

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**WIFIA LOAN AGREEMENT**

**For Up to \$134,500,000**

**With**

**KING COUNTY, WASHINGTON**

**For the**

**GEORGETOWN WET WEATHER TREATMENT STATION PROJECT  
(WIFIA – N17107WA)**

**Dated as of [●], 2018**

## TABLE OF CONTENTS

		<b>Page</b>
Section 1.	Definitions.....	2
Section 2.	Interpretation.....	20
Section 3.	WIFIA Loan Amount.....	21
Section 4.	Disbursement Conditions.....	21
Section 5.	Term.....	22
Section 6.	Interest Rate.....	22
Section 7.	Outstanding WIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule.....	22
Section 8.	Security and Priority; Flow of Funds.....	23
Section 9.	Payment of Principal and Interest.....	24
Section 10.	Prepayment.....	26
Section 11.	[Reserved].....	27
Section 12.	Conditions Precedent.....	27
Section 13.	Representations and Warranties of Borrower.....	32
Section 14.	Representations and Warranties of WIFIA Lender.....	39
Section 15.	Affirmative Covenants.....	40
Section 16.	Negative Covenants.....	47
Section 17.	Indemnification.....	54
Section 18.	Sale of WIFIA Loan.....	55
Section 19.	System Events of Default and Remedies.....	55
Section 20.	Project Events of Default and Remedies.....	59
Section 21.	Accounting and Audit Procedures; Inspections; Reports and Records.....	60
Section 22.	System Financial Planning and Reporting.....	61
Section 23.	Project Oversight and Monitoring.....	63
Section 24.	Disclaimer of Warranty.....	65
Section 25.	No Personal Recourse.....	65
Section 26.	No Third Party Rights.....	65
Section 27.	Borrower's Authorized Representative.....	65
Section 28.	WIFIA Lender's Authorized Representative.....	66
Section 29.	Servicer.....	66
Section 30.	Fees and Expenses.....	66
Section 31.	Amendments and Waivers.....	68
Section 32.	Governing Law.....	68
Section 33.	Severability.....	68
Section 34.	Successors and Assigns.....	68
Section 35.	Remedies Not Exclusive.....	68
Section 36.	Delay or Omission Not Waiver.....	68
Section 37.	Counterparts.....	69
Section 38.	Notices; Payment Instructions.....	69
Section 39.	Effectiveness.....	70
Section 40.	Termination.....	70
Section 41.	Integration.....	70

**SCHEDULE I** – Project Budget

**SCHEDULE II** – Construction Schedule

**SCHEDULE III** – Existing Indebtedness

**SCHEDULE IV** – Section 14 of Ordinance

**SCHEDULE 13(n)** – Principal Project Contracts

**SCHEDULE 13(r)** – Environmental Matters

**EXHIBIT A** – Form of WIFIA Bond

**EXHIBIT B** – Anticipated WIFIA Loan Disbursement Schedule

**EXHIBIT C**– Certification Regarding Debarment, Suspension and other Responsibility Matters

**EXHIBIT D** – Requisition Procedures

**EXHIBIT E** – Compliance With Laws

**EXHIBIT F** – WIFIA Debt Service

**EXHIBIT G-1** – Opinions Required from Counsel to Borrower

**EXHIBIT G-2** – Opinions Required from Bond Counsel

**EXHIBIT H** – Form of Borrower’s Officer’s Certificate

**EXHIBIT I** – Form of Certificate of Substantial Completion

**EXHIBIT J** – Form of Pari Passu Obligations Certificate

**EXHIBIT K** – Form of Monthly Report

## WIFIA LOAN AGREEMENT

**THIS WIFIA LOAN AGREEMENT** (this “**Agreement**”), dated as of [●], 2018, is by and between **KING COUNTY, WASHINGTON**, a political subdivision of the State of Washington (the “**State**”) (the “**Borrower**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington DC 20460 (the “**WIFIA Lender**”).

### RECITALS:

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

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

WHEREAS, the Borrower has requested that the WIFIA Lender make the WIFIA Loan (as defined herein) in a principal amount not to exceed \$134,500,000 to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for WIFIA financial assistance dated November 6, 2017 (the “**Application**”); and

WHEREAS, on [*insert date of Administrator approval of Project for financial assistance*], the Administrator approved WIFIA financial assistance for the Project in the form of the WIFIA Loan; and

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Lender proposes to make funding available to the Borrower through the purchase of the WIFIA Bond (as defined herein), upon the terms and conditions set forth herein; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Bond in accordance with the terms and provisions hereof and of the WIFIA Bond; and

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

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and

intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Lender as follows:

Section 1. Definitions.

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

**“Acceptable Credit Rating”** means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues a Qualified Hedge, ‘A+’, ‘A1’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

**“Accreted Value”** means, for any Pari Passu Obligations that are Capital Appreciation Bonds, as of any date of calculation, the sum of the amounts set forth in the ordinance, resolution or motion authorizing such bonds as the amounts representing the initial principal amount of such bonds plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, as provided in the ordinance, resolution or motion authorizing the issuance of such bonds; provided that if such calculation is not made as of a compounding date, such amount shall be determined by straight-line interpolation as of the immediately preceding and the immediately succeeding compounding dates.

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

**“Additional Obligations”** means Additional Pari Passu Obligations and Additional Subordinated Obligations.

**“Additional Pari Passu Obligations”** means any Pari Passu Obligations permitted under Section 16(a)(i)(A) (*Negative Covenants – Indebtedness – Additional Pari Passu Obligations*) and under the Ordinance, which Pari Passu Obligations are issued or incurred on or after the Effective Date.

**“Additional Principal Project Contract”** means any contract, agreement, letter of intent, understanding or instrument entered into by (or on behalf of) the Borrower after the Effective Date with respect to the Project, in each case, (a) pursuant to which the Borrower has payment obligations in excess of \$2,500,000 in the aggregate or (b) the termination of which could reasonably be expected to have a Material Adverse Effect, but excluding in any case any (i) insurance policies or documents pertaining to the Borrower’s self-insurance program, (ii) Governmental Approvals and (iii) agreements, documents and instruments (A) providing for,

governing or evidencing any Permitted Debt and any related Permitted Lien for such Permitted Debt or (B) entered into to consummate any Permitted Investment.

“**Additional Subordinated Obligations**” means any Subordinated Obligations permitted under Section 16(a)(i)(B) (*Indebtedness/Additional Subordinated Obligations*) and under the Ordinance (as applicable), which Subordinated Obligations are issued or incurred on or after the Effective Date.

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

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

“**Annual Parity Debt Service**” means, for any calendar year, the sum of the following:

(a) the interest due on all Outstanding Parity Bonds (i) on all interest payment dates (other than January 1) in such calendar year, and (ii) on January 1 of the next succeeding year, and any Payment Agreement Payments (as defined in the Ordinance) due on such dates in respect of Parity Payment Agreements (as defined in the Ordinance), minus any Payment Agreement Receipts (as defined in the Ordinance) due in such period in respect of such Parity Payment Agreements.

