LOAN AGREEMENT

Between

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
ACTING ON BEHALF OF
THE STATE OF KANSAS

and

CITY OF WICHITA, KANSAS

KPWSLF PROJECT NO. 2979

EFFECTIVE AS OF JUNE 22, 2020

The interest of the Kansas Department of Health and Environment ("KDHE") in the Loan Repayments to be made by the Municipality and certain other revenues (the "Revenues") under this Loan Agreement have been pledged and assigned to the Kansas Development Finance Authority (the "Authority") pursuant to a Master Indenture. The interest of the Authority in the Revenues has been pledged as security for the payment of the principal of, redemption premium if any, and interest on the Authority's State Revolving Fund Revenue Bonds, pursuant to the Master Indenture.
# LOAN AGREEMENT

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RECITALS

KANSAS PUBLIC WATER SUPPLY LOAN FUND

LOAN AGREEMENT

THIS LOAN AGREEMENT, effective as of June 22, 2020, by and between the KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT (“KDHE”), acting on behalf of THE STATE OF KANSAS (the “State”), and the City of Wichita, Kansas, a “Municipality” according to K.S.A. 65-163d (the “Municipality”);

WITNESSETH:

WHEREAS, the Safe Drinking Water Act Amendments of 1996 [PL 104-182] to the Safe Drinking Water Act (jointly, the “Federal Act”) established the Drinking Water Loan Fund to assist public water supply systems in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal Act and to protect the public health and authorized the Environmental Protection Agency (the “EPA”) to administer a revolving loan program operated by the individual states; and

WHEREAS, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

WHEREAS, by passage of the Kansas Public Water Supply Loan Act, K.S.A. 65-163d et seq., as amended (the “Loan Act”), the State of Kansas (the “State”) has established the Kansas Public Water Supply Loan Fund (the “Revolving Fund”) for purposes of the Federal Act; and

WHEREAS, under the Loan Act, the Secretary (the “Secretary”) of the Kansas Department of Health and Environment (“KDHE”) is given the responsibility for administration and management of the Revolving Fund; and

WHEREAS, the Secretary, Kansas Development Finance Authority (the “Authority”), and the Kansas Department of Administration (the “DOA”) have entered into an Inter-Agency Agreement dated as of September 28, 2009, (jointly, the “Inter-Agency Agreement”), to define the cooperative relationship between KDHE, the DOA and the Authority to jointly administer certain provisions of the Loan Act; and

WHEREAS, the Authority and KDHE have supplemented the Inter-Agency Agreement by entering into a Master Indenture, dated November 1, 1997, as the same may be amended and supplemented from time to time (the “Master Indenture”) pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities (as defined in the Loan Act) for Public Water Supply Projects and to pledge the Loan Repayments received pursuant to such Loan Agreements to the Authority; and

WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the “KDFA Bonds”) for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and
WHEREAS, the Municipality has made timely application to KDHE for a Loan to finance all or a portion of the Project Costs; and

WHEREAS, the State has approved the Municipality's application for a Loan, subject to the receipt of capitalization grants from the EPA pursuant to the Federal Act and proceeds of the KDFA Bonds when issued by the Authority.

NOW, THEREFORE, in consideration of the award of the Loan by KDHE, the Municipality agrees to complete its Project (as defined herein) and to perform under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

“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 Loan 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, loans or other obligations, other than the Parity Bonds, of the Municipality hereafter issued or incurred, payable from the Net Revenues and standing on a parity and equality with the Parity Bonds and the Loan with respect to the Lien on the Net Revenues.

“Additional Payments” means the payments described in Section 2.06 hereof.

“Authority” or “KDFA” means the Kansas Development Finance Authority, a public body politic and corporate and an instrumentality of the State, and its successors and assigns.

“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 Municipality’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 Municipality 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, the federal home loan mortgage corporation or government national mortgage association;

(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 Investors Service or S&P Global Ratings, a division of S&P Global Inc.;

(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, and amendments thereto, 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, and amendments thereto, 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 Insurer, all as may be further restricted or modified by amendments to applicable State law.

“Authorized Municipality Representative” means any person authorized pursuant to a resolution of the governing body of the Municipality to perform any act or execute any document relating to the Loan, or this Loan Agreement.

“Balloon Indebtedness” means Long-Term Indebtedness, 25% or more of the original principal amount of which becomes due (either by maturity or mandatory redemption) during any consecutive twelve-month period, if such principal amount becoming due is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such twelve-month period.

“Bond Reserve Account” means the Water and Sewer Utility Bond Reserve Account established in the Treasury of the Municipality.

“Bond Reserve Requirement” means, collectively or individually, as the context requires, any bond reserve requirement for each series of Outstanding Parity Bonds and any bond reserve requirement for any subsequent series of Parity Bonds; provided that there shall be no bond reserve requirement for the
Loan and the KDHE 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, any supplemental resolution authorizing any Additional Indebtedness, including the WIFIA Bond Resolution, and any loan agreement or other evidence of indebtedness, including this Loan Agreement and any other loan agreement between KDHE and the Municipality relating to Additional Indebtedness.

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


“Conditions Applicable to Construction of the Project” shall have the meaning set forth on Exhibit C hereto.

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

“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 Municipality for the purpose of carrying out the duties imposed on the Consultant by the Bond Resolutions.

“Continuing Disclosure Undertaking” means, with respect to any series of KDFA Bonds, the undertaking or agreement by KDHE and any other parties thereto with respect to continuing disclosure matters within the scope of the SEC Rule.

“Current Expenses” means, as applied to either component of the Utility, the Municipality’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 Indebtedness, (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 Municipality or by improvement districts heretofore annexed by the Municipality 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 Municipality under the provisions of the Bond Resolutions 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 Municipal Fiscal Year: (a) with respect to the Rate Covenant, the ratio determined by dividing (i) a numerator equal to the Net Revenues for such Municipal Fiscal Year by (ii) a denominator equal to the Debt Service Requirements and/or the Payment to the City, as applicable, for such Municipal 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 Municipal 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.

“Dedicated Source of Revenue” shall have the meaning ascribed thereto in Section 3.02(a) hereof.

“Depreciation and Replacement Account” means the Water and Sewer Utility Depreciation and Replacement Account established within the Treasury of the Municipality.

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

“Director of Finance” means the duly appointed and acting Director of Finance of the Municipality or, in the Director’s absence, the duly appointed Deputy, Assistant or Acting Director of Finance of the Municipality.

“Discount Indebtedness” means Long-Term Indebtedness that is originally sold at a price excluding accrued interest, but without deduction of any underwriters' discount) of less than 75% of the maturity amount including the amount of principal and interest to accrete at maturity of such Long-Term Indebtedness.

“Effective Date” means the date on which the Kansas Public Water Supply Loan Fund application process has been completed and KDHE sets the Gross Interest Rate in accordance with K.A.R. 28-15-52(b).

“EPA” means the Environmental Protection Agency of the United States, its successors and assigns.

“Event of Default” means any occurrence of the following events:

(a) Failure by the Municipality to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due.
(b) Failure by the Municipality to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by KDHE, unless KDHE shall agree in writing to an extension of such time prior to its expiration. If the failure stated in such notice is correctable but cannot be corrected within the applicable period KDHE may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above, if corrective action is instituted by the Municipality within the applicable period and diligently pursued until such failure is corrected.

(c) Failure by the KDHE to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement which shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to KDHE by the Municipality, unless the Municipality shall agree in writing to an extension of such time prior to its expiration. If the failure stated in such notice is correctable but cannot be corrected within the applicable period the Municipality may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above if corrective action is instituted by KDHE within the applicable period and diligently pursued until such failure is corrected.

(d) The discovery that any representation made by or on behalf of the Municipality in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect.

(e) The discovery that any representation made by or on behalf of KDHE in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement, is false or misleading in any material respect.

(f) The filing of a petition by or against the Municipality under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Municipality, such petition is dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal.

(g) Failure of KDHE to promptly pay any Project Costs when reasonably requested to do so by the Municipality pursuant to Section 2.03 hereof.

(h) Any Event of Default under any Utility Indebtedness of the Municipality.


“Flow of Funds” shall have the meaning set forth in Section 3.02(c) of this Loan Agreement.

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

“GAAP” means generally accepted accounting principles as applicable to municipal utility systems.

“General Obligation Indebtedness” means any of the Municipality’s general obligation bonds issued for improvements to the Utility.
“Green Project Reserve” means the requirement from Public Law 111-88 indicating that to the extent there are sufficient eligible project applications, 20% of the funds awarded to the KPWSLF from Public Law 111-88 shall be used by for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

“Gross Interest Rate” means an interest rate of 1.48% per annum, which includes a net loan interest rate and a service fee as described in Exhibit B.

“Gross Revenues” means all income and revenues derived and collected by the Municipality 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.

“Independent Accountant” means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Municipality 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.

“Initiation of Operations” means the ability to start operations of the Project, which may be coterminous with the substantial completion of the Project.

“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.

“Insurer” means Build America Mutual Assurance Company, a New York domiciled mutual insurance corporation, or any successor thereto.

“KDFA Bonds” means the Kansas Development Finance Authority, Kansas Public Water Supply Revolving Loan Fund Revenue Bonds, issued in one or more series, pursuant to Master Bond Resolution No. 106, and supplements thereto, or such other authorization, resolution, indenture, instrument or security agreement deemed appropriate by KDFA and KDHE.

“KDHE” means the Kansas Department of Health and Environment or its successors in interest.

“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.

“Loan” means the loan made by KDHE to the Municipality to finance or refinance a portion of the Project Costs pursuant to this Loan Agreement.
“Loan Act” means the Constitution and laws of the State of Kansas, including particularly K.S.A. 65-163d through 65-163u inclusive, as amended and supplemented.

“Loan Agreement” means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“Loan Repayments” means the payments payable by the Municipality pursuant to Section 2.05 of this Loan Agreement.

“Loan Terms” means the terms of this Loan Agreement provided in Article II hereof.

“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.

“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 Municipal 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.

“Municipal Bond Insurance Policy” means the Municipal Bond Insurance Policy issued by the Insurer insuring the payment, when due, of the Loan Repayments, as provided therein.

“Municipal Fiscal Year” means the twelve-month period ending on December 31 of each year.

“Municipality” means the City of Wichita, Kansas.

“Master Indenture” means the Master Indenture between the Authority and KDHE, dated as of November 1, 2010, and any agreement or agreements amendatory or supplemental thereto.

“Net Revenues” or “Net Revenues Available for Debt Service” 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.

“Operating Revenues” means the Gross Revenues, less investment income and less Current Expenses.

“Ordinance” means the ordinance adopted by the governing body of the Municipality authorizing the Municipality to enter into and perform the Loan and Loan Agreement.
“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 Insurer.

“Outstanding Parity Bond Resolutions” means the ordinances and resolutions authorizing the issuance of the Outstanding Parity Bonds, as the same may be amended and supplemented from time to time.

“Outstanding Parity Bonds” means the bonds of the Municipality that have been issued or incurred prior to the Loan Effective Date and standing on a parity and equality with the Loan with respect to the Lien on the Net Revenues, including but not limited to the WIFIA Bond.

“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 Municipality that have been issued or incurred prior to the Loan 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, including but not limited to the WIFIA Credit Agreement.

“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, KDHE is the Owner of the Loan.

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

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

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

“Paying Agent” means (a) with respect to the Outstanding Parity Bonds other than the WIFIA Bond, 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 ordinance or resolution authorizing such Additional Indebtedness.
“Payment Date” means each date on which principal or interest is due on any Utility Indebtedness.

“Payment to the City” means the payment to the Municipality’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 Municipality which are then in effect with respect to the then outstanding Utility Indebtedness.

“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 entity.

“Policy” means the Insurer’s policy of insurance insuring the Loan Repayments.


“Principal and Interest Account” means the Water and Sewer Principal and Interest Account established within the treasury of the Municipality.

“Project” means the acquisition, design, construction, improvement, repair, rehabilitation or extension of the System described in Exhibit A hereto, which constitutes a project pursuant to the Loan Act for which KDHE is making a Loan to the Municipality pursuant to this Loan Agreement.

“Project completion” or “completion of the Project” for purposes of this Loan Agreement means the completion of construction of the Project.

“Project Costs” means all costs or expenses which are necessary or incident to the Project and which are directly attributable thereto, including, but not limited to: (a) interest on the Loan during the construction of the Project; (b) principal of and interest on any temporary financing obligations issued by the Municipality to pay Project Costs incurred for contracts entered into on or after August 6, 1996; and (c) financing and administrative costs associated with the Loan Agreement.

“Public Water Supply System” means a system for the provision to the public of piped water for human consumption, if such system has at least ten (10) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year, and as further defined in K.S.A. 65-162a, and amendments thereto.

“Put Indebtedness” means Long-Term Indebtedness which is (a) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, at the option of the holder thereof, prior to its stated maturity date, or (b) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, other than at the option of the holder, prior to its stated maturity date, other than pursuant to any mandatory sinking fund or other similar fund, or other than by reason of acceleration upon the occurrence of an Event of Default under the Bond Resolutions.


“Revenue Fund” means the Water and Sewer Utility Revenue Fund established within the treasury of the Municipality.

“Revolving Fund” means the Kansas Public Water Supply Loan Fund established by the Loan Act.
“SEC Rule” means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time or such other similar rule regarding disclosure of information in securities transactions.