(i) For purposes of calculating the amounts required to pay interest on Parity Bonds, capitalized interest and accrued interest paid to the Borrower upon the issuance of Parity Bonds shall be excluded.

(ii) The amount of interest deemed to be payable on any issue of Variable Rate Parity Bonds (as defined in the Ordinance) shall be calculated on the assumption that the interest rate on those bonds would be equal to the Assumed RBI Rate; provided that for purposes of determining actual compliance in any past calendar year with the Rate Covenant, the actual amount of interest paid on any issue of Variable Rate Parity Bonds shall be taken into account.

(b) the principal due (at maturity or upon the mandatory redemption of Term Bonds (as defined in the Ordinance) prior to their maturity) for all Outstanding Parity Bonds (i) on all principal payment dates (other than January 1) of such calendar year and (ii) on January 1 of the next succeeding year. In the case of Capital Appreciation Bonds, the Accreted Value due at maturity or upon the mandatory redemption of Parity Term Bonds (as defined in the Ordinance) that are Capital Appreciation Bonds shall be included in the calculation of Annual Parity Debt Service, and references in the Ordinance and this Agreement to principal of Parity Bonds shall include the Accreted Value due at maturity or upon the mandatory redemption of any Capital Appreciation Bonds.

Notwithstanding the foregoing, debt service on Parity Bonds with respect to which a Payment Agreement (as defined in the Ordinance) is in force shall be calculated by the Borrower to reflect the net economic effect of the terms of the Parity Bonds and the applicable Payment Agreement, in accordance with the requirements set forth in

Section 26 of the Ordinance (*Payment Agreements*) and any other applicable requirements from the ordinances authorizing issuance of such Parity Bonds.

For purposes of calculating the Reserve Requirement, satisfying the Rate Covenant and satisfying the tests for the issuance of Additional Pari Passu Obligations in Section 16(a), Annual Parity Debt Service for any Borrower Fiscal Year or calendar year shall exclude any Debt Service Offsets.

“**Anticipated WIFIA Loan Disbursement Schedule**” means the schedule set forth in **Exhibit B** (*Anticipated WIFIA Loan Disbursement Schedule*), reflecting the anticipated disbursement of proceeds of the WIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(b) (*Disbursement Conditions*).

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

“**Assumed RBI Rate**” means the rate that is 90% of the average Bond Buyer Revenue Bond Index (or comparable index reasonably acceptable to the WIFIA Lender) during the fiscal quarter preceding the quarter in which the applicable calculation is made.

“**Authorized Representative**” means, with respect to the Borrower, such officers or individuals that have authorization from the applicable governing body to perform the act being referred to.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

“**Bankruptcy Related Event**” means, with respect to any Person, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or (b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 9 (*Payment of Principal and Interest*) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the

foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law.

**“Base Case Financial Model”** means a financial model prepared by the Borrower forecasting the capital costs of the System (including the Project) and the rates, revenues and Operations and Maintenance Expenses of the System for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Lender as of the Effective Date, which model shall be provided to the WIFIA Lender as a fully functional Microsoft Excel – based financial model.

**“Beneficial Owner”** means, with respect to a Parity Bond, the owner of the beneficial interest in that Parity Bond.

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

**“Borrower Fiscal Year”** means (a) as of the Effective Date, a fiscal year of the Borrower commencing on January 1 of any calendar year and ending on December 31 of such year or (b) such other fiscal year as the Borrower may hereafter adopt.

**“Borrower’s Authorized Representative”** means any Person who shall be designated as such pursuant to Section 27 (*Borrower’s Authorized Representative*).

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

**“Business Interruption Insurance”** means any policy of insurance insuring against loss of revenues upon the occurrence of certain casualties or events covered by such policy of insurance.

**“Business Interruption Insurance Loss Proceeds”** means any proceeds of Business Interruption Insurance resulting from any Event of Loss.

**“Capital Appreciation Bonds”** means any Pari Passu Obligations the interest on which is compounded, accumulated and payable only upon redemption or on the maturity date of such Pari Passu Obligations; provided that Pari Passu Obligations may be deemed to be Capital Appreciation Bonds for only a portion of their term pursuant to the ordinance, resolution or motion authorizing their issuance. On the date on which Pari Passu Obligations no longer are Capital Appreciation Bonds, they shall be deemed Outstanding in a principal amount equal to their Accreted Value.

**“Collateral”** means (a) that portion of System Revenues that the Borrower has covenanted pursuant to the Ordinance Documents to pay into the Parity Bond Fund and the accounts therein, and (b) all amounts set forth in the Parity Bond Fund and the accounts therein.



“**Comprehensive Plan**” means the Borrower’s comprehensive water pollution abatement plan authorized by RCW 35.58.200 and defined in Section 28.82.150 of the King County Code as the Comprehensive Sewage Disposal Plan adopted by Resolution No. 23 of the Metro Council on April 22, 1959, and all amendments thereto, together with any amendments hereafter approved by ordinance of the Borrower.

“**Construction Account**” has the meaning provided in the Ordinance.

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

“**Construction Period Servicing Fee**” has the meaning set forth in Section 30(b) (*Fees and Expenses – Construction Period Servicing Fee*).

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II**, and (b) any updates thereto included in the periodic reports submitted to the WIFIA Lender pursuant to Section 23(b) (*Project Oversight and Monitoring – Reporting*).

“**Construction Subaccount**” has the meaning provided in the Ordinance.

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

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

“**Credit Facility**” means any letter of credit, standby bond purchase agreement, line of credit, surety bond, insurance policy or other insurance commitment or similar agreement (but not including a Hedging Agreement), satisfactory to the Borrower, that is provided by a commercial bank, insurance company or other financial institution to provide support for a series of Parity Bonds or other Permitted Debt, and shall include any substitute therefor in accordance with the provisions of the ordinance providing for the issuance of such series of Parity Bonds or other Permitted Debt; provided that any provider of a Credit Facility that provides support for a series of Parity Bonds shall have a current long term rating (or shall have obligations thereunder that are guaranteed by a financial institution with a long term rating) from Moody’s and S&P not lower, when issued, than the credit rating of any series of Parity Bonds.

“**Credit Facility Provider**” means, with respect to any Credit Facility, the issuer or provider of such Credit Facility.

“**Customers**” means Residential Customers and Residential Customer Equivalents as defined and determined in the existing Service Agreements.

“**Debt Service Account**” has the meaning provided in the Ordinance.

“**Debt Service Offsets**” means receipts of the Borrower, including federal interest subsidy payments, designated as such by the Borrower that are not included in System Revenues and that are legally available to pay debt service on Parity Bonds, Parity Lien Obligations or other obligations of the Borrower payable from and secured by a pledge of System Revenues.

“**Default**” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means an interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 500 basis points.

“**Development Default**” means the Borrower fails to diligently prosecute the work related to the Project.

“**Effective Date**” means the date of this Agreement.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including, as applicable, prior Project expenditures preceding the date of the Application, all of which shall arise from the following:

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

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

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

(d) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided that Eligible Project Costs must be consistent with all other applicable federal law, including the Act.

“**Environmental Laws**” has the meaning provided in Section 13(r) (*Representations and Warranties of Borrower – Environmental Matters*).

“**EPA**” means the United States Environmental Protection Agency.

“**Event of Default**” means a System Event of Default or a Project Event of Default.

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

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

“**Existing Principal Project Contract**” means each contract of the Borrower set forth in Part A of **Schedule 13(n)**.

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

“**Final Disbursement Date**” means the earliest of (a) the date on which the WIFIA Loan has been disbursed in full, (b) the date on which the Borrower has certified to the WIFIA Lender that it will not request any further disbursements under the WIFIA Loan and (c) the date that is one (1) year after the Substantial Completion Date.

“**Final Maturity Date**” means January 1, 2051; provided that the Final Maturity Date shall be no later than the date that is thirty-five (35) years following the Substantial Completion Date.

“**Finance Director**” means the director of the finance and business operations division of the department of executive services of the Borrower or any other Borrower officer who succeeds to the duties now delegated to that office, or the designee of such officer.

“**Financial Statements**” has the meaning provided in Section 13(x) (*Representations and Warranties of Borrower – Financial Statements*).

“**Fixed Level Payment**” has the meaning provided in Section 9(d) (*Payment of Principal and Interest – Fixed Level Payments*).

“**GAAP**” means generally accepted accounting principles for governmental entities, as established by GASB, in effect from time to time in the United States of America.

“**GASB**” means the Government Accounting Standards Board, or any successor entity with responsibility for establishing accounting rules for governmental entities.

“**General Obligations**” means obligations of a governmental entity with powers to assess taxes on property within the jurisdiction of such governmental entity, backed by the full faith and credit and taxing power of such entity.

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

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

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

**“Hedging Agreement”** means (a) the ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, to be entered into by the Borrower and a Hedging Bank, (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, and (c) any other documentation directly relating to the foregoing.

**“Hedging Bank”** means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and its permitted successors (to the extent such successors are also Qualified Hedge Providers).

**“Hedging Obligations”** means, collectively, the payment of (a) all scheduled amounts payable to the Hedging Banks by the Borrower under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedging Banks, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedging Banks to the Borrower under such Hedging Agreements; provided that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

**“Hedging Termination Obligations”** means the aggregate amount payable to the Hedging Banks by the Borrower upon the early termination of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks upon such early termination. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

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

“**Indemnitee**” has the meaning provided in Section 17 (*Indemnification*).

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

“**Interest Only Period**” means the period commencing on the Effective Date and ending on the Interest Payment Date occurring on July 1, 2032 (or on such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in cash).

“**Interest Payment Date**” means each January 1 and July 1.

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

“**Investment Policy**” means the investment policy of the Borrower, as approved by the Treasury Operations Section of the King County Finance and Business Operations Division from time to time and as of the Effective Date published on the Borrower’s website at the following link: [www.kingcounty.gov/depts/finance-business-operations/treasury/investment-pool.aspx](http://www.kingcounty.gov/depts/finance-business-operations/treasury/investment-pool.aspx).

“**ISDA Master Agreement**” means a master agreement, entered into by the Borrower and a Hedging Bank, in the form published by the International Swaps and Derivatives Association, Inc.

“**Junior Lien Obligations**” means (a) the junior lien Obligations of the Borrower listed under the heading “Junior Lien Obligations” in **Schedule III** and (b) any other revenue bonds or revenue obligations having a Lien on System Revenues that is *pari passu* to the Lien thereon of the foregoing bonds.

“**Level Payment Commencement Date**” means January 1, 2036.

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

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

“**Loan Amortization Schedule**” means the Loan Amortization Schedule reflected in the applicable column of **Exhibit F** (*WIFIA Debt Service*), as amended from time to time in accordance with Section 7 (*Outstanding WIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*).

“**Loss Proceeds**” means any proceeds of builders’ risk or casualty insurance (other than Business Interruption Insurance Loss Proceeds) or proceeds of eminent domain proceedings resulting from any Event of Loss.

“**Material Adverse Effect**” means a material adverse effect on (a) the System, the Project or the System Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the System, (c) the legality, validity or enforceability of any material provision of any Ordinance Document or WIFIA Loan Document, (d) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any Ordinance Document or WIFIA Loan Document, (e) the validity, enforceability or priority of the Liens provided under the Ordinance Documents on the Collateral in favor of the Secured Parties or (f) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document.

“**Multi-Modal LTGO/Sewer Revenue Bonds**” means (a) the Borrower’s limited tax general obligation bonds, additionally secured by System Revenues, which are listed under the heading “Multi-Modal LTGO/Sewer Revenue Bonds” in **Schedule III** and (b) any additional limited tax general obligation bonds of the Borrower payable from System Revenues and having a Lien on System Revenues that is pari passu to the Lien thereon of the foregoing bonds.

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

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

“**NEPA Determination**” means the Categorical Exclusion for the Project issued by EPA on [●], 2018 in accordance with NEPA.

“**Net Loss Proceeds**” means Loss Proceeds after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties.

“**Net System Revenues**” means, for any Borrower Fiscal Year or other period of time, the System Revenues during such period, less Operations and Maintenance Expenses for such period.

“**Obligations**” means debt of the Borrower that is (i) a General Obligation of the Borrower and/or (ii) secured by a pledge of and lien on System Revenues pledged as security for indebtedness issued pursuant to the applicable ordinance.

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

“**Operating Period Servicing Fee**” has the meaning set forth in Section 30(c) (*Fees and Expenses – Operating Period Servicing Fee*).

“**Operations and Maintenance Expenses**” means all normal expenses incurred by the Borrower in causing the System to be maintained in good repair, working order and condition

and includes payments to any private or governmental agency for the operation or maintenance of facilities or for the disposal of sewage but excludes any allowance for depreciation.

“**Ordinance**” means that certain King County Ordinance 18588, dated October 23, 2017, passed by the Metropolitan King County Council.

“**Ordinance Documents**” means the Ordinance and each Supplemental Ordinance, each Sale Motion and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing, in each case to the extent the provisions of such ordinance, motion, agreement, instrument or document pertain to Parity Bonds, including the WIFIA Bond.

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

“**Outstanding**” means, with respect to Obligations, Obligations that have not been cancelled or legally defeased or discharged within the meaning of the applicable ordinance.

“**Outstanding WIFIA Loan Balance**” means (i) the aggregate principal amount of the WIFIA Loan drawn by the Borrower minus (ii) the aggregate principal amount of the WIFIA Loan repaid by the Borrower, as determined in accordance with Section 7 (*Outstanding WIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*).