“Secretary” means the Secretary of KDHE.

“Sewer Utility” shall mean and include the sanitary sewer system now owned and operated by the City, 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.

“State” means the State of Kansas, acting, unless otherwise specifically indicated, by and through KDHE, and its successors and assigns.

“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 or Ordinance as the fixed date on which the principal of such Utility Indebtedness or such installment of interest is due and payable.

“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 Municipality 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.

“Uncontrollable Force” means any cause beyond the control of the Municipality, 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, pandemic, or act of God (provided that the Municipality 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 Municipality and the Municipality 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 Municipality.

“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.
“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 Municipality 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.

“Variable Rate Indebtedness” means any Utility Indebtedness which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with procedures provided in the instrument creating such Utility Indebtedness.

“Water Utility” or “System” shall mean and include the waterworks system now owned and operated by the Municipality 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, including the Project described in *Exhibit A*, for which the Municipality is making the borrowing under this Loan Agreement, which constitutes or includes a Public Water Supply System.

“WIFIA” means the Water Infrastructure Finance and Innovation Act as enacted by the Congress of the United States of America and 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), which is codified as 33 U.S.C. §§ 3901-3914.

“WIFIA Bond” means the Municipality's not to exceed $331,000,000 principal amount Taxable Water and Sewer Utility Revenue Bond, Series 2020B (WIFIA) issued and delivered by the Municipality to WIFIA.

“WIFIA Bond Resolution” means Ordinance No. 51-211 and Resolution No. 20-096, each adopted by the governing body of the Municipality on April 21, 2020, as amended and supplemented from time to time, authorizing the Municipality to issue bonds and receive credit pursuant to WIFIA.

“WIFIA Credit Agreement” means the WIFIA Credit Agreement dated April 23, 2020 between the EPA and the Municipality for up to $280,860,714 to finance a portion of the cost of the Project.
Section 1.02. Rules of Interpretation.

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

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(c) All references in this Loan Agreement to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Loan Agreement as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(d) The Table of Contents and the Article and Section headings of this Loan Agreement shall not be treated as a part of this Loan Agreement or as affecting the true meaning of the provisions hereof.

ARTICLE II

LOAN TERMS

Section 2.01. Amount of the Loan. Subject to all of the terms, provisions and conditions of this Loan Agreement, and subject to the availability of State and Federal funds and proceeds of KDFA Bonds, KDHE will loan an amount not to exceed $55,000,000.00 to the Municipality to pay for a portion of the Project Costs for the Project described in Exhibit A hereto. KDHE currently anticipates that it will execute up to 4 additional loans for the Project up to an aggregate total loan amount of $267,342,000; provided that each additional loan will be subject to the terms, provisions and conditions of its applicable loan agreement and subject to the availability of State and Federal funds and available proceeds of KDFA Bonds. The additional loans will be executed as funds are needed but not more frequently than one per calendar year. Terms for additional loans may be different from terms in this Loan Agreement, including but not limited to the interest rate applicable to the additional loan and repayment terms and conditions established and determined in accordance with KDHE policies, the Loan Act and the Regulations, all as set out in the applicable loan agreement. The final actual amount of the Loan may be reduced without revision of any other terms, provisions or conditions of this Loan Agreement, other than the Loan Repayment Schedule (Exhibit B hereto), to reflect reductions in the estimated or actual total Project Costs as impacted by opening of bids for construction, change orders, final actual costs, and prepayments. The Municipality shall be responsible for any costs incurred by the Municipality in connection with the Project in excess of the amount of the Loan. An amendment to Exhibit B must be accomplished by written amendment to the Loan Agreement executed by all parties.

Section 2.02. Interest Rate. The Gross Interest Rate on the loan shall be 1.48% per annum, which shall be assessed on the unpaid principal balance to be paid as set out in the Loan Repayment Schedule, Exhibit B hereto. This Gross Interest Rate consists of a net loan interest rate and a service fee as described in Exhibit B. Any subsequent revision to the amount of the Loan or Exhibit B hereto shall not change the Gross Interest Rate on the Loan. The interest rate for additional loans will be determined by K.A.R 28-15-52 based on the effective date of each additional loan.
Section 2.03. Disbursement of Loan Proceeds.

(a) Subject to the conditions described in this Section, KDHE agrees to disburse the proceeds of the Loan during the progress of the Project. Requests for disbursement may be submitted by the Municipality (in substantially the form attached hereto as Exhibit E), not more than once per month, in accordance with the procedures set forth by KDHE. Any request for disbursement must be supported by proper invoices and a certificate of the Authorized Municipality Representative to the effect that all representations made in this Loan Agreement remain true as of the date of the request and, based upon that information then available to such person, no adverse developments affecting the financial condition of the Municipality or its ability to complete the Project or to repay the Loan have occurred.

The Municipality may request disbursement for Project Costs, including:

(1) any eligible planning/design costs incurred prior to execution of this Loan Agreement (initial disbursement request only);

(2) disbursement for eligible Project Costs if such Project Costs have been incurred and are due and payable to Project contractors (actual payment of such Project Costs by the Municipality is not required as a condition of the payment request);

(3) interest becoming due on the Loan prior to the initial scheduled payment of principal;

(b) KDHE shall not be under any obligation to disburse any Loan proceeds to the Municipality under this Loan Agreement unless:

(1) there are moneys available in the Revolving Fund to fund the Loan, as determined solely by KDHE;

(2) the Municipality shall have funds available to pay for that portion of the Project Costs not eligible (pursuant to the Loan Act or the Federal Act) to be funded under this Loan Agreement;

(3) no Event of Default by the Municipality shall have occurred and be continuing; and

(4) in KDHE’s reasonable discretion, the Municipality continues to maintain reasonable progress towards completion of the Project.

Section 2.04. Schedule of Compliance; Completion of Project.

(a) The Municipality agrees to complete the Project in accordance with the Conditions Applicable to Construction of the Project set forth on Exhibit C attached hereto.

(b) The completion of the construction of the Project shall be evidenced to KDHE by a certificate signed by the Authorized Municipality Representative stating: (1) that the construction of the Project has been completed in accordance with the plans and specifications therefore; and (2) that all Project Costs have been paid, except Project Costs the payment of which is not yet due or is being retained or contested in good faith by the Municipality. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.
Section 2.05. Repayment of the Loan.

(a) **Loan Repayments.** The Municipality shall pay to KDHE, on or before the due dates, installments of principal and interest at the Gross Interest Rate on the Loan in accordance with Exhibit B attached hereto (the “Loan Repayments”), until the Loan has been paid in full. Nothing in this Loan Agreement shall prevent the Municipality from making a Loan Repayment (including interest at the Gross Interest Rate) prior to the due date of such Loan Repayment. Installments of principal and interest on the Loan shall be computed and paid in accordance with the Loan Repayment Schedule on Exhibit B as in effect at any time under this Loan Agreement. Notwithstanding any other provision of this Loan Agreement, the first payment of principal and interest due on the Loan shall be made on the day that is one year after Project completion or August 1, 2025, whichever comes first. Except for the first payment, Loan Repayments will be due semiannually in February and August. The final installment of principal under the Loan shall be fully repaid not later than 21 years after Project completion or February 1, 2045, whichever comes first.

(b) **Prepayment of the Loan.** The Municipality may not prepay the outstanding principal of the Loan, except as may be consented in writing by KDHE in advance of such prepayment, which consent, if any, shall be at the sole discretion of KDHE. The municipality must provide a written request to KDHE of its desire to prepay, such request shall indicate the actual source of funds that will be used to make the prepayment (specifically proceeds from a tax exempt bond issue, proceeds from a taxable bond issue, cash on hand, or some other instrument) and the desired date of prepayment. KDHE may require the prepayment date coincide with a scheduled repayment date of the Loan. A partial prepayment may be made only if the prepayment amount is equal to or greater than the greater of 10% of the original principal amount of the Loan or $50,000. A new Exhibit B will be prepared by KDHE following receipt of any acceptable partial prepayment, reamortizing the remaining principal amount over the remaining term of the Loan.

Section 2.06. Additional Payments. The Municipality shall pay as Additional Payments the following amounts:

(a) Any amounts required to be paid by the Authority to the United States of America as arbitrage rebate, arising due to the Municipality's failure to expend proceeds of the Loan at the times certified to KDHE by the Municipality, that result in arbitrage rebate liability for the Authority, but only to the extent that the funds in the Rebate Fund established by the Master Indenture are insufficient to make such payments; and

(b) All other payments of whatever nature which the Municipality has agreed to pay or assume hereunder.

Section 2.07. Additional Indebtedness. The Municipality shall not create, incur or suffer to exist any Additional Indebtedness, Utility Indebtedness or other obligations the payments of which are senior or prior in right to (A) the payment by the Municipality of the Loan and the other Parity Indebtedness or (B) the Lien on the Net Revenues in favor of the Loan.

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

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

(A) the Municipality 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 Municipality shall have delivered the following:

(i) for issuance of any Long-Term Indebtedness, a certificate signed by the Municipality evidencing that the Debt Service Coverage Ratio on all Parity Indebtedness for the two (2) Municipality 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 Municipality 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) Municipality 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 Municipality 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;

(ii) for issuance of any Short-Term Indebtedness, a certificate signed by the Municipality 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 Municipality 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 Municipality 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 Municipality 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

(iii) for issuance of any Interim Indebtedness, a certificate signed by the Municipality evidencing either of the following: (1) the Interim Indebtedness could be incurred assuming it was Long-Term Indebtedness or (2) the Municipality 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 Municipality 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.

(F) The Secretary may waive any or all or any part of the conditions in (A), (B), (D) and (E) above by written waiver delivered to the Municipality preceding issuance of the Additional Indebtedness. The Municipality will not issue any Utility Indebtedness as Parity Obligations pursuant to this subsection 2.07(a)(1) unless each of the foregoing conditions in (A) through (E) is first satisfied or waived by the Secretary.

(2) The Municipality shall have the right, without complying with the provisions of the foregoing terms and conditions of the issuance of Additional Parity Indebtedness to issue 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.

(3) 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 Municipality may make equal provision for paying the 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.

(b) Issuance of Subordinate Indebtedness. The Municipality 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 Municipality shall not be in default in the performance of any 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 Municipality shall be in default in paying either interest on or principal of the Parity Indebtedness, or the Municipality 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 Municipality shall make no payments of Debt Service Requirements on such Subordinate Indebtedness until such default is cured.

(c) Calculation of Debt Service Requirements.

(1) Debt Service Requirements on Balloon, Put, Short-Term and Interim Indebtedness.
(A) The principal of Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under this Section 2.07, or Interim Indebtedness shall be deemed due and payable at its Stated Maturity; provided, however, that at the election of the Municipality for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal deemed payable on Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under this Section 2.07, or Interim Indebtedness, shall be deemed to be payable as set forth below:

(i) If the Municipality has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency) to refinance such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(ii) If the Municipality has entered into a binding agreement providing for the deposit by the Municipality with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency), in trust herein called a “Special Redemption Fund” of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, when due from the sums so deposited and investment earnings realized thereon, then the principal amount of the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(iii) If the Municipality has entered into arrangements or agreements with respect to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, other than those referred to in subsections (i) and (ii) above, which a Consultant in a certificate filed with the Municipality determines, taking into account the interests of the Owners of Utility Indebtedness, provides adequate assurances that the Municipality will be able to meet the Debt Service Requirements due on such Indebtedness. the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(iv) Such Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness may be deemed to be Utility Indebtedness which, at the date of its original incurrence, was payable over a term not to exceed twenty (20) years in equal annual installments of principal and interest at the Index Rate.
A Consultant shall deliver to the Municipality a certificate stating that it is reasonable to assume that installment obligations of such term of the Municipality can be incurred and stating the interest rate then applicable to installment obligations of such term of comparable quality. Interim Indebtedness may be deemed to be Indebtedness which, at the date of its original incurrence, would meet the conditions specified in the statement of the Consultant as required in this Section 2.07; provided that the Consultant shall for each annual period that the Debt Service Requirement is computed, provide a supplemental statement that at such period, the certifications contained in the statement are reasonable.

(B) Interest that is payable prior to the Stated Maturity of any Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness shall be taken into account for such appropriate period in computation of Debt Service Requirements. Interest payable at maturity or early redemption on Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may either be amortized over the anticipated maturity or such longer period as is permitted under Section 2.07 or Section 2.07(c)(A)(iv) or may be treated as principal payable on the principal maturity date of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness.

(C) In measuring compliance with the applicable tests hereunder in connection with incurring Put Indebtedness and generally for purposes of determining the Debt Service Requirements relating thereto, Put Indebtedness shall be deemed to mature based upon the actual amortization requirements for the Put Indebtedness, only to the extent that the Municipality has a commitment to refinance such Put Indebtedness.

(2) Debt Service Requirements on Discount Indebtedness. At the election of the Municipality for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal and interest deemed payable on Discount Indebtedness shall be deemed to be payable as set forth below:

(A) If the Municipality has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency) to refinance such Discount Indebtedness, or a portion thereof; including without limitation, a letter of credit or a line of credit, the Discount Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(B) If the Municipality has entered into a binding agreement providing for the deposit with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency), in trust (herein called a “Special Redemption Fund”) of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Discount Indebtedness, or a portion thereof, and providing for the payment of such principal amount when due from the sums so deposited, and investment earnings realized thereon, then the Discount Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(C) If the Municipality has entered into arrangements or agreements with respect to the principal amount of such Discount Indebtedness, other than those referred to
in subsections (A) and (B) above, which a Consultant in a certificate filed with the Municipality determines, taking into account the interests of the holders of Utility Indebtedness, provides adequate assurances that the Municipality will be able to meet the Debt Service Requirements due on such Indebtedness, the Discount Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(D) As of any time the maturity amount represented by Discount Indebtedness shall be deemed to be the accreted value of such Indebtedness computed on the basis of a constant yield to maturity.