“**Owner**” means, with respect to any Parity Bond, without distinction, the Beneficial Owner or the Registered Owner.

“**Pari Passu Obligations**” means any borrowing or indebtedness of the Borrower permitted under Section 16(a) (*Negative Covenants – Indebtedness*) and under the Ordinance that ranks *pari passu* in right of payment and right of security with the WIFIA Loan. “Pari Passu Obligations” shall include any Credit Facilities supporting any Pari Passu Obligations and any Hedging Agreement entered into in respect of any Pari Passu Obligations.

“**Parity Bond**” has the meaning provided in the Ordinance.

“**Parity Bond Fund**” has the meaning provided in the Ordinance.

“**Parity Bond Reserve Account**” has the meaning provided in the Ordinance.

“**Parity Bondowner**” means, when used with respect to the WIFIA Bond, the WIFIA Lender (and any subsequent Registered Owner of the WIFIA Bond) and, when used with respect to any other Parity Bond, the Registered Owner of such Parity Bond.

“**Parity Lien Obligations**” means (a) the limited tax general obligation bonds, additionally secured by the System Revenues junior and subordinate to the Lien thereon of the

Parity Bonds, which are listed under the heading “Parity Lien Obligations” in **Schedule III**, and (b) any other bonds issued with a Lien on System Revenues that is pari passu with the Lien thereon of the foregoing bonds. Parity Lien Obligations include any Hedging Agreement applicable to Parity Lien Obligations or Reimbursement Agreement entered into with the provider of a Credit Facility securing any Parity Lien Obligations.

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

“**Payment Date**” means each Interest Payment Date and each Principal Payment Date.

“**Payment Default**” has the meaning provided in Section 19(a)(i) (*System Events of Default and Remedies – Payment Default*).

“**Permitted Debt**” means:

- (a) Existing Indebtedness;
- (b) the WIFIA Loan;
- (c) Additional Pari Passu Obligations that satisfy the requirements of Section 16(a)(i)(A) (*Negative Covenants – Indebtedness – Additional Pari Passu Obligations*), including Obligations under any Credit Facility in respect thereof;
- (d) Additional Subordinated Obligations that satisfy the requirements of Section 16(a)(i)(B) (*Negative Covenants – Indebtedness – Additional Subordinated Obligations*), including Obligations under any Credit Facility in respect thereof; and
- (e) indebtedness incurred in respect of Qualified Hedges.

“**Permitted Hedging Termination**” means the early termination, in whole or in part, of any Qualified Hedge (a) at the request of the Borrower as a result of a determination by the Borrower that such (or any part of such) Qualified Hedge is no longer necessary or required under the terms of this Agreement, (b) pursuant to the terms of any Hedging Agreement evidencing such Qualified Hedge that provides for the notional amount of such Qualified Hedge to amortize or otherwise be reduced from time to time or (c) as may be required pursuant to Section 15(n)(iv) (*Affirmative Covenants – Hedging*).

“**Permitted Investment**” means any investment permitted by the Investment Policy.

“**Permitted Liens**” means:

- (a) Liens imposed pursuant to the Ordinance Documents or otherwise pertaining to Permitted Debt;
- (b) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 15(m) (*Affirmative Covenants – Material Obligations; Liens*);



(c) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 15(m) (*Affirmative Covenants – Material Obligations; Liens*);

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

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

(f) judgment Liens in respect of judgments that do not constitute a System Event of Default under Section 19(a)(vi) (*System Events of Default and Remedies – Judgments*); and

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

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

“**Principal Payment Date**” means each January 1.

“**Principal Project Contracts**” means the Existing Principal Project Contracts and the Additional Principal Project Contracts.

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

“**Professional Utility Consultant**” means any independent licensed professional engineer, certified public accountant, or other independent person or firm, selected by the Borrower, having skill and experience with the operation and maintenance of sewer systems of comparable size and character to the System in such areas as are relevant to the purposes for which such entity is retained, including the establishment of rates and charges.

“**Project**” means a new combined sewer overflow (CSO) wet weather treatment facility referred to as the Georgetown Wet Weather Treatment Station (GWWTS), associated conveyance improvements, and an outfall structure in the Lower Duwamish Waterway located in King County, Washington.

**“Project Budget”** means the budget for the Project attached to this Agreement as **Schedule I** showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs for the Project.

**“Project Event of Default”** means a Project Event of Default as set forth in Section 20 (*Project Events of Default and Remedies*).

**“Projected Substantial Completion Date”** means December 31, 2022, as such date may be adjusted in accordance with Section 23(b) (*Project Oversight and Monitoring – Reporting*).

**“Public Works Trust Fund Loans”** means (a) the loans to the Borrower by the State Department of Commerce under the Public Works Trust Fund loan program listed under the heading “PWTF Loans” in **Schedule III** and (b) any loan agreements hereafter entered into by the Borrower under the Public Works Trust Fund loan program, the repayment obligations of which are secured by a Lien on System Revenues that is *pari passu* to the Lien thereon of the foregoing loans.

**“Qualified Hedge”** means, to the extent from time to time permitted by law, with respect to Permitted Debt, any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 15(n) (*Affirmative Covenants – Hedging*).

**“Qualified Hedge Provider”** means any bank or trust company authorized to engage in the banking business, which is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof and which has an Acceptable Credit Rating.

**“Qualified Insurance”** means any unconditional municipal bond insurance policy or surety bond issued by any insurance company licensed to conduct an insurance business in any state of the United States or by a service corporation acting on behalf of one or more such insurance companies, which insurance company or service corporation, as of the time of issuance of such policy or surety bond, is then rated in one of the two highest rating categories by Moody’s, S&P, and any other rating agency then maintaining a rating on the Parity Bonds and maintains a policy owner’s surplus in excess of \$500,000,000.

**“Qualified Letter of Credit”** means any irrevocable letter of credit issued by a bank for the account of the Borrower and for the benefit of the Registered Owners of Parity Bonds; provided that such bank maintains an office, agency or branch in the United States; provided, further, that as of the time of issuance of such letter of credit, such bank is currently rated in one of the two highest rating categories by Moody’s, S&P, and any other rating agency then maintaining a rating on the Parity Bonds.

**“Rate Covenant”** has the meaning set forth in Section 15(k) (*Affirmative Covenants – Rate Covenant*).

**“Registered Owner”** means, with respect to a Parity Bond, the person in whose name that Parity Bond is registered on the Bond Register (as defined in the Ordinance).

**“Reimbursement Agreement”** means, with respect to any Credit Facility, the agreement between the Borrower and the Credit Facility Provider that governs the terms and conditions of

the Credit Facility and the obligations of the Borrower with respect to, among other things, the terms of payment of principal of and interest on amounts drawn under the Credit Facility.

“**Related Documents**” means (a) the Ordinance Documents, the WIFIA Loan Documents and the Principal Project Contracts and (b) the Hedging Agreements and the Reimbursement Agreements, in each case to the extent the provisions of such Hedging Agreement or Reimbursement Agreement pertain to Parity Bonds, including the WIFIA Bond.

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

“**Reserve Requirement**” means the maximum Annual Parity Debt Service with respect to any calendar year.

“**Revenue Fund**” has the meaning provided in the Ordinance.

“**Sale Motion**” means the WIFIA Sale Motion and each other Sale Motion passed by the Metropolitan King County Council in connection with the issuance of any Parity Bond.

“**Secured Parties**” means (a) the WIFIA Lender, each other Parity Bondowner, the Trustee and the holders of Subordinated Obligations and (b) the Hedging Banks, if any, and Credit Facility Providers, if any, in each case in respect of Pari Passu Obligations and Subordinated Obligations.

“**Service Agreements**” means the sewage disposal agreements entered into between the Borrower and municipal corporations, persons, firms, private corporations, or governmental agencies providing for the disposal by the Borrower of sewage collected from such contracting parties.

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

“**Servicing Set-Up Fee**” has the meaning set forth in Section 30(a) (*Fees and Expenses – Servicing Set-Up Fee*).

“**Servicing Fee**” means any Construction Period Servicing Fee or Operating Period Servicing Fee.

“**SRF Loans**” means (a) the loans to the Borrower by the State Department of Ecology under the State water pollution control revolving fund loan program listed under the heading “SRF Loans” in **Schedule III** and (b) any loan agreements hereafter entered into by the Borrower under the State water pollution control revolving fund loan program, the repayment obligations of which are secured by a Lien on System Revenues that is pari passu to the Lien thereon of the foregoing loans.

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

“**Subordinate Lien Obligations**” means those revenue bonds or other revenue obligations that may be issued by the Borrower in the future with a Lien on System Revenues

junior and inferior to the Lien thereon of the Multi-Modal LTGO/Sewer Revenue Bonds, and payable from System Revenues that are available after first making the payments required to be made under paragraphs “First” through “Seventh” but before making the payments required to be made under paragraph “Ninth” of the cash flow waterfall set forth in Section 14 of the Ordinance (*Sewer Revenue Priorities of Payment*) and described in **Schedule IV** to this Agreement.

“**Subordinated Obligations**” means (a) the Existing Indebtedness listed under the headings “Parity Lien Obligations,” “Junior Lien Obligations,” “Multi-Modal LTGO/Sewer Revenue Bonds,” “SRF Loans” and “Public Works Trust Fund Loans” in **Schedule III**, (b) additional Obligations that are fully subordinated in priority of payment (as to both principal and interest) and priority of security interest in the Collateral to the WIFIA Bond, including with respect to payment from revenues and reserves and payment upon default of any Obligations, including each of the following: any additional Parity Lien Obligations, Junior Lien Obligations, Multi-Modal LTGO/Sewer Revenue Bonds, Subordinate Lien Obligations, SRF Loans, Public Works Trust Fund Loans, (c) any Hedging Agreement or Credit Facility, in each case in respect of any Obligations described in clause (a) or (b) above, and (d) any Qualified Insurance and any Qualified Letter of Credit.

“**Substantial Completion**” means the Project is able to perform the functions for which the Project is designed.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Supplemental Ordinance**” means an ordinance of the Borrower authorizing the issuance of Additional Pari Passu Obligations or amending the terms of the Ordinance or a Supplemental Ordinance.

“**System**” means the sewers and sewage disposal facilities now or hereafter acquired, constructed, used or operated by the Borrower for the purpose of carrying out the Comprehensive Plan.

“**System Accounts**” means the Revenue Fund, the Parity Bond Fund, the Debt Service Account, the Parity Bond Reserve Account, the WIFIA Debt Service Subaccount, the Construction Account and each Construction Subaccount.

“**System Event of Default**” has the meaning provided in Section 19 (*System Events of Default and Remedies*).

“**System Revenues**” means all earnings, revenues and money received by the Borrower from or on account of the operations of the System and the income from the investment of money in the Revenue Fund or any account within such fund; provided that “System Revenues” shall not include any money collected pursuant to the Service Agreements applicable to administrative costs of the Borrower other than costs of administration of the System; provided further that for certain purposes described in Section 13.B. of the Ordinance (*Revenue Fund; Rate Stabilization Fund – Rate Stabilization Fund*), deposits from the Rate Stabilization Fund (as defined in the Ordinance) into the Revenue Fund may be included in calculations of System Revenues.

**“Tender Option Obligations”** means any Obligation which by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof to the Borrower, a tender agent or a remarketing agent.

**“Total Project Costs”** means (a) the costs paid or incurred or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and costs of issuance; (b) amounts, if any, required by the Ordinance Documents or the WIFIA Loan Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan, any Pari Passu Obligations or any Subordinated Obligations, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the period from January 1, 2014 through the Substantial Completion Date in respect of any indebtedness of the Borrower, in each case in connection with the Project (other than the WIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

**“Trustee”** means any trustee appointed by the Parity Bondowners in accordance with the terms of Section 21.A. of the Ordinance (*Trustee for Registered Owners of Parity Bonds – Appointment of Trustee*) and having the rights and responsibilities set forth in the Ordinance.

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

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

**“Updated Financial Model”** has the meaning provided in Section 22(a) (*Updated Financial Model*).

**“Variable Interest Rate”** means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the ordinance pursuant to which such Permitted Debt is incurred. Such ordinance shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect or (b) the time or times upon which any change in such variable interest rate shall become effective.

“**Variable Interest Rate Obligations**” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided that Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Obligations if the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect; provided, further, that Permitted Debt bearing a fixed rate of interest shall be deemed Variable Interest Rate Obligations to the extent that the Borrower has entered into a Qualified Hedge pursuant to which the Borrower is obligated to pay a floating rate of interest and receives a fixed rate of interest and shall be deemed to bear interest at the Assumed RBI Rate.

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

“**WIFIA Bond**” means the Parity Bond delivered by the Borrower in substantially the form of **Exhibit A** (*Form of WIFIA Bond*).

“**WIFIA Debt Service**” means with respect to any Payment Date, as applicable, the principal portion of the Outstanding WIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, due and payable on such Payment Date in accordance with the provisions of Section 9(c) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*) and 9(d) (*Payment of Principal and Interest – Fixed Level Payments*).

“**WIFIA Debt Service Subaccount**” means the subaccount within the Debt Service Account established for the benefit of the WIFIA Lender in accordance with the terms of the Ordinance.

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

“**WIFIA Lender**” has the meaning provided in the preamble hereto.

“**WIFIA Lender’s Authorized Representative**” means the Administrator and any other Person who shall be designated as such pursuant to Section 28 (*WIFIA Lender’s Authorized Representative*).