(3) **Debt Service Requirements on Variable Rate Indebtedness.** When calculating interest requirements on Variable Rate Indebtedness which bears a variable rate of interest for periods as to which the rate of interest has not been determined, the rate of interest on Outstanding Variable Rate Indebtedness shall be the average annual rate of interest which was payable on such Variable Rate Indebtedness during the twelve (12) months immediately preceding the date as of which the calculation is made; and the rate of interest on Variable Rate Indebtedness to be incurred (or incurred less than twelve (12) months preceding such date) shall be the average annual rate of interest which would have been payable on such Variable Rate Indebtedness had it been outstanding for a period of twelve (12) months immediately preceding the date as of which the calculation is made, as evidenced in a certificate of a Consultant, delivered to the Municipality.

**ARTICLE III**

**REPRESENTATIONS AND COVENANTS OF MUNICIPALITY**

**Section 3.01. Representations of the Municipality.** The Municipality represents as follows:

(a) **Organization and Authority.**

(1) The Municipality is a body corporate and politic duly created and validly existing under and pursuant to the constitution and statutes of the State.

(2) The Municipality has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain its Utility, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(3) The proceedings of the Municipality's governing body approving this Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Municipality, and authorizing the Municipality to undertake and complete the Project have been duly and lawfully adopted and have not been repealed or modified.

(4) This Loan Agreement has been duly authorized, executed and delivered on behalf of the Municipality, and, constitutes the legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

(b) **Full Disclosure.** To the best knowledge of the Authorized Municipality Representative signing this Loan Agreement, after due investigation, there is no fact that the Municipality has not disclosed to KDHE in writing on the Municipality's application for the Loan, or otherwise, that materially adversely affects, or that will materially adversely affect, its properties, activities, the Utility, Gross Revenues, or
ability to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreement under this Loan Agreement.

(c) Non-Litigation. Other than claims challenging the Municipality’s charter, legislative authorities and police powers that lack any reasonable merit, there is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legal organization of the Municipality; (2) its boundaries; (3) the right or title of any of its officers to their respective offices; (4) the collection of revenues of the Utility; or (5) the imposition and collection of rates, fees and charges for use of the Utility; which if decided adversely to the Municipality could materially and adversely affect the transactions contemplated hereby or the validity or enforceability of the Loan or this Loan Agreement. There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legality of any official act taken in connection with obtaining the Loan; (2) the constitutionality or validity of the indebtedness represented by the Loan Agreement; (3) any of the proceedings had in relation to the authorization or execution of this Loan Agreement; (4) the pledging of Net Revenues to pay the principal of and interest on the Loan; or (5) the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(d) Compliance with Existing Laws and Agreements. To the best knowledge of the Municipality, the authorization, execution and delivery of this Loan Agreement by the Municipality, and the performance by the Municipality of its duties, covenants, obligations and agreements thereunder will not result in any breach of any existing law, any Outstanding Utility Indebtedness, or any other agreement to which the Municipality is a party.

(e) No Defaults. To the knowledge of the Municipality, no event has occurred and no condition exists that would constitute an Event of Default under this Loan Agreement or any Outstanding Utility Indebtedness. There is presently no material default under any resolution, Outstanding Utility Indebtedness, or agreement which would materially adversely affect the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(f) Compliance with Law. The Municipality has, to the best of the Authorized Municipality Representative's knowledge:

1. complied with all laws, governmental rules and regulations to which it is subject, including, without limitation, any public hearing or public notice requirements or environmental review requirements contained in the Loan Act, the Regulations and the Federal Act, the failure to comply with which would materially adversely affect the ability of the Municipality to conduct its activities, enter into this Loan Agreement or undertake or complete the Project; and

2. obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership and operation of its System which, if not obtained, would materially adversely affect the ability of the Municipality to complete the Project or operate the System.

(g) Use of Loan Proceeds. The Municipality will apply the proceeds of the Loan as described in Exhibit D: (1) to finance or refinance a portion of the Project Costs; and (2) where applicable, to reimburse the Municipality for a portion of the Project Costs paid or incurred in anticipation of reimbursement by KDHE as a result of contracts entered into on or after August 6, 1996 and eligible for such reimbursement pursuant to the Regulations and the Code. The Municipality understands that all or a
portion of the proceeds of the Loan may be funded with proceeds of KDFA Bonds, the interest on which is intended to be exempt from Federal income tax under the Code (“Tax-Exempt Bonds”). The Municipality agrees that it will not use, or permit any Person to use, any portion of the proceeds of the Loan or the facilities financed with the proceeds of the Loan (the “Financed Facility”) in a manner that could cause interest on any of the Tax-Exempt Bonds to become subject to income tax under the Code. The Municipality agrees to comply with the requirements set forth in the Qualified User Certificate attached as Exhibit J hereto, as such may be modified or amended from time to time by KDHE to maintain compliance with the Code for any Tax-Exempt Bonds, with respect to the use of the Financed Facilities, and to provide to KDHE confirmation of such compliance as from time to time requested by KDHE. Each request by the Municipality for disbursement of Project Costs pursuant to this Loan Agreement shall be deemed a representation that the portion of the Financed Facilities funded thereby is in compliance with the requirements set forth in the Qualified User Certificate attached as Exhibit J hereto.

(h) Project Costs. The Municipality certifies that the statement of sources of funds and Project Costs, as listed in Exhibit D, is a reasonable and accurate estimation based on facts known to the Authorized Municipal Representative and, upon direction of KDHE, it will supply the same with a certificate from its consulting engineer stating that such sources of funds and Project Costs are reasonable and accurate estimations, taking into account investment income to be realized during the estimated course of construction of the Project, if any, and other lawfully available money that would, absent the Loan, have been used to pay the Project Costs.

(i) Parity Obligations. The Municipality certifies that the Loan is a Parity Obligation as defined in the WIFIA Credit Agreement and is a Parity Obligation as defined in the Outstanding Parity Bond Resolutions. The Municipality hereby represents and covenants that the Loan granted by this Loan Agreement is so granted in full compliance with the restrictions and conditions upon which the Municipality may issue Additional Obligations which stand on a parity of lien with the Net Revenues with the Parity Indebtedness heretofore issued and Outstanding, as set forth and contained in the Outstanding Parity Bond Resolution, and that the Loan herein directed to be granted is so issued in all respects on a parity and equality with the Parity Indebtedness heretofore issued and Outstanding. In case any one or more of the provisions of this Loan Agreement or of the Loan granted hereunder shall for any reason be inconsistent with the provisions of the Outstanding Parity Bond Resolutions or the Parity Indebtedness: (a) the provisions of any Outstanding Parity Bond Resolution adopted prior to this Loan Agreement shall prevail with respect to Parity Indebtedness issued prior in time, so long as such Parity Indebtedness is Outstanding; and (b) the provisions of this Loan Agreement shall prevail with respect to any Parity Bond Resolution adopted subsequent to this Loan Agreement, so long as any Parity Indebtedness issued under this Loan Agreement is Outstanding.

Section 3.02. Particular Covenants of the Municipality.

(a) Dedicated Source of Revenue for Repayment of the Loan. (i) The Municipality hereby adopts the Net Revenues as the Dedicated Source of Revenue; which Dedicated Source of Revenue is hereby pledged to and as security for the Loan Repayments, Additional Payments and all other obligations under the Loan Agreement. The Loan shall be a special obligation of the Municipality payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the Municipality hereby pledges said Net Revenues to the payment of the principal and interest on the Loan. The Loan shall not be or constitute a general obligation of the Municipality and the taxing power of the Municipality is not pledged to the payment of the Loan, either as to principal or interest.

(ii) The obligation of the Municipality to make Loan Repayments is secured by the Municipal Bond Insurance Policy issued in favor of KDHE but obtained by and at the cost of the Municipality. The Municipality has obtained a commitment from Build America Mutual Assurance Company to provide the
Municipal Bond Insurance Policy herein referenced. The cost of the policy can be included in the principal component of the Loan.

(b) **Rate Covenant.** The Municipality, 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 Municipality to have in each Municipal 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 Municipal 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 Municipal Fiscal Year’s Debt Service Requirements for all Utility Indebtedness.

The Municipality 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 Municipal Fiscal Year, Net Revenues are an amount less than as provided in the foregoing provisions of this section, the Municipality 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 Municipality 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.

(c) **Application of Gross Revenues; Funds and Accounts.** The Municipality’s Gross Revenues shall be deposited into the Revenue Fund and applied in the following order of priority (the “Flow of Funds”):

**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 Municipality 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;

**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 Municipality 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;
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 Municipality solely to prevent any default in the payment of interest on or principal of the Parity Bonds 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 Bonds 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 Municipality 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 Municipality 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;

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;

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 Municipality 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 Municipality 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 Municipality 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;

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

seventh, to transfer monthly to such funds or accounts of the Municipality determined by the Director of Finance of the Municipality, proportionate amounts equal to the next required Payment to the City; and

eighth, to transfer all moneys in the Revenue Fund on each January 1 not required for payment of the Current Expenses and all transfers required by first through seventh hereof for the next ninety (90) days to the Improvement Account. When the Pre-2014 Bonds are no longer
Outstanding, transfers from the Revenue Fund to the Improvement Fund may be made on a monthly basis in such amounts as may be determined by the Director of Finance. Moneys in the Improvement Account may be expended and used for the following purposes:

(1) Paying the Current Expenses.

(2) Paying the cost of extending, enlarging or improving the Utility.

(3) Preventing default in, making payments into or increasing the amounts in any of the Funds and Accounts or other payments required by subsections (a) to (g) hereof

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

(5) Any other lawful purpose in connection with the operation of the Utility and benefiting the Utility.

(6) To make transfers to the Revenue Fund.

(d) **Performance Under Loan Agreement.** The Municipality covenants and agrees in the performance of its obligations under this Loan Agreement:

(1) to comply with all applicable State and federal laws, rules and regulations (including, but not limited to those rules and conditions set forth in Exhibit C hereto as are applicable to this Loan Agreement); and

(2) to reasonably cooperate with KDHE in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and KDHE under this Loan Agreement and the Regulations, including, without limitation the requirements contained in Exhibit C hereto.

(e) **Completion of Project and Provision of Moneys Therefor.** The Municipality covenants and agrees:

(1) to exercise its commercially reasonable efforts in accordance with prudent water treatment utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date set forth in Exhibit C hereto; provided such completion date shall be extended for the period of any Uncontrollable Force; and

(2) to provide from its own financial resources all moneys, in excess of the total amount of proceeds it receives under the Loan, required to complete the Project.

(f) **Delivery of Documents.** Concurrently with the delivery of this Loan Agreement and the closing of the Loan, the Municipality will cause to be delivered to KDHE:

(1) fully executed counterparts of this Loan Agreement;

(2) copies of the ordinance of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement, certified by an Authorized Municipality Representative, which shall be in substantially the form attached hereto as Exhibit F;
(3) an opinion of the Municipality's counsel substantially in the form set forth in Exhibit G attached hereto;

(4) a certificate of the Municipality substantially in the form set forth in Exhibit J attached hereto;

(5) a fully executed UCC Financing Statement or other security filing instrument, if applicable;

(6) the Municipal Bond Insurance Policy of the Insurer in substantially the form attached hereto as a part of Exhibit I, the statement of insurance; and

(7) such other certificates, documents, opinions and information as KDHE may reasonably require.

(g) **Operation and Maintenance of System.** The Municipality covenants and agrees that it shall, in accordance with prudent public water supply utility practice:

(1) at all times operate its System in an efficient manner in accordance with applicable laws and regulations; and

(2) maintain its System, making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements necessary to maintain its system in good repair, working order and operating condition; and

(3) implement and collect any rates, fees and charges for use of the System that comprise the Dedicated Source of Revenues, including charges levied for use of the System adopted by the Secretary, after consultation with the governing body of the Municipality, to ensure repayment of all Parity Indebtedness (including the Loan) without preference in accordance with the provisions of the Loan Act, including Section 65-163j thereof; and

(4) take such other action as the Secretary may require in accordance with express powers granted to the Secretary under the Loan Act and the Regulations.

(h) **Disposition of System.** The Municipality shall not sell, lease or otherwise transfer ownership of all or substantially all of its System without the consent of the Secretary and compliance with restrictions upon the same under the Bond Resolutions. The Municipality shall provide the Secretary with ninety (90) days' prior written notice to KDHE of such sale, lease or transfer. No such sale, lease or transfer shall be effective unless compliance is with the provisions of Section 4.02 hereof, assuming such sale, lease or transfer is deemed to be an assignment for the purposes of such Section. Subject to compliance with the Bond Resolutions, the Municipality may enter into a lease of a portion of the System in conjunction with a lease-purchase transaction to finance improvements to the System; provided that such lease-purchase transaction is deemed to be an Additional Indebtedness and further provided that a termination or an event of default by the Municipality under such arrangement shall not have a material adverse effect on the Municipality's Dedicated Source of Revenues.