“**WIFIA Loan**” means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed \$134,500,000, to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

“**WIFIA Loan Documents**” means this Agreement, the WIFIA Bond, the WIFIA Sale Motion and the other Ordinance Documents.

“**WIFIA Sale Motion**” means the Sale Motion, dated [●], passed by the Metropolitan King County Council in connection with the issuance of the WIFIA Bond.

Section 2. Interpretation.

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

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

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

(d) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(e) Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns.

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

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

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

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

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 38 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

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

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

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed \$134,500,000. WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 12(b) (*Conditions Precedent – Conditions Precedent to All Disbursements*).

Section 4. Disbursement Conditions.

(a) WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the Borrower in connection with the Project. Each disbursement of the WIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** (*Form of Requisition*) to **Exhibit D** (*Requisition Procedures*), along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the WIFIA Lender, all in accordance with the procedures of **Exhibit D** (*Requisition Procedures*) and subject to the requirements of this Section 4 (*Disbursement Conditions*) and the conditions set forth in Section 12(b) (*Conditions Precedent – Conditions Precedent to All Disbursements*); provided that no disbursements of WIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date. A Requisition to pay Eligible Project Costs previously paid by the Borrower that otherwise satisfies the conditions for a Requisition for such Eligible Project Costs shall be treated as a Requisition to pay such Eligible Project Costs.

(b) The Borrower shall deliver copies of each Requisition to the WIFIA Lender and the Servicer (if any) on or before the first (1<sup>st</sup>) Business Day of each month for which a disbursement is requested. If the WIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15<sup>th</sup>) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15<sup>th</sup>) day is not a Business Day. Express WIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month. At the time of any disbursement, the sum of all prior disbursements of WIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current Federal Fiscal Year set forth in the Anticipated WIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Any scheduled disbursement (as reflected in the Anticipated WIFIA Loan Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall be available for disbursement in subsequent years, subject to this Section 4 (*Disbursement Conditions*).

(c) The Borrower may amend the Anticipated WIFIA Loan Disbursement Schedule by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated WIFIA Loan



Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be granted in the WIFIA Lender's sole discretion. Unused draw authority from a prior Federal Fiscal Year automatically rolls forward to be available in the succeeding Federal Fiscal Year, having the effect of automatically updating the Anticipated WIFIA Loan Disbursement Schedule without need for the WIFIA Lender's approval.

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

Section 6. Interest Rate. The interest rate with respect to the Outstanding WIFIA Loan Balance (the "**WIFIA Interest Rate**") shall be [●] percent ([●]%) per annum. Interest will accrue and be computed on the Outstanding WIFIA Loan Balance (as well as on any past due interest) from time to time on the basis of a 360-day year of twelve (12) thirty (30) day months, and will be compounded semi-annually; provided that, in the event of any Payment Default or any Project Event of Default arising from abandonment of the Project, the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate, in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and, in the case of any Project Event of Default arising from abandonment of the Project, from (and including) the date of such occurrence until (and excluding) the date on which the Outstanding WIFIA Loan Balance has been paid in full in cash.

Section 7. Outstanding WIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule.

(a) The Outstanding WIFIA Loan Balance will be (i) increased on each occasion on which the WIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds and (ii) decreased upon each payment or prepayment of the Outstanding WIFIA Loan Balance, by the amount of principal so paid. The WIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding WIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** (*WIFIA Debt Service*) from time to time, to reflect (i) any change to the Outstanding WIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the WIFIA Lender may determine is necessary for administering the WIFIA Loan and this Agreement. The WIFIA Lender shall modify the Loan Amortization Schedule promptly following the Final Disbursement Date. Any calculations described above shall be rounded up to the nearest whole cent. Any partial prepayments of the Outstanding WIFIA Loan Balance pursuant to Section 10 (*Prepayment*) shall be applied in accordance with Section 10(d) (*Prepayment – General Prepayment Instructions*). Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided that neither the failure to modify the Loan Amortization Schedule nor the failure to make any such recordation nor any

error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. The WIFIA Lender shall provide the Borrower with a copy of **Exhibit F** (*WIFIA Debt Service*) as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents.

Section 8. Security and Priority; Flow of Funds.

(a) As security for the WIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, for the benefit of the WIFIA Lender, Liens on the Collateral in accordance with the provisions of the Ordinance Documents. The Liens on the Collateral for the benefit of the WIFIA Lender shall at all times be (i) *pari passu* in right of payment and right of security with the Liens on the Collateral for the benefit of the other Parity Bondowners and (ii) senior in right of payment and right of security to the Liens on the Collateral for the benefit of the holders of Subordinated Obligations.

(b) The Collateral will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that is (i) of equal rank with the pledge of the Borrower created under the Ordinance Documents for the benefit of the WIFIA Lender (other than Permitted Liens) or (ii) senior to the pledge of the Borrower created under the Ordinance Documents for the benefit of the WIFIA Lender (other than Permitted Liens required by operation of law). All organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use System Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 (*Security and Priority; Flow of Funds*) and the Ordinance Documents and shall not apply any portion of the System Revenues in contravention of this Agreement or the Ordinance Documents.

(d) The Ordinance provides that all System Revenues shall be deposited in the Revenue Fund and applied in accordance with the requirements specified in Section 14 of the Ordinance (*Sewer Revenue Priorities of Payment*), a copy of which, as of the Effective Date, is attached hereto as **Schedule IV** (all capitalized terms used in **Schedule IV** and not otherwise defined in this Agreement shall have the meanings provided in the Ordinance).

(e) Notwithstanding anything to the contrary set forth herein (including in **Schedule IV**) or in any other WIFIA Loan Document:

(i) the Borrower shall transfer (or cause the transfer of) amounts in the Revenue Fund to the applicable Parity Bondowners (including the WIFIA Lender) to pay the fees, costs, expenses and indemnities owed to such Parity Bondowners (including the WIFIA Lender) and any official, employee, agent, representative or Trustee thereof concurrently (and on a *pari passu* basis) with payments required to be made under paragraph *Second* of the cash flow waterfall set forth in Section 14 of the Ordinance (*Sewer Revenue Priorities of Payment*); provided that, for the avoidance of doubt, in accordance with Section 21.A. of the Ordinance (*Trustee for Registered Owners of Parity*

*Bonds – Appointment of Trustee*), the fees owed to any Trustee shall be direct obligations of the Parity Bondowners; and

(ii) if, on the date of any withdrawal or transfer from the Revenue Fund for payment pursuant to any of paragraphs *Second* or *Third* of the cash flow waterfall set forth in Section 14 of the Ordinance (*Sewer Revenue Priorities of Payment*), the amount required to be withdrawn and transferred from the Revenue Fund pursuant to such paragraph exceeds the amount then on deposit in or credited to the Revenue Fund after the withdrawals and transfers made pursuant to all applicable preceding paragraphs are completed, the amount on deposit in or credited to the Revenue Fund at the time of application pursuant to such paragraph shall be transferred pro rata to each of the Persons (or System Accounts) specified in such paragraph based on the respective amounts owed to such Persons (or otherwise required to be transferred) pursuant to such paragraph.