(i) **Creation of Liens; Adverse Amendments.**

(1) The Municipality will neither create, nor permit the creation of, any lien, encumbrance or charge upon its Utility or upon the Gross Revenues except the pledge, lien and charge securing its obligations under this Loan Agreement, any Outstanding Utility Indebtedness,
any Additional Indebtedness issued as Parity Obligations, or any pledge, lien or charge created to secure any junior lien Revenue Obligation issue by the Municipality, as long as the rights of the owners of such obligations are subordinate in all respects to the covenants and provisions of this Loan Agreement and such lien, encumbrance or charge further complies with the Bond Resolutions. The Municipality further covenants that it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within 60 days after the same accrue, all lawful claims and demands for labor, materials, supplies or other obligations constituting operating expenses of its Utility which, if unpaid, might by law become a lien upon the Utility or upon the Gross Revenues. Nothing in this paragraph shall require the Municipality to pay or cause to be discharged, or to make provisions for payment of, any such lien, encumbrance or charge so long as the validity thereof is contested in good faith and by appropriate legal proceedings. If the Municipality proposes to issue any Utility Indebtedness or otherwise create a pledge of, or lien upon, its Gross Revenues, the Utility, or any part thereof, written notice of such proposed issuance or lien shall be given to KDHE and the Authority.

(2) The Municipality shall not, and shall not permit any Person to, without the prior written consent of KDHE, (i) extinguish or impair the Lien on the Net Revenues granted pursuant to this Loan Agreement, (ii) amend, modify, replace or supplement the Ordinance or permit a waiver of any provision thereof, (iii) amend, modify, replace or supplement any related document or permit a waiver of any provision thereof in a manner that could adversely affect KDHE or (iv) subject to Section 3.02(r) (Particular Covenants of the Municipality – Additional Rights), provide any counterparty to a Contractual Obligation the right to accelerate any Utility Indebtedness or other obligations.

(j) **Annual Budget.** Prior to the commencement of each Municipal Fiscal Year, the Municipality will cause to be prepared and filed with the Secretary a budget setting forth its estimated Gross Revenues and operating expenses for the next succeeding Municipal Fiscal Year. A copy of such budget will be furnished by the Secretary to the Authority. The budget must be prepared in accordance with the requirements of the laws of the State and shall contain all information that is required by such laws.

(k) **Records and Accounts.**

(1) The Municipality shall keep accurate records and accounts for its Utility (the “Utility Records”), separate and distinct from its other records and accounts (the “General Accounts”). Such Utility Records shall be audited annually by an independent certified public accountant or firm of independent certified public accountants, in accordance with generally accepted auditing standards, if municipal aggregate annual gross receipts are in excess of $275,000 or if the municipality has outstanding debt in excess of $275,000. Such audit may be a part of the single agency audit made in accordance with the Federal Single Audit Act of 1984, OMB Circular No. A-133, *Audits of States, Local Governments, and Non-profit Organizations* as amended in 1996 and 2003 and as may be further amended and revised. Such Utility Records and General Accounts shall be made available for inspection by KDHE at any reasonable time, and a copy of the Municipality's annual audit, including all written comments and recommendations of such accountant, shall be furnished to KDHE within 210 days of the close of the Municipal Fiscal Year being so audited. Such audit report shall be prepared in accordance with subsection (k)(2) hereof.

(2) The Municipality shall maintain financial information in accordance with generally accepted government accounting standards defined in the Government Accounting, Auditing, and Financial Reporting Manual (1994 Ed.), or any revised edition, issued by the Government Finance Officers Association. The financial information shall be prepared in accordance with generally accepted accounting principles (GAAP) for state and local governments.
Inspections. The Municipality shall permit the EPA, KDHE and any party designated by KDHE to examine, visit and inspect, at any and all reasonable times, with reasonable prior notice, the property, constituting the Project and/or the Utility, and to inspect and make copies of any accounts, financial books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the EPA and KDHE may reasonably require in connection therewith. In addition, not less than every three (3) years, the Municipality will cause its consulting engineer to make an examination and written report on the condition and operation of the Utility, such report to include recommendations as to any changes in such operation deemed desirable. Such report shall also make references to any unusual or extraordinary items of maintenance and repair and any extensions, enlargements or improvements that may be needed in the period prior to the preparation of the next consultant's report required by this Section. A copy of such report shall be filed with the Secretary within a reasonable time after the inspection is completed.

Obligation to Provide Information if Notified by KDHE. The Municipality agrees to provide to KDHE such annual financial information and operating data, together with ongoing notice of the occurrence of any “material event” (defined below), each with respect to the Municipality, as is necessary for KDHE to comply with each Continuing Disclosure Undertaking from time to time in effect. Such information, data and notices pursuant to this section will be required to be provided by the Municipality upon notice from KDHE that the Municipality is a Principal Participating Municipality (which is a borrower for which information and notices are required to be filed pursuant to a Continuing Disclosure Undertaking), as defined in a Continuing Disclosure Undertaking.

Timing. Any such financial information and operating data shall be provided by the Municipality to KDHE as soon as practicable after it is available, and any such notice of a material event shall be provided by the Municipality to KDHE promptly following the occurrence of the event, no later than 7 business days after the occurrence of the event. Existing Continuing Disclosure Undertakings require that any such financial information and operating data shall be filed by KDHE within 270 days after the end of the Municipal Fiscal Year, as defined in a Continuing Disclosure Undertaking, and that any such notice of a material event be filed by KDHE within 10 business days of the occurrence of the material event. The timing of such requirements may be different in a future Continuing Disclosure Undertaking, and a request by KDHE to the Municipality pursuant to this section may require that such information be provided to KDHE a reasonable period in advance of the filing dates required by a Continuing Disclosure Undertaking.

Annual Information. Any such financial information shall be accompanied by an audit report prepared in accordance with the provisions of subsection (g)(2) hereof, unless such subsection exempts the Municipality from such audit report requirement. The financial information shall be prepared in accordance with GAAP, unless the Municipality has received a waiver from such requirement as permitted by State Law, in which case it shall be prepared on such other basis of accounting that demonstrates compliance with State law. Such requirement for financial information and operating data may be satisfied by submitting the Municipality's comprehensive annual financial report (CAFR) and/or annual report of its Utility (if Gross Revenues are included in the dedicated source of repayment), unless KDHE notifies the Municipality of the need for additional information. If an audit report is required to be prepared, but is not available within 270 days of the end of the Municipal Fiscal Year, unaudited financial information shall be provided to KDHE pending receipt of the audit report. If the method of preparation and the basis of accounting is changed to a basis less comprehensive than previously described, the Municipality shall provide a specific notice of such change to KDHE when the financial information is provided.
(3) Event Notices. For purposes of this section, “material event” shall mean any event with respect to the Municipality (if it is a Principal Participating Municipality) required to be reported by KDHE pursuant to a Continuing Disclosure Undertaking. Upon a determination by KDHE that the Municipality is a Principal Participating Municipality, KDHE will provide instructions to the Municipality identifying such events then required to be reported, and the Municipality agrees to report such events to the extent required by a Continuing Disclosure Undertaking. The existing Continuing Disclosure Undertakings require reporting by a Principal Participating Municipality of four events, relating generally to (i) bankruptcy or insolvency, (ii) merger, consolidation or acquisition, (iii) incurrence of a financial obligation or debt and (iv) default, acceleration, termination or modification of a financial obligation or debt.

(n) Insurance. The Municipality will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Utility as would be carried by similar municipal operators of public water supply systems, insofar as the properties are of an insurable nature. The Municipality also will carry general liability insurance in amounts not less than the maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., or other similar future law (currently $500,000 per occurrence). The Municipality shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any entity that has contract of which costs will be reimbursed with funds from this loan), other than workers’ compensation insurance, to reflect the Kansas Department of Health and Environment as an additional insured to the extent of its insurable interest. In lieu of the foregoing, the Municipality may establish a self-insurance program which will provide substantially the same protection for KDHE.

(o) Notice of Material Adverse Change. The Municipality shall promptly notify KDHE and the Insurer of any material adverse change in the activities, prospects or condition (financial or otherwise) of the Utility, or in the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(p) Additional Covenants and Requirements. The parties hereto acknowledge that this Loan Agreement may be assigned or pledged to secure KDFA Bonds or other financings of the Authority. Should it be necessary to modify any covenants, the parties agree to take all reasonable actions and make reasonable covenants and agreements necessary to accomplish such purpose to the extent permitted by applicable laws and all Bond Resolutions. The parties hereto acknowledge that in conjunction with the issuance of or providing security for any KDFA Bonds or other financings, KDHE reserves the right to obtain municipal bond insurance or any other form of credit enhancement with respect to this Loan Agreement. The Municipality acknowledges that the decision to obtain any such municipal bond insurance or other credit enhancement shall be at the sole discretion of KDHE and the Authority. The costs of obtaining such credit enhancement and related costs shall be borne by the Revolving Fund. The Municipality shall cooperate with KDHE, the Authority and any provider of such credit enhancement with respect to furnishing financial information required by subsections (k) and (m) of this section, or any other relevant information or operating data of the Utility reasonably necessary to obtain such credit enhancement or comply with the provisions thereof on an ongoing basis so long as this Loan Agreement is in effect.

(q) Parity Obligations. The Municipality agrees that it will not take any action that would result in the Loan no longer remaining at least a Parity Obligation as defined in the WIFIA Credit Agreement and a Parity Obligation as defined in the Parity Bond Resolutions.

(r) Additional Rights. In the event that the Municipality 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 Loan Agreement and KDHE shall have the benefit of such Additional Rights including the right to accelerate the Loan pursuant to Section 5.02(a) of this Loan Agreement. The Municipality shall promptly, upon entering into or otherwise consenting to a Contractual Obligation containing such Additional Rights, notify KDHE of such Contractual Obligation and enter into an amendment to this Loan Agreement to incorporate such Additional Rights herein; provided that KDHE shall have the benefit of such Additional Rights even if the Municipality fails to provide such notice or enter into an amendment hereto to incorporate such Additional Rights into this Loan Agreement. As of the Effective Date and as of the date of the execution of this Loan Agreement, the Municipality does not have Contractual Obligations that contain Additional Rights.

ARTICLE IV

ASSIGNMENT

Section 4.01. Assignment and Transfer by KDHE. The Municipality hereby approves and consents to any assignment or transfer of this Loan Agreement that KDHE deems necessary in connection with the operation and administration of the Revolving Fund. The Municipality hereby specifically approves the assignment and pledging of the Loan Repayments to the Authority, and the Authority’s pledging of all or a portion of the same to the KDFA Bonds.

Section 4.02. Assignment by the Municipality. This Loan Agreement may not be assigned by the Municipality for any reason, unless the following conditions shall be satisfied:

(a) KDHE, the Insurer, and the Authority shall have approved the assignment in writing;

(b) the assignee is a city, county, township, water district, improvement district or other political subdivision of the State of Kansas or any combination thereof;

(c) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, and obligations under this Loan Agreement; provided, however, such assignment shall not relieve the Municipality of its duties, covenants, and obligations under this Loan Agreement;

(d) the assignment will not adversely impact KDHE's ability to meet its duties, covenants and obligations under its Master Indenture nor may the sale endanger the exclusion from gross income for federal income tax purposes of the interest on any KDFA Bonds; and

(e) the Municipality shall provide KDHE and the Insurer with an opinion of a qualified attorney that each of the conditions set forth in subparagraphs (b), (c), and (d) hereof have been met.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Notice of Default. If an Event of Default shall occur, the non-defaulting party shall give the party in default and the Authority prompt telephonic notice of the occurrence of such Event of Default, provided the non-defaulting party has knowledge of such Event of Default. Such telephonic notice
shall be immediately followed by written notice of such Event of Default given in the manner set forth in Section 7.01 hereof.

Section 5.02. Remedies on Default.

(a) Whenever an Event of Default shall have occurred and be continuing, KDHE, the Insurer or the Municipality shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and to become due or to enforce the performance and observance of any obligation or agreement of KDHE or the Municipality (including, without limitation, withholding remaining Loan disbursements and cancellation of the Loan Agreement (subject to consent of the Insurer as provided in Article VI)), or such other remedies provided to the Secretary in the Loan Act and the Regulations; provided that:

(1) the remedies for any Event of Default resulting solely from noncompliance by the Municipality with Section 3.02(m) (Particular Covenants of the Municipality - Obligation to Provide Information if Notified by KDHE) of this Loan Agreement shall be limited to such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Municipality to comply with its obligations under such section; and

(2) subject to the limitation in clause (1) of this subsection, if KDHE has a right to accelerate the Loan pursuant to Section 3.02(r) (Particular Covenants of the Municipality – Additional Rights) of this Loan Agreement, KDHE may declare the outstanding balance of the Loan 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 Loan Agreement, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(b) The parties hereto acknowledge that the Bond Resolutions and all of the provisions thereof shall constitute a contract between the Municipality, the Bond Insurer, if any, and each of the Owners of Utility Indebtedness incurred under the applicable Bond Resolution, and any such Owner may by suit, action, mandamus, injunction or other proceeding, either at law or in equity, enforce and compel performance of all duties, obligations and conditions determined and required by the applicable Bond Resolutions, subject to the limitations set forth in the applicable Bond Resolutions; provided however, that no Owner of Subordinate Indebtedness shall have the ability to impair the rights of Owners of Parity Indebtedness. Upon the happening and continuance of any Event of Default under a Bond Resolution, then and in every such case any Owner of Utility Indebtedness issued under such Bond Resolution may proceed, subject to the provisions of the applicable Bond Resolution, to protect and enforce the rights of the Owners by a suit, action or special proceeding in equity, or at law, either for the specific performance of any covenant or agreement contained therein or in aid or execution of any power therein granted or for the enforcement of any proper legal or equitable remedy as such Owner shall deem most effectual to protect and enforce such rights.

(c) The parties further acknowledge that anything in the Bond Resolutions to the contrary notwithstanding, if at any time moneys in the Principal and Interest Account shall not be sufficient to pay the interest on or the principal of the Utility Indebtedness as the same shall become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Section or otherwise, shall he applied as follows:

(1) If the principal of all the Parity Indebtedness shall not have become due and payable, all such moneys shall be applied:
first: to the payment of the persons entitled thereto of all installments of interest
then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Parity Indebtedness which shall have become due and payable (other than Parity Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolutions), in the order of their due dates, with interest on the principal amount of such Parity Indebtedness at the respective rates specified therein from the respective dates upon which such Parity Indebtedness became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Parity Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Parity Indebtedness,
to the purchase and retirement of the Parity Indebtedness and to the redemption of the Parity Indebtedness, all in accordance with the provisions of the Bond Resolutions.

(2) If the principal of all of the Parity Indebtedness shall have become due and payable, all such moneys shall be applied:

first: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness, and then to the payment of any interest due and payable after maturity on the Parity Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness; and

second: to the payment of the principal of the Parity Indebtedness, ratably, to the persons entitled thereto, without preference or priority of any Parity Indebtedness over any other Parity Indebtedness.

(3) If the principal of all the Subordinate Indebtedness shall not have become due and payable, all such moneys shall be applied:

first: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons

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entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Indebtedness;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Subordinate Indebtedness which shall have become due and payable (other than Subordinate Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolution), in the order of their due dates, with interest on the principal amount of such Subordinate Indebtedness at the respective rates specified therein from the respective dates upon which such Subordinate Indebtedness became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Subordinate Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Subordinate Indebtedness, to the purchase and retirement of the Subordinate Indebtedness and to the redemption of the Subordinate Indebtedness, all in accordance with the provisions of the Bond Resolution.

(4) If the principal of all of the Subordinate Indebtedness shall have become due and payable, all such moneys shall be applied:

first: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Indebtedness, and then to the payment of any interest due and payable after maturity on the Subordinate Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Indebtedness; and

second: to the payment of the principal of the Subordinate Indebtedness, ratably, to the persons entitled thereto, without preference or priority of any Subordinate Indebtedness over any other Subordinate Indebtedness.

(d) In case any proceeding taken by any Owner on account of any default under this Loan Agreement shall have been discontinued or abandoned for any reason, then and in every such case the Municipality and the Owner shall be restored to its former position and rights under this Loan Agreement, respectively, and all rights and remedies of the Owner shall continue as though no such proceedings had been taken. No Owner of any of any Utility Indebtedness shall have any right in any manner whatever to affect, disturb or prejudice the security of this Loan Agreement or to enforce any right under this Loan Agreement, except in any manner herein provided, and all proceedings at law or in equity, other than those available to KDHE (but not other Owners) pursuant to the Loan Act, the Regulations or this Loan Agreement, shall be instituted, had and maintained for the equal benefit of all Owners of the same class of Parity Indebtedness. No remedy herein conferred on the Owners is intended to be exclusive of any other remedy or remedies, and each and every remedy conferred shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement and under the Loan Act or now or hereafter existing.
Section 5.03. Expenses.

(a) Upon the occurrence of an Event of Default on the part of the Municipality, and to the extent permitted by law, the Municipality shall, on demand, pay to KDHE the reasonable fees and expenses incurred by KDHE in the collection of Loan Repayments or any other sum in addition to Loan Repayments due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Municipality contained herein. Prior to incurring any such expenses, KDHE shall provide written notice to the Municipality that it intends to incur such expenses; provided, however, a failure by KDHE to give such notice shall not affect KDHE's right to receive payment for such expenses. Upon request by the Municipality, KDHE shall provide copies of statements evidencing the fees and expenses for which KDHE is requesting payment.

(b) Upon the occurrence of an Event of Default on the part of KDHE, and to the extent permitted by law and availability of appropriated funds by the Kansas Legislature, KDHE shall, on demand, pay to the Municipality the reasonable fees and expenses incurred by the Municipality in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of KDHE contained herein. Prior to incurring any such expenses, the Municipality shall provide written notice to KDHE that it intends to incur such expenses; provided, however, a failure by the Municipality to give such notice shall not affect the Municipality's right to receive payment for such expenses. Upon request by KDHE, the Municipality shall provide copies of statements evidencing the fees and expenses for which the Municipality is requesting payment.

Section 5.04. Application of Moneys. Any moneys collected by KDHE pursuant to section 5.03 hereof shall be applied (a) first, to pay interest on the Loan as the same becomes due and payable; (b) second, to pay principal due and payable on the Loan; (c) third, to pay expenses owed by the Municipality pursuant to section 5.03 hereof; and (d) fourth, to pay any other amounts due and payable hereunder as such amounts become due and payable. To the extent that KDHE's right to receive Loan Repayments is on a parity of lien basis with the lien of Utility Indebtedness on the Municipality's Gross Revenues, such moneys shall be applied to the Loan as a Parity Obligation under the Bond Resolutions as described in section 5.02(c) hereof.

Section 5.05. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Parties hereto is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. The parties hereto, in good faith, shall exercise such remedies with due diligence in a timely manner, however, no delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the parties hereto to exercise any remedy reserved to them in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

Section 5.06. Retention of Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the parties hereto shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the defaulting party at law or in equity, as such party may, in its
discretion, deem necessary to enforce the obligations of the defaulting party pursuant to this Loan Agreement.

Section 5.07. Financial and Management Review. As provided in the Loan Act and the Regulations, upon failure of the Municipality to pay one or more installments of the Loan Repayments in a timely manner, or in the event that the Secretary deems it advisable or necessary, the Secretary, after consultation with the governing body of the Municipality, may require the Municipality to undergo a financial and management operations review. The governing body shall correct any deficiencies noted during such review and collect charges or surcharges as may be adopted by the Secretary during the term of this Loan Agreement.

ARTICLE VI

MUNICIPAL BOND INSURANCE PROVISIONS

Section 6.01. Notice and Other Information to be given to BAM. The Municipality will provide BAM with all notices and other information it is obligated to provide (i) under its Continuing Disclosure Undertaking for the 2020A Bonds even if such bonds are no longer outstanding and (ii) to KDHE under the Security Documents. All financial information described in Section 3.02(m) required to be delivered by the Municipality to KDHE shall also be delivered to BAM at the times described in Section 3.02(m).

The notice address of BAM is: Build America Mutual Assurance Company, 200 Liberty Street, 27th Floor, New York, NY 10281, Attention: Surveillance, Re: Policy No. __________, Telephone: (212) 235-2500, Telecopier: (212) 235-1542, Email: notices@buildamerica.com. In each case in which notice or other communication refers to an event of default or a claim on the Policy, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214 and shall be marked to indicate “URGENT MATERIAL ENCLOSED.”

Section 6.02. Consent of BAM. BAM’s prior written consent is required for all amendments and supplements to the Security Documents, with the exceptions noted below. The Municipality shall send copies of any such amendments or supplements to BAM and the rating agencies which have assigned a rating to the Insured Obligations, if any.

(a) Amendments or Supplements to Security Documents. Any amendments or supplements to the Security Documents shall require the prior written consent of BAM with the exception of amendments or supplements:

(1) To cure any ambiguity or formal defect or omissions or to correct any inconsistent provisions in the Security Documents or in any supplement thereto, or

(2) To grant or confer upon KDHE any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the holders of the Insured Obligations, or

(3) To add to the conditions, limitations and restrictions on the issuance of Additional Indebtedness under the provisions of the Security Documents other conditions, limitations and restrictions thereafter to be observed, or
(4) To add to the covenants and agreements of the Municipality in the Security Documents other covenants and agreements thereafter to be observed by the Municipality or to surrender any right or power therein reserved to or conferred upon the Municipality, or

(5) To issue additional Parity Indebtedness in accordance with the requirements set forth in the Security Documents (unless otherwise specified herein).

(b) **Consent of BAM in Addition to KDHE Consent.** Any amendment, supplement, modification to, or waiver of, any of the Security Documents that requires the consent KDHE or adversely affects the rights or interests of BAM shall be subject to the prior written consent of BAM.

**Section 6.03. Insolvency.** Any reorganization or liquidation plan with respect to the Municipality must be acceptable to BAM. KDHE hereby appoints BAM as its agent and attorney-in-fact with respect to the Insured Obligations and agrees that BAM may at any time during the continuation of any proceeding by or against the Municipality under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an “Insolvency Proceeding”) direct all matters relating to such Insolvency Proceeding, including without limitation, (1) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a “Claim”), (2) the direction of any appeal of any order relating to any Claim, (3) the posting of any surety, supersedeas or performance bond pending any such appeal, and (4) the right to vote to accept or reject any plan of adjustment. In addition, KDHE delegates and assigns to BAM, to the fullest extent permitted by law, the rights of KDHE with respect to the Insured Obligations in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.

**Section 6.04. Control by BAM Upon Default.** Anything in the Security Documents to the contrary notwithstanding, upon the occurrence and continuance of a default or an event of default, BAM shall be entitled to control and direct the enforcement of all rights and remedies granted to KDHE under any Security Document. No default or event of default may be waived without BAM’s written consent.

**Section 6.05. BAM as Owner.** Upon the occurrence and continuance of a default or an event of default, BAM shall be deemed to be the sole owner of the Insured Obligations for all purposes under the Security Documents, including, without limitations, for purposes of exercising remedies and approving amendments.

**Section 6.06. Consent of BAM for Acceleration.** BAM’s prior written consent is required as a condition precedent to and in all instances of acceleration.

**Section 6.07. Grace Period for Payment Defaults.** No grace period shall be permitted for payment defaults on the Insured Obligations. No grace period for a covenant default shall exceed 30 days without the prior written consent of BAM.

**Section 6.08. Special Provisions for Insurer Default.** If an Insurer Default shall occur and be continuing, then, notwithstanding anything in Section 6.02 through Section 6.05 above to the contrary, (1) if at any time prior to or following an Insurer Default, BAM has made payment under the Policy, to the extent of such payment BAM shall be treated like any other holder of the Insured Obligations for all purposes, including giving of consents, and (2) if BAM has not made any payment under the Policy, BAM shall have no further consent rights until the particular Insurer Default is no longer continuing or BAM makes a payment under the Policy, in which event, the foregoing clause (1) shall control. For purposes of this paragraph, “Insurer Default” means: (A) BAM has failed to make any payment under the Policy when due and owing in accordance with its terms; or (B) BAM shall (i) voluntarily commence any proceeding or file
any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding described in (i), (ii) or (iii), (v) make a general assignment for the benefit of creditors, or (vi) take action for the purpose of effecting any of the foregoing; or (C) any state or federal agency or instrumentality shall order the suspension of payments on the Policy or shall obtain an order or grant approval for the rehabilitation, liquidation, conservation or dissolution of BAM (including without limitation under the New York Insurance Law).

Section 6.09. BAM As Third Party Beneficiary. BAM is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

Section 6.10. Payment Procedure Under the Policy.

(a) In the event that principal and/or interest due on the Insured Obligations shall be paid by BAM pursuant to the Policy, the Insured Obligations shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Municipality, the assignment and pledge of the Dedicated Source of Revenue and all covenants, agreements and other obligations of the Municipality to KDHE shall continue to exist and shall run to the benefit of BAM, and BAM shall be subrogated to the rights of KDHE with respect to such Insured Obligations.

(b) In the event that KDHE has not received sufficient moneys to pay all principal of and interest on the Insured Obligations due on any payment date, KDHE shall immediately notify BAM or its designee on such payment date by telephone or electronic mail, of the amount of the deficiency. If any deficiency is made up in whole or in part following the payment date, KDHE shall so notify BAM or its designee.

(c) In addition, if KDHE has been required to disgorge payments of principal of or interest on the Insured Obligations pursuant to a final, non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such holder within the meaning of any applicable bankruptcy law, then KDHE shall notify BAM or its designee of such fact by telephone or electronic mail, or by overnight or other delivery service as to which a delivery receipt is signed by a person authorized to accept delivery on behalf of BAM.

(d) The Municipality consents to the following, and KDHE shall irrevocably be designated, appointed, directed and authorized to act as attorney-in-fact for subsequent holders of the Insured Obligations:

(1) If there is a deficiency in amounts required to pay interest and/or principal on the Insured Obligations, KDHE shall (i) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for KDHE as holder (or attorney-in-fact for subsequent holders) of the Insured Obligations, in any legal proceeding related to the payment and assignment to BAM of the claims for interest on the Insured Obligations, (ii) receive as holder of the Insured Obligations (or attorney-in-fact for subsequent holders), in accordance with the tenor of the Policy payment from BAM with respect to the claims for interest so assigned, (iii) segregate all such payments in a separate account (the “BAM Policy Payment Account”) to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (iv) disburse the same to pay Insured Obligations; and
(2) If there is a deficiency in amounts required to pay principal of the Insured Obligations, KDHE shall (i) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for KDHE as holder (or attorney-in-fact for subsequent holders) of the Insured Obligations, in any legal proceeding related to the payment of such principal and an assignment to BAM of the Insured Obligations surrendered to BAM, (ii) receive as holder of the Insured Obligations (or attorney-in-fact for subsequent holders), in accordance with the tenor of the Policy payment therefore from BAM, (iii) segregate all such payments in the BAM Policy Payment Account to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (iv) disburse the same to pay Insured Obligations.