(f) Notwithstanding anything to the contrary set forth herein or in any other WIFIA Loan Document, the obligations of the Borrower under this Agreement, the WIFIA Bond and each other WIFIA Loan Document are special limited obligations of the Borrower, payable solely from Net System Revenues and from amounts in the Parity Bond Fund, and are not obligations of the State or any political subdivision thereof other than the Borrower, and neither the full faith and credit nor the taxing power of the Borrower or the State or any political subdivision thereof is pledged to the payment of the obligations of the Borrower under this Agreement, the WIFIA Bond or any other WIFIA Loan Document.

Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the WIFIA Loan by making payments in accordance with the provisions of this Agreement and the Ordinance Documents, in the case of interest, on each Interest Payment Date and, in the case of principal, on each Principal Payment Date and, in each case, on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is otherwise due); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the WIFIA Bond shall be treated as a payment of the WIFIA Loan and any prepayment of principal of the WIFIA Loan shall be treated as a redemption of the WIFIA Bond.

(b) Interest Commencement Date. With respect to the WIFIA Loan (and the corresponding WIFIA Bond), interest shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as have been approved by WIFIA Lender) have been made available to the Borrower for use on the Project in accordance with Section 4 (*Disbursement Conditions*).

(c) Payment of WIFIA Debt Service.

(i) During the Interest Only Period, the WIFIA Debt Service payable by the Borrower shall consist of one hundred percent (100%) of the amount of interest then due and payable on the Outstanding WIFIA Loan Balance, and no payment of

principal will be due and payable. Such payments shall be made in accordance with Section 9(e) (*Payment of Principal and Interest – Manner of Payment*).

(ii) On each Payment Date following the Interest Only Period, the Borrower shall pay WIFIA Debt Service in the amounts set forth in respect of such Payment Date on **Exhibit F** (*WIFIA Debt Service*), as the same may be revised as provided in Section 7 (*Outstanding WIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*). All such payments shall be made in accordance with Section 9(e) (*Payment of Principal and Interest – Manner of Payment*).

(d) Fixed Level Payments. During the Level Payment Period, the Borrower shall make payments of principal on each Principal Payment Date and payments of interest on each Interest Payment Date. The amount consisting of (i) the interest payment due on July 1 of any year *plus* (ii) the sum of the principal and interest payments due on January 1 of the immediately following year, will be approximately equal in amount for each such period during the Level Payment Period (each such amount, a “**Fixed Level Payment**”). The amount of the Fixed Level Payment shall be calculated in such manner that the Outstanding WIFIA Loan Balance as of the Level Payment Commencement Date shall be reduced to \$0 on the Final Maturity Date (assuming that interest accrues during such period on the Outstanding WIFIA Loan Balance at the rate per annum set forth in Section 6 (*Interest Rate*) in the absence of an Event of Default, that all Fixed Level Payments are made in a timely manner during such period, and that no additional payments of principal of or interest on the WIFIA Loan are made during such period). Within thirty (30) days prior to the beginning of the Level Payment Period, the WIFIA Lender may (or, at the written request of the Borrower, shall) give written notice to the Borrower of the amount of the related Fixed Level Payment, which amount shall be deemed conclusive absent manifest error, but no failure to provide or delay in providing the Borrower with such notice shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents. To the extent that any prepayments of the WIFIA Loan shall be made during the Level Payment Period in addition to the Fixed Level Payments, such prepayments shall be applied to the remaining Outstanding WIFIA Loan Balance and the resulting Fixed Level Payments shall be recalculated as provided in Section 10(d) (*Prepayment – General Prepayment Instructions*) and reflected in a revised **Exhibit F** (*WIFIA Debt Service*).

(e) Manner of Payment. Payments under this Agreement (and the WIFIA Bond which payments shall not be duplicative) shall be made by wire transfer on or before each Payment Date in immediately available funds in accordance with payment instructions provided by the WIFIA Lender pursuant to Section 38 (*Notices; Payment Instructions*), as modified in writing from time to time by the WIFIA Lender. The Borrower may make any such payment or portion thereof with funds then on deposit in the WIFIA Debt Service Subaccount.

(f) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date.

(g) WIFIA Bond; Adjustments to Loan Amortization Schedule. As evidence of the Borrower’s obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the Effective Date, the WIFIA Bond substantially in the form

of **Exhibit A** (*Form of WIFIA Bond*), having a maximum principal amount of \$134,500,000 (subject to increase or decrease as herein provided), bearing interest at the rate set forth in Section 6 (*Interest Rate*) and having principal and interest payable on the same dates set forth herein.

(h) No Defeasance. Notwithstanding anything to the contrary in any Ordinance Document or document related thereto, the WIFIA Loan shall not be subject to defeasance and no amounts in respect of the WIFIA Loan shall be considered or deemed to have been paid until the WIFIA Lender shall have received irrevocable payment in immediately available funds in accordance with the requirements for payment set forth in this Agreement.

#### Section 10. Prepayment.

(a) Optional Prepayments. The Borrower may prepay the WIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the WIFIA Lender such principal amount of the WIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the WIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Lender. In the case of any optional prepayment, such written notice shall be delivered to the WIFIA Lender not less than twenty (20) days or more than sixty (60) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 10(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) Prepayment with Net Loss Proceeds. The Borrower shall prepay the WIFIA Loan, without penalty or premium, from Net Loss Proceeds required to be applied to such prepayment pursuant to Section 15(q) (*Events of Loss; Loss Proceeds*). The Borrower shall provide written notice to the WIFIA Lender at least two (2) Business Days prior to the date on which it makes any such prepayment; provided that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's obligation to make any such prepayment as and when the circumstances requiring such prepayment have occurred. The failure of the Borrower to make any prepayment pursuant to this Section 10(b) shall constitute an Event of Default pursuant to Section 19(a)(ii), subject to the Borrower's cure rights set forth in such section, and shall not constitute a Payment Default.

(c) Borrower's Certificate. Each prepayment pursuant to this Section 10 (*Prepayment*) shall be effected pursuant to Section 5 of the Ordinance (*Redemption Provisions; Purchase of Bonds*) and Section 6 of the Ordinance (*Notice and Effect of Redemption*) (as applicable) and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(d) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in cash of the entire Outstanding WIFIA Loan Balance and any unpaid interest and fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or its representative at the principal office of the WIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the WIFIA Bond, the WIFIA Lender may make a notation on **Exhibit F** (*Form of WIFIA Bond*) indicating the amount of principal of and interest on the WIFIA Bond then being prepaid. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*Form of WIFIA Bond*) shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. All partial prepayments of principal shall be applied to reduce future payments due on the WIFIA Bond in inverse order of maturity or, to the extent any such prepayment occurs prior to the Level Payment Commencement Date, to reduce each Fixed Level Payment ratably by an equal amount. If such funds have not been so paid on the prepayment date, such principal amount of the WIFIA Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 11. [Reserved].