(3) KDHE shall designate any portion of payment of principal on Insured Obligations paid by BAM, whether when due or upon prepayment, on its books as a reduction in the principal amount of Insured Obligations and shall prepare a new Exhibit B (Loan Repayment Schedule) reflecting such payment by BAM; provided that KDHE’s failure to so designate any payment or prepare a new Exhibit B shall have no effect on the amount of principal or interest payable by the Municipality on any Insured Obligation or the subrogation or assignment rights of BAM.

(e) Payments with respect to claims for interest on and principal of Insured Obligations disbursed by KDHE from proceeds of the Policy shall not be considered to discharge the obligation of the Municipality with respect to such Insured Obligations, and BAM shall become the owner of such unpaid Insured Obligations and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of the preceding paragraphs or otherwise. The Security Documents shall not be discharged or terminated unless all amounts due or to become due to BAM have been paid in full or duly provided for.

(f) Irrespective of whether any such assignment is executed and delivered, the Municipality and KDHE agree for the benefit of BAM that:

(1) They recognize that to the extent BAM makes payments directly or indirectly (e.g., by paying through a paying agent or trustee), on account of principal of or interest on the Insured Obligations, BAM will be subrogated to the rights of KDHE to receive the amount of such principal and interest from the Municipality, with interest thereon, as provided and solely from the sources stated in the Security Documents and the Insured Obligations; and

(2) The Municipality will accordingly pay to BAM the amount of such principal and interest, with interest thereon as provided in the Loan Agreement and the Insured Obligations, but only from the sources and in the manner provided therein for the payment of principal of and interest on the Insured Obligations to KDHE, and will otherwise treat BAM as the owner of such rights to the amount of such principal and interest.

Section 6.11. Reimbursement of BAM.

(a) The Municipality agrees unconditionally that it will pay or reimburse BAM on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that BAM may pay or incur, including, but not limited to, fees and expenses of BAM’s agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of the Security Documents (“Administrative Costs”). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the
time of employees of BAM spent in connection with the actions described in the preceding sentence. The Municipality agrees that failure to pay any Administrative Costs on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to BAM until the date BAM is paid in full.

(b) Notwithstanding anything herein to the contrary, the Municipality agrees to pay to BAM (i) a sum equal to the total of all amounts paid by BAM under the Policy (“BAM Policy Payment”); and (ii) interest on such BAM Policy Payments from the date paid by BAM until payment thereof in full by the Municipality, payable to BAM at the Late Payment Rate per annum (collectively, “BAM Reimbursement Amounts”) compounded semi-annually. Notwithstanding anything to the contrary, including without limitation the post default application of revenue provisions, BAM Reimbursement Amounts and Administrative Costs shall be, and the Municipality hereby covenants and agrees that the BAM Reimbursement Amounts and Administrative Costs are, solely payable from and secured by a lien on and pledge of the same revenues and other collateral pledged to the Insured Obligations under the Loan Agreement on a parity with debt service due on the Insured Obligations under the Loan Agreement.

Section 6.12. Exercise of Rights by BAM. The rights granted to BAM under the Security Documents to request, consent to or direct any action are rights granted to BAM in consideration of its issuance of the Policy. Any exercise by BAM of such rights is merely an exercise of the BAM’s contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of KDHE and such action does not evidence any position of BAM, affirmative or negative, as to whether the consent of KDHE or any other person is required in addition to the consent of BAM.

Section 6.13. Payment upon Nonpayment by Municipality. BAM shall be entitled to pay principal or interest on the Insured Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Municipality (as such terms are defined in the Policy) and any amounts due on the Insured Obligations as a result of acceleration of the maturity thereof in accordance with the Security Documents, whether or not BAM has received a claim upon the Policy.

Section 6.14. No Transfer. So long as the Insured Obligations are outstanding or any amounts are due and payable to BAM, the Municipality shall not sell, lease, transfer, encumber or otherwise dispose of the Utility or any material portion thereof, except upon obtaining the prior written consent of BAM.

Section 6.15. No Impairment. No contract shall be entered into or any action taken by which the rights of BAM or security for or source of payment of the Insured Obligations may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of BAM.

Section 6.16. Additional Events of Default. If an event of default occurs under any agreement pursuant to which any Obligation of the Municipality has been incurred or issued and that permits the holder of such Obligation or trustee to accelerate the Obligation or otherwise exercise rights or remedies that are adverse to the interest of the holders of the Insured Obligations or BAM, as BAM may determine in its sole discretion, then an event of default shall be deemed to have occurred under this Loan Agreement and the related Security Documents for which BAM or KDHE, at the direction of BAM, shall be entitle to exercise all available remedies under the Security Documents, at law and in equity. For purposes of the foregoing "Obligation" shall mean any bonds, loans, certificates, installment or lease payments or similar obligations that are payable and/or secured on a parity or subordinate basis to the Insured Obligations.

Section 6.17. Definitions. Terms used in this Article VI and not otherwise defined herein shall have the following meanings. For the avoidance of confusion, it is understood and agreed that the Insured
Obligations bear interest at the Gross Interest Rate and that references in this Article VI to the payment of interest on the Insured Obligations are references to payment of interest at such Gross Interest Rate.

“BAM” shall mean Build America Mutual Assurance Company, or any successor thereto.

“Insured Obligations” shall mean the Loan.

“Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, N.A., at its principal office in The City of New York, New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank, N.A.) plus 3%, and (ii) the then applicable highest rate of interest on the Insured Obligations and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates including K.S.A. 10-1009. In the event JPMorgan Chase Bank, N.A., ceases to announce its Prime Rate, the Prime Rate shall be the prime or base lending rate of such other bank, banking association or trust company as BAM, in its sole and absolute discretion, shall designate. Interest at the Late Payment Rate on any amount owing to BAM shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

“Policy” shall mean the Municipal Bond Insurance Policy as defined in Section 1.01 of this Loan Agreement.

“Security Documents” shall mean the Municipality’s Ordinance, this Loan Agreement and/or any additional or supplemental document executed in connection with the Insured Obligations.

“2020A Bonds” shall mean the Municipality’s Water and Sewer Utility Revenue Bonds, Series 2020A.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when: (a) hand delivered; (b) mailed by registered or certified United States mail, postage prepaid; or (c) via telefax, with confirmation in the manner set forth in subsection (b), to the parties hereinafter set forth at the following addresses:

(1) to KDHE:
Department of Health and Environment
1000 SW Jackson St., Suite 420
Topeka, Kansas 66612
Attention: Bureau of Water

with a copy to its General Counsel

(2) to the Authority:
Kansas Development Finance Authority
534 S. Kansas Avenue, Suite 800
Topeka, Kansas 66603
Attention: President
Section 7.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon KDHE and the Municipality and their respective successors and assigns.

Section 7.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 7.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority.

Section 7.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 7.06. Governing Law and Regulations. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Kansas, including the Loan Act and the Regulations which Regulations are, by this reference thereto, incorporated herein as a part of this Loan Agreement.

Section 7.07. Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by KDHE.

Section 7.08. Further Assurances. The Municipality shall, at the request of KDHE, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be reasonably necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.
SIGNATURE AND SEAL

IN WITNESS WHEREOF, KDHE and the Municipality have caused this Loan Agreement to be executed, sealed and delivered, effective as of the date above first written.

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, acting on behalf of THE STATE OF KANSAS

By: ____________________________
    Leo G. Henning
    Deputy Secretary and Director
    Division of Environment
    Kansas Department of Health and Environment

Date: ____________

CITY OF WICHITA, KANSAS

(Seal)

By: ____________________________
    Brandon J. Whipple, Mayor

Date: ____________

ATTEST:

By: ____________________________
    Karen Sublett, City Clerk
Construction of a new drinking water treatment plant, known as the Northwest Water Treatment Facility, with a firm capacity of 120 MGD. The project includes all related appurtenances and related offsite infrastructure.
EXHIBIT B

LOAN REPAYMENT SCHEDULE

Dedicated Source of Revenue

The Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide Gross Revenues sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the Debt Service Requirements on the Loan and any other Utility Indebtedness as and when the same become due at the Maturity thereof or on any interest payment date, (c) pay all other amounts due at any time under the Loan Agreement, (d) provide reasonable and adequate reserves for the payment of the Utility Indebtedness and for the protection and benefit of the Utility, (e) make the additional transfers of moneys on deposit in the Revenue Fund as described in Section 3.02(c) hereof and (f) enable the Municipality to maintain the Debt Service Coverage Ratios described in Section 3.02(b) hereof, all as more fully set forth in said Sections 3.02(b) and 3.02(c); provided, however, the pledge of the Gross Revenues contained herein shall be subject to reasonable expenses of operation and maintenance of the System.

Loan Repayment Schedule

The Municipality and KDHE have agreed that interest becoming due semiannually on the Loan during the construction period for the Project may be capitalized and repaid as a part of the Loan. In this regard, KDHE shall give the Municipality written notice of each semiannual installment of interest becoming due during the construction period. At its option, the Municipality may elect to pay such amounts, and if so elected, must pay such amounts within 30 days of receipt of the notice of their becoming due. If the Municipality does not elect to pay such amounts within 30 days of receipt of such notice, the amount then due and owing as semiannual interest on the Loan shall be capitalized and added to the principal amount of the Loan and shall bear interest at the rate of interest set forth in Section 2.02 hereof.
### KANSAS PUBLIC WATER SUPPLY LOAN FUND

**Project Principal:** 55,000,000.00  
**Interest During Const.:** 0.00  
**Service Fee During Const.:** 0.00  
**Loan Reserve Account:** 0.00  
**Gross Loan Costs:** 55,000,000.00  

Prepared for:  
City of Wichita, Project No. 2979

#### Estimated Draws - Actual Interest Rate

#### Amortization of Loan Costs as of 6/9/2020

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Totals | 5,090,728.85 | 55,000,000.00 | 3,652,037.15 | 63,742,766.00 |
EXHIBIT C

CONDITIONS APPLICABLE TO CONSTRUCTION OF THE PROJECT

The standard conditions applicable to the Loan Agreement are:

1. Municipality agrees to expeditiously initiate and complete the Project in accordance with the following schedule:
   a. Initiation of Operation no later than February 1, 2025
   b. Project Performance Certification 365 days following Initiation of Operation.

   KDHE must be promptly notified of any proposed changes to this project schedule.

2. The Municipality must certify that all easements and rights-of-way necessary to allow construction of the Project have been obtained (i.e., all real property has been acquired, bonafide options have been taken or formal condemnation proceedings have been initiated for necessary real property).

3. A final plan of operations shall be submitted by the Municipality for approval by KDHE at or prior to 50 percent construction completion. The plan of operation must include, but is not limited to, an overall Project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and the projected revenues to operate and maintain the public water supply system. Revenue projections shall also include the Loan Repayments and any other debt paid by the water system.

4. The final operations and maintenance manual must be submitted to KDHE at or prior to 90 percent construction completion. The operations and maintenance manual must include, but is not limited to, a description of the operation and managerial responsibility, detailed operation and controls, operators and personnel classification and requirements, operational testing, equipment maintenance schedule, operational records, and emergency operating and shut-down procedures.

5. The rates and ordinances enacting the System user charges and System use requirements necessary to satisfy the rate covenants set forth in Section 3.02(b) as of the date of Initiation of Operation shall be enacted prior to initiation of operation, and the Municipality shall have provided KDHE with a schedule and timetable satisfactory to KDHE of the remaining rates and ordinances expected to be enacted to support the Project.

6. The Municipality agrees to make prompt payment to its contractor(s) of sums due for construction and to retain only such amounts as may be justified by specific circumstances and provisions of this Loan Agreement or the construction contract.

7. The Municipality hereby assures that the engineering firm principally responsible for supervising construction and for providing engineering services during construction will continue its relationship with the Municipality for a period of up to one year after initiation of operation of the Project; provided that nothing contained herein prevents the Municipality from continuing such relationship for longer than one year. During this period, the engineering firm shall direct the operation of the Project, train operating personnel and prepare curricula and training material for operating personnel. The following specific requirements apply:
a. The Municipality agrees the performance standards applicable to the Project are:

1. all construction deficiencies have been resolved.
2. all testing requirements of the specifications have been performed and met.

b. The final plan of operation and operation and maintenance manual submitted in accordance with Exhibit C, Condition No. 3 and 4.

c. One year after completion of construction and initial operation of the Project, the Municipality shall certify to KDHE whether or not such Project meets the design specifications and requirements contained in subparagraph a. of this condition. Any statement of non-compliance must be accompanied by a corrective action report containing: an analysis of the cause of the Project's inability to meet performance standards; actions necessary to bring it into compliance; and a reasonably scheduled date for positive certification of the Project. Timely corrective action will be executed by the Municipality.

d. In the event the Project does not meet the performance standards, Municipality agrees to furnish KDHE with an annual report describing actions taken to date to achieve positive certification, planned future activities, the Project's status and potential for positive certifications.

8. If this Project is for a segment of a total project for the System, KDHE does not assume any obligation, commitment, or responsibility for funding any other anticipated steps, phases, segments or stages or any other improvements to the System not constituting the Project. The Municipality agrees to complete the total System improvements of which this Project is a part in accordance with the schedule presented in Exhibit C(I), regardless of whether KDHE funding is available for the remaining System improvements.

9. The Municipality shall obtain any required Corps of Engineers Section 404 and/or Section 10 permit prior to awarding the construction contract.

10. The Municipality shall follow applicable state procurement laws and regulations.

11. The Municipality hereby agrees to implement measures to mitigate all known adverse environmental effects of this project. The following mitigative actions are required:

a. proper grading, drainage and slope protection to eliminate erosion;
b. riparian habitat will be avoided, and disturbed areas will be reseeded with native plant species;
c. directional boring at all stream crossings, where practical, to minimize aquatic habitat impacts;
d. in the event that construction work uncovers buried archeological artifacts, the Kansas Historical Society should be contacted immediately; and
e. contacting KCC in the event of unexpected circumstances are encountered during construction such as the discovery of abandoned oil, gas, or exploratory holes.

12. The Municipality agrees and consents to KDHE’s authority to monitor and enforce compliance with the mitigative measures identified in paragraph 11 above and the Loan Agreement conditions.
13. The Municipality further agrees that those members of the public who participate in the environmental review process shall have the right to appeal the decisions made within that process. Further, that all such appeals shall be conducted pursuant to the Kansas Administrative Procedures Act (K.S.A. 77-5501, et seq.) and the Act for Judicial Review (77-601, et seq.).

14. The Municipality agrees to comply with the Kansas Act Against Discrimination, K.S.A. 44-1001, et seq. and the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111, et seq. as provided by law and to include those provisions in every contract or purchase order relating to the Project so that they are binding upon such subcontractors or vendors.

15. In order to comply with KPWSLF wage rate requirements the Municipality shall,

a. insert in full in any contract funded by this loan agreement in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, wage rate contract provisions, found in 29 CFR 5.5, as indicated by EPA and US Department of Labor, generally known as Davis Bacon requirements;

b. while the solicitation remains open, shall monitor https://beta.sam.gov/ on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The municipality shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Municipality may request a finding from KDHE that there is not reasonable time to notify interested contractors of the modification of the wage determination. KDHE will provide a report of its findings to the Municipality.

c. incorporate any modifications or supersedes DOL makes to the wage determination contained in the solicitation if the contract is not awarded within 90 days of bid opening. Unless KDHE, at the request of the Municipality, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Municipality shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

d. review all subcontracts subject to Davis-Bacon entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

e. either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL’s wage determination retroactive to the beginning of the contract or ordering instrument by change order, if the Department of Labor (DOL) issues a revised wage determination applicable to the contract after the award of a contract or the issuance of an ordering instrument due to a DOL determination.
that the municipality has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. The Municipality’s contractor must be compensated for any increases in wages resulting from the use of DOL’s revised wage determination.

f. provide written confirmation in a form satisfactory to KDHE indicating whether or not the Project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified weeks. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls;

g. interview a sufficient number of employees entitled to Davis Bacon Act prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 20 CFR 5.6 (a)(6), all interviews must be conducted in confidence. The Municipality must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of SF 1445 are available from EPA on request;

h. establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. The Municipality shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

i. periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The municipality shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis -Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Municipality must spot check payroll data within two weeks of each contractor or subcontractor’s submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. The Municipality must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. In addition, during the examinations the Municipality shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

j. periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item (h) and (i) above.

k. must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact Julie Milazzo at Milazzo.Julie@epa.gov or 206-553-2429 ; and to the appropriate DOL Wage and Hour District Office listed at www.dol.gov/whd/america2.htm.
16. Prior to 90% of project completion the municipality agrees to execute a water conservation plan using the most recent municipal water conservation plan guidelines provided by the Kansas Water Office.

17. The Municipality must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. Other civil rights laws may impose additional requirements on the Municipality. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

18. Municipalities that receive over $100,000 in KPWSLF funds shall comply with the Anti-Lobbying Act, Title 40 CFR Part 34, and file an Anti-Lobbying Certification form and the Disclosure of Lobbying Activities form to KDHE when required. Furthermore, the Municipality shall require that the language of this certification be included in the award of any contracts funded by this loan.

19. The Municipality certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 2 CFR Part 180 and Subpart C of 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions.” The Municipality must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and Subpart B of 2 CFR Part 1532, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. Recipient may search for exclusion records at www.sam.gov.

20. The Municipality agrees to comply with Executive Order No. 11246 by including Section 202 of E.O. 11246 in all contracts funded in part with proceeds of this loan.

21. The Municipality is prohibited from procuring goods or services from persons who have been convicted of violations of the Clean Air Act or the Clean Water Act.

22. None of the funds made available by this Loan Agreement shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

23. If project construction activities reveal the presence of lead pipes or lead appurtenances that are being used in the distribution system or used in service line assemblies up to the premise plumbing of the customer, the municipality will either replace the lead infrastructure or document the location of the lead infrastructure component and maintain such documentation for use in planning for a future removal project.
**EXHIBIT D**

**USE OF LOAN PROCEEDS**

The Project will be jointly funded by proceeds of the WIFIA Credit Agreement, City of Wichita Utility Funds and loans from KDHE. KDHE funding is expected to be provided over multiple loans, the aggregate total of which will not exceed $267,342,000.00.

Project components and anticipated costs are summarized as follows:

<table>
<thead>
<tr>
<th>Dev. Ph.</th>
<th>Development Phase Activities</th>
<th>$555,631</th>
</tr>
</thead>
<tbody>
<tr>
<td>NWWTFT</td>
<td>Phase 1 – Preliminary Design and development of Cost Proposal for NWWTFT</td>
<td>$5,999,999</td>
</tr>
<tr>
<td></td>
<td>Phase 2 – Final Design and Construction of NWWTFT</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 Costs - Add Alternates</td>
<td>Land Acquisition Costs</td>
<td>$10,400,000</td>
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<tr>
<td></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>
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<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>
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<tr>
<td>Financial</td>
<td>SRF Capitalized Interest</td>
<td>$15,384,615</td>
</tr>
<tr>
<td></td>
<td>WIFIA Application Costs</td>
<td>$400,000</td>
</tr>
</tbody>
</table>
EXHIBIT E

INSTRUCTIONS FOR REQUESTING DISBURSEMENT

1. All payment requests must be filed on the Request for Disbursement from KDHE Revolving Loan Programs form (currently located at https://www.kdheks.gov/pws/documents/Loan_Disbursement_Request.pdf) and represent the actual completion level of the project at the date the request is prepared.

2. All cost entries must be based upon allowable work in place which is due and payable. This means that you may not request payment for:
   a. Any work or services which have not been explicitly approved by the KDHE in the Loan Agreement or subsequent amendments.
   b. Any work performed under a change order unless written approval of the change order has been given by the State.
   c. Any ineligible project costs.
   d. Any retainage which you are withholding from the construction contractor, engineer, etc.
   e. Easements acquired through eminent domain are not eligible for funding.
   f. Costs incidental to normal operating overhead of a municipality, whether performed by municipal employees, the engineer, or the attorney.

   It is essential that you understand the cost basis of the approved loan amount. It is, therefore, necessary that you read the Loan Agreement (including all conditions) and its transmittal letter, any loan amendments and project correspondence, and that you maintain current and accurate files on all approved change orders. Failure to follow these procedures may result in your requesting and subsequently receiving overpayment of loan funds which later may, in turn, result in substantial inconvenience to you and your municipality. This could include repayment or crediting to KDHE the interest earned on overpaid funds, and any penalties that can result from this action.

3. Submit an original signature of the form and one set of supporting documentation directly to:

   Kansas Department of Health & Environment
   Bureau of Water
   Public Water Supply Section
   1000 SW Jackson St., Suite 420
   Topeka, Kansas 66612

   You should retain one copy for your records.
EXHIBIT F

FORM OF MUNICIPALITY ORDINANCE

EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON ______________________ [ORDINANCE DATE]

The Governing Body of the City of Wichita, Kansas met in regular session at the usual meeting place, at 9:00 a.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * * * * * * * * * * *
(Other Proceedings)

Among other business, there came on for first reading, consideration and discussion the following:

AN ORDINANCE AUTHORIZING THE EXECUTION OF LOAN AGREEMENTS BETWEEN THE CITY OF WICHITA, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY LOAN FUND FOR THE PURPOSE OF FINANCING A PUBLIC WATER SUPPLY PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENTS.

Following first reading, [Council member] ______________ moved that said Ordinance be passed. The motion was seconded by [Council member] ____________. Said Ordinance was duly read and considered, and upon being put, the motion for the adoption of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Yes: ____________________________________________________________.

No: _____________________________________________________________.

Thereafter, the Governing Body of the City of Wichita, Kansas met again in regular session, at the usual meeting place in said City on ________________, 2020 at 9:00 a.m., the following members being present and participating, to-wit:
Absent:

The Mayor declared that a quorum was present and called the meeting to order.

Thereupon, among other business, there again came on for second reading, consideration and discussion the following:

AN ORDINANCE AUTHORIZING THE EXECUTION OF LOAN AGREEMENTS BETWEEN THE CITY OF WICHITA, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY LOAN FUND FOR THE PURPOSE OF FINANCING A PUBLIC WATER SUPPLY PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENTS.

Thereupon, [Council member] ___________ moved that said Ordinance be passed. The motion was seconded by [Council member] ___________. Said Ordinance was duly read and considered, and upon being put, the motion for the adoption of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Yes: ____________________________________________________________.

No: _____________________________________________________________.
Thereupon, the Mayor declared said Ordinance duly adopted and the Ordinance was then [duly numbered Ordinance No. __________] and was signed by the Mayor and attested by Clerk.

* * * * * * * * * * * * * *

(Other Proceedings)

On motion duly made, seconded and carried, the meeting thereupon adjourned.

(SEAL)

________________________________________
Clerk

Ordinance Summary published in The Wichita Eagle on __________, 2020 and the full text of the Ordinance made available at www.wichita.gov for a minimum of one (1) week from the date of publication

ORDINANCE NO. ____________

A ORDINANCE AUTHORIZING THE EXECUTION OF LOAN AGREEMENTS BETWEEN OF CITY OF WICHITA, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY FUND FOR THE PURPOSE OF FINANCING A PUBLIC WATER SUPPLY PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENTS.

WHEREAS, the City of Wichita, Kansas (the “City”) is a city of the first class, duly created, organized and existing under the Constitution and laws of the State of Kansas (the “State”) and a municipality as said term is defined in the Kansas Public Water Supply Loan Act, K.S.A. 65-163d et seq., as amended (the “Loan Act”); and

WHEREAS, the City Council (the “Governing Body”) of the City has heretofore by Ordinance No. 39-888, adopted May 26, 1987, and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the “City of Wichita, Kansas Water and Sewer Utility” (the Utility’); and

WHEREAS, the City is authorized under the provisions of K.S.A. 10-1201 et seq., as amended, (the “Utility Revenue Bond Act”) to issue and sell revenue bonds for the purpose of paying all or part of
the cost of the acquisition, construction, reconstruction, alteration, repair, improvement, extension or
enlargement of the Utility, provided that the principal of and interest on such revenue bonds shall be payable
solely from the Net Revenues (as defined in the Bond Resolutions defined below) derived by the City from
the operation of the Utility; and

WHEREAS, the Governing Body has heretofore by various resolutions (collectively, together with
each hereinafter-defined Loan Agreement when entered, the “Bond Resolutions”), duly adopted, found and
determined it to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend or
enlarge the Utility, and found and determined it to be necessary and advisable to issue certain revenue bonds
pursuant to the provisions of the Utility Revenue Bond Act in order to pay the costs thereof, secured on a
parity basis by the Utility’s Net Revenues and co-equal in priority and lien (collectively, the “Parity
Bonds”); and

WHEREAS, the City has previously identified the need for a greenfield water treatment plant to
serve the City and adopted Resolution No. 19-463 authorizing the issuance of revenue bonds of the City in
an amount not to exceed $636,165,665 to pay the costs of the Project (as defined below), interest on interim
financing and associated reserves; and

WHEREAS, the City has previously issued a revenue bond in the principal amount of not to exceed
$331,000,000 (the “WIFIA Bond”) as a Parity Bond and delivered the same to the United States
Environmental Protection Agency (the “WIFIA Credit Provider”) to enable the City to participate in the
federal Water Infrastructure Finance and Innovation Act (“WIFIA”) and finance a portion of the costs of
the Project, subject to the terms of a credit agreement between the City and the WIFIA Credit Provider (the
“WIFIA Credit Agreement”); and

WHEREAS, the Safe Drinking Water Act Amendments of 1996 [PL 104-182] to the Safe Drinking
Water Act (the “Federal Act”) established the Drinking Water Loan Fund to assist public water supply
systems in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal
Act and to protect the public health, and authorized the Environmental Protection Agency (the “EPA”) to
administer a revolving loan program operated by the individual states; and

WHEREAS, to fund the state revolving fund program, the EPA will make annual capitalization
grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

WHEREAS, by passage of the Loan Act, the State has established the Kansas Public Water Supply
Loan Fund (the “Revolving Fund”) for purposes of the Federal Act; and

WHEREAS, under the Loan Act, the Secretary of the Kansas Department of Health and
Environment (“KDHE”) is given the responsibility for administration and management of the Revolving
Fund; and

WHEREAS, the Kansas Development Finance Authority (the “Authority”) and KDHE have
entered into a Master Indenture (the “Master Indenture”) pursuant to which KDHE agrees to enter into loan
agreements with Municipalities for public water supply system projects and to pledge the Loan Repayments
(as defined in the Master Indenture) received pursuant to such loan agreements to the Authority; and
WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the “KDFA Bonds”) for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

WHEREAS, the Utility includes a Public Water Supply System, as said term is defined in the Loan Act; and

WHEREAS, the City previously adopted Resolution No. 20-044 authorizing the City, pursuant to the Loan Act, to submit an Application to KDHE to obtain a loan from the Revolving Fund in an amount not to exceed $267,342,000 to finance a portion of the costs of improvements to its Utility consisting of the following particulars:

Construction of a new drinking water treatment plant, known as the Northwest Water Treatment Facility, with a firm capacity of 120 MGD. The project includes all related appurtenances and related offsite infrastructure

(where the “Project”); and

WHEREAS, the City has taken all steps necessary and has complied with the provisions of the Loan Act and the provisions of K.A.R. 28-15-50 through 28-15-65 (the “Regulations”) applicable thereto necessary to qualify for the Loan; and

WHEREAS, KDHE has informed the City that it has been approved for loans in an aggregate amount of not to exceed $267,342,000 (each a “Loan” and collectively the “Loans”) in order to finance a portion of the cost of the Project, with the first such Loan to be made in calendar year 2020 in an amount not to exceed $55,000,000 (the “2020 Loan”); and

WHEREAS, the City is permitted, pursuant to the provisions of the Bond Resolutions, to issue and enter into obligations (“Parity Obligations”) secured by the Net Revenues on a parity and co-equal in priority and lien with the Parity Bonds and other Parity Obligations (Parity Bonds and Parity Obligations being referred to herein collectively as “Parity Indebtedness”), and each Loan when entered into shall be such a Parity Obligation; and

WHEREAS, the Governing Body hereby finds and determines that each and all of the conditions precedent to the issuance of additional obligations on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility have been, or can and will be in due course and as required, satisfied prior to or upon the execution and delivery of the Loans; provided that such conditions precedent shall only apply to amounts actually disbursed pursuant to the terms of the Loan Agreements (defined below); and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and desirable to accept the Loans as Parity Obligations payable from Net Revenues of the Utility and to enter into the Loan Agreements and certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreements.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:
Section 1. Authorization of the Project. The Project (as defined above) is hereby determined to be advisable and it is further hereby authorized, ordered and directed that the Project shall be constructed in accordance with the plans and specifications and estimates of costs therefor, which have been and are hereby approved by the Governing Body and are on file in the office of the City Clerk.

Section 2. Authorization of Loan Agreements. The City is hereby authorized to accept the Loans and to enter into, deliver, and perform all obligations under the Loan Agreements, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the “Loan Agreements”) to finance the Project Costs (as defined in the Loan Agreements). The Mayor and Clerk are hereby authorized to execute the Loan Agreements from time to time as necessary to pay Project Costs in substantially the form of Loan Agreement relating to the 2020 Loan presented to the Governing Body this date, with such changes or modifications thereto (including applicable interest rates and repayment periods for each Loan Agreement) as may be approved by the Mayor and the City’s legal counsel, the Mayor's execution of each Loan Agreement being conclusive evidence of such approval.

Section 3. Establishment of Dedicated Source of Revenue for Repayment of Loans. Pursuant to the Loan Act, the City hereby adopts the Net Revenues (as defined in the Loan Agreements) as the dedicated source of revenue for repayment of the Loans. Such dedicated source of revenue is hereby pledged as security for repayment of the Loans, which pledge of security is no less than a Parity Obligation as defined in the WIFIA Credit Agreement and the Parity Bond Resolutions (as said terms are defined in the Loan Agreements). The Loans shall be a special obligation of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the City hereby pledges said Net Revenues to the payment of the principal and interest on the Loans. The Loans shall not be or constitute a general obligation of the City and the taxing power of the City is not pledged to the payment of the Loans, either as to principal or interest.

Section 4. Terms, Details and Conditions of the Loan Agreements. Each Loan shall be dated and bear interest, shall be payable at such times, shall be in such forms, shall be subject to prepayment, and shall be governed by and subject to the provisions, covenants and agreements set forth in the applicable Loan Agreement.

Section 5. Rate Covenant. The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the Utility, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Gross Revenues sufficient to (a) pay Current Expenses (as defined in the Loan Agreements); (b) pay the Debt Service Requirements on the Utility Indebtedness (each as defined in the Loan Agreements) as and when the same become due; (c) provide reasonable and adequate reserves for the payment of the Parity Indebtedness and the interest thereon and for the protection and benefit of the Utility as provided in this Ordinance and the Loan Agreements, and (d) enable the Municipality to maintain the Debt Service Coverage Ratios described in the Loan Agreements, all as more fully set forth in the Loan Agreements. The Loan Agreements may establish requirements in excess of the requirements set forth herein.

Section 6. Further Authority. The Mayor, Clerk and other City officials and legal counsel are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, and to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents.
herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 7. Governing Law.** The Ordinance and the Loan Agreements shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

**Section 8. Effective Date.** This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the City, approval by the Mayor and either (a) publication once in the official newspaper of the City, or (b) publication of a summary hereof certified as legally accurate and sufficient by the City Attorney.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]
PASSED by the Governing Body of the City on __________________, [Ordinance Date].

(SEAL)

________________________________________
Brandon J. Whipple, Mayor

ATTEST:

_____________________________________
Karen Sublett, City Clerk
Form of Opinion of Municipality's Counsel

[Date]

Kansas Development Finance Authority
Topeka, Kansas

The Kansas Department of Health and
Environment, acting on behalf of
The State of Kansas
Topeka, Kansas

Re: Loan Agreement effective as of June 22, 2020, between the Kansas Department of Health and Environment, acting on behalf of the State of Kansas, and the City of Wichita, Kansas (the “Municipality”)

We have acted as special counsel to the Municipality in connection with the authorization, execution and delivery of the above referenced Loan Agreement (the “Loan Agreement”). In my capacity as special counsel to the Municipality, We have examined original or certified copies of minutes, ordinances of the Municipality and other documents relating to the authorization of the Project, the authorization, execution and delivery of the Loan Agreement, and the establishment of a dedicated source of revenue for repayment of the Loan evidenced by the Loan Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

In this connection, we have examined the following:

(a) an executed or certified copy of the Loan Agreement;

(b) proceedings adopted or taken by the Municipality to authorize and approve the Project to be constructed with the proceeds of the Loan evidenced by the Loan Agreement;

(c) Ordinance No _________ of the Municipality (the “Ordinance”) adopted on _______________, and other proceedings of the Municipality taken and adopted in connection with the authorization, execution and delivery of the Loan Agreement, and the establishment of a Dedicated Source of Revenue for repayment of the Loan evidenced by the Loan Agreement; and

(d) such other proceedings, documents and instruments as We have deemed necessary or appropriate to the rendering of the opinions expressed herein.

In this connection, we have reviewed such documents, and have made such investigations of law, as deemed relevant and necessary as the basis for the opinions hereinafter expressed.

Based upon the foregoing, it is my opinion, as of the date hereof, that:
1. The Municipality is a municipal corporation duly created, organized and existing under the laws of the State.

2. The Municipality operates a Public Water Supply System, as said term is defined in the Loan Act.

3. The Project has been duly authorized by the Municipality.

4. The Municipality has all requisite legal power and authority to, and has been duly authorized under the terms and provisions of the Ordinance to, execute and deliver, and perform its obligations under, the Loan Agreement.

5. The Loan Agreement has been duly authorized, executed and delivered by the Municipality and constitutes a valid and binding agreement of the Municipality enforceable in accordance with its terms, subject as to enforcement of remedies to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights heretofore or hereafter enacted, and subject further to the exercise of judicial discretion in accordance with general principles of equity. In rendering this opinion we have assumed due authorization, execution and delivery of the Loan Agreement by the State, acting by and through KDHE.

6. The Loan Agreement is a Parity Obligation as defined in the WIFIA Credit Agreement and the Parity Bond Resolutions; provided that the Secretary or KDHE may have certain additional powers, payments, and security under or incident to the Loan Act and the Regulations.

7. By adopting the Ordinance, the Municipality has duly adopted the Dedicated Source of Revenue for repayment of the Loan to be made pursuant to the Loan Agreement.

8. To the best of my knowledge, the execution and delivery of the Loan Agreement by the Municipality will not materially, adversely conflict with or result in a material breach of any of the terms of, or constitute a material default under, any ordinance, indenture, mortgage, deed of trust, lease or other agreement or instrument known to us to which the Municipality is a party or by which it or its Net Revenues are pledged, or any of the rules or regulations applicable to the Municipality or its Net Revenues, or of any court or other governmental body.

This opinion may be relied upon by the addressees alone and only in connection with the Loan Agreement referenced herein and may not be used or relied upon for any other purpose or by any other person for any reason whatsoever, without obtaining in each instance our prior written consent.

Very truly yours,
EXHIBIT H

MUNICIPALITY'S NOTICE ADDRESS

The City of Wichita, Kansas
Director of Public Works & Utilities
455 N. Main St., 8th Floor
Wichita, Kansas 67202

with copies to:

The City of Wichita, Kansas
Director of Finance
455 N. Main St., 12th Floor
Wichita, Kansas 67202

The City of Wichita, Kansas
Director of Law
455 N. Main St., 13th Floor
Wichita, Kansas 67202
EXHIBIT I

FORM OF BOND INSURANCE POLICY

[TO BE PROVIDED]
EXHIBIT J

FORM OF QUALIFIED USER CERTIFICATE

The undersigned is making the following representations and covenants on behalf of the City of Wichita, Kansas (the “Municipality”) in connection with the loan of funds to it (the “Loan”) by the Kansas Department of Health and Environment (“KDHE”). The loan between KDHE and the Municipality (the “Loan Agreement”) is dated June 22, 2020. The Municipality understands that all or a portion of the proceeds of its Loan may be funded with proceeds of bonds issued by Kansas Development Finance Authority (“KDFA”) the interest on which is intended to be exempt from Federal income tax (“Tax-Exempt Bonds”). In the Loan Agreement the Municipality agreed that it would not use, or permit any person to use, any portion of the proceeds of the Loan or the facilities financed with the proceeds of the Loan (the “Financed Facility”) in a manner that could cause interest on any of the Tax-Exempt Bonds to become subject to income tax. Each of the following representations and covenants is made for the purpose of satisfying this covenant contained in the Loan Agreement.

1. In addition to the terms defined above, the following capitalized terms have the meaning set out below:

“Management or Operating Agreement” means a legal agreement with a Non-Qualified User where the Non-Qualified User provides services involving all or a portion of any function of the Financed Facility, such as a contract to manage the entire Financed Facility or a portion of the Financed Facility. However, a contract for services that are solely incidental to the primary governmental function of the Financed Facility (for example, contracts for janitorial, office equipment repair, billing or similar services) is not a Management or Operating Agreement.

“Non-Qualified Use” generally means any use of the Financed Facility in a trade or business carried on by any Non-Qualified User that is different in form or substance to the use made of the Financed Facility by any other member of the general public. The rules set out in United States § 1.141-3 determine whether Bond Proceeds or the Financed Facility are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facility, will constitute use under Regulations § 1.141-3.

“Non-Qualified User” means any person or entity other than a Qualified User.

“Opinion of Bond Counsel” means the written opinion of a firm of nationally recognized Bond Counsel acceptable to KDFA to the effect that the proposed action or the failure to act will not adversely affect the exclusion of the interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.
“Qualified User” means the City, a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

2. The Municipality is the owner of the Financed Facility. As long as any portion of the Loan is unpaid the Municipality will never permit any of the Financed Facility to be used in any Non-Qualified Use without first notifying KDFA and KDHE in writing and obtaining an Opinion of Bond Counsel.

3. None of the proceeds of the Loan will be loaned directly or indirectly to any Non-Qualified User.

4. All costs previously paid by the Municipality that are to be reimbursed from the proceeds of the Loan either (1) were paid by the Municipality not more than 3 years prior to the date reimbursement is requested or (2) were for costs incurred in connection with the planning or design of the project paid prior to the date construction commenced. Loan proceeds will not be available to reimburse outstanding tax-exempt obligations of a political subdivision, except in certain limited circumstances. Should you wish to discuss applicable restrictions, please contact the KDHE Program Administrator.

5. No operating costs or expenses of the Municipality are being paid from the proceeds of the Loan.

6. The Municipality will not enter into any Management or Operating Agreement of the Financed Facility or lease any portion of the Financed Facility to any Non-Qualified User without first (1) notifying KDFA and KDHE in writing and (2) obtaining an Opinion of Bond Counsel.

7. Upon the written request of KDHE or KDFA the Municipality will provide written confirmation of compliance with each of the foregoing certifications and covenants in a form acceptable to KDHE and KDFA.

CITY OF WICHITA, KANSAS

By: ______________________________

Brandon J. Whipple, Mayor