Section 12. Conditions Precedent.

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

(i) The Borrower shall have duly executed and delivered to the WIFIA Lender this Agreement and the WIFIA Bond, each in form and substance satisfactory to the WIFIA Lender.

(ii) The Borrower shall have delivered to the WIFIA Lender certified, complete, and fully executed copies of each Ordinance Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the WIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that for purposes of this Section 12(a)(ii), any such waiver shall be subject to the WIFIA Lender's consent in its sole discretion).

(iii) Counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-1** (*Opinions Required from Counsel to Borrower*) and bond counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-2** (*Opinions Required from Bond Counsel*)).

(iv) The Borrower shall have provided a certificate from an Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** (*Certification Regarding Debarment, Suspension and other Responsibility Matters*) with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995).

(v) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the Effective Date, of the assignment by at least two (2) Nationally Recognized Rating Agencies of a public Investment Grade Rating to the WIFIA Loan and the Outstanding Pari Passu Obligations and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(vi) The Borrower shall have delivered to the WIFIA Lender a certificate from an Authorized Representative in the form attached hereto as **Exhibit H** (*Form of Borrower's Officer's Certificate*) (A) as to the satisfaction of certain conditions precedent set forth in this Section 12(a) (*Conditions Precedent to Effectiveness*) as required by the WIFIA Lender, (B) designating the Authorized Representative, and (C) confirming such person's position and incumbency.

(vii) The Borrower shall have demonstrated to the WIFIA Lender's satisfaction that, as of the Effective Date, the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and that such funds are sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(viii) The Borrower shall have provided to the WIFIA Lender certified, complete, and fully executed copies of each Existing Principal Project Contract, together with any amendments, waivers or modifications thereto, and each such agreement shall be in full force and effect and in form and substance satisfactory to the WIFIA Lender.

(ix) The Borrower shall have demonstrated to the WIFIA Lender's satisfaction that it has obtained all Governmental Approvals necessary to commence construction of the Project and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(x) The Borrower shall have delivered to the WIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected System Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date, (C) reflect principal amortization and interest payment schedules acceptable to the WIFIA Lender, (D) demonstrate that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life

of the Project and (E) otherwise be in form and substance acceptable to the WIFIA Lender.

(xi) The Borrower shall have (A) provided evidence satisfactory to the WIFIA Lender that the Borrower is authorized, pursuant to the Ordinance and Revised Code of Washington, Section 39.46.150, to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the Ordinance Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Lien on the Collateral (for the benefit of the WIFIA Lender and the other Secured Parties) to the extent contemplated by the Ordinance Documents or required pursuant to applicable law, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Ordinance Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xii) The Borrower shall have paid in full (A) the Servicing Set-Up Fee and the initial Construction Period Servicing Fee and (B) all invoices delivered by the WIFIA Lender to the Borrower as of the Effective Date for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(xiii) The Borrower shall have (A) provided evidence satisfactory to the WIFIA Lender of compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project and (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the WIFIA Lender of such compliance upon request by the WIFIA Lender.

(xiv) The WIFIA Lender shall have delivered its initial WIFIA Lender's Authorized Representative certificate.

(xv) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System Number, and (C) registered with, and obtained confirmation of active registration status from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov)).

(xvi) The Borrower shall have delivered to the WIFIA Lender (A) certificates of insurance or documents pertaining to the Borrower's self-insurance program, in each case evidencing (1) that the Borrower and each applicable Principal Project Party has obtained insurance with respect to the Borrower, the Project and the System, as applicable, that meets the requirements of Section 15(f) (*Affirmative Covenants – Insurance*) and (2) that each liability policy (other than workers' compensation insurance or the Borrower's self-insurance program) reflects the WIFIA



Lender as an additional insured and (B) at the WIFIA Lender's request, copies of such insurance policies or documents pertaining to the Borrower's self-insurance program.

(xvii) The Borrower shall have provided to the WIFIA Lender evidence that the Borrower is duly organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own the properties of the System and to carry on the business and governmental functions of the System as now conducted, including the following documents, each certified by the applicable Authorized Representative: (A) a copy of the Borrower's Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents shall be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate; and (B) a copy of such further instruments and documents (if any) as are necessary, appropriate or advisable to consummate and implement the transactions contemplated by the Ordinance Documents and the WIFIA Loan Documents.

(xviii) The Borrower shall have duly passed the WIFIA Sale Motion, which (A) confirms the terms and conditions of the WIFIA Bond and authorizes the execution of the WIFIA Loan Agreement, (B) is in form and substance satisfactory to the WIFIA Lender and (C) is and shall remain in full force and effect.

(xix) The Borrower shall have provided the WIFIA Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the WIFIA Lender to review such costs.

(xx) The Borrower shall have provided to the WIFIA Lender certified, complete and fully executed copies of each performance security instrument delivered to or by the Borrower pursuant to any Principal Project Contract as of the Effective Date, each of which shall be (A) in compliance with the requirements for such performance security instrument pursuant to the applicable Principal Project Contract and (B) in full force and effect.

(xxi) The Borrower shall have provided to the WIFIA Lender evidence that the Borrower has opened the WIFIA Debt Service Subaccount with respect to the WIFIA Loan.

(xxii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxiii) The Borrower shall have provided the WIFIA Lender with evidence satisfactory to the WIFIA Lender that, as of the Effective Date (A) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (B) the total federal

assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.

(xxiv) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the WIFIA Lender, all in form and substance satisfactory to the WIFIA Lender, including evidence that all other Project funding requirements have been met.

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender:

(i) The Borrower shall have provided to the WIFIA Lender evidence satisfactory to the WIFIA Lender that (A) the aggregate amount of all disbursements of the WIFIA Loan (including the requested disbursement) shall not exceed the amount of Eligible Project Costs paid or incurred by the Borrower and (B) the Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.

(ii) The Borrower shall have provided Updated Financial Models reasonably satisfactory to the WIFIA Lender in accordance with Section 22(a) (*System Financial Planning and Reporting – Financial Plan*).

(iii) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender certified, complete and fully executed copies of any Ordinance Documents then in effect and entered into after the Effective Date.

(iv) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have provided certified copies of all Principal Project Contracts then in effect requested by the WIFIA Lender pursuant to Section 15(b) (*Affirmative Covenants – Copies of Documents*), including, in each case, any amendment, modification or supplement thereto, entered into after the Effective Date.

(v) The Borrower shall have demonstrated to the WIFIA Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.

(vi) At the time of, and immediately after giving effect to, any disbursement of WIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder and no event of default under any other Related Document shall have occurred and be continuing and (B) no event that with the giving of notice or the passage of time or both would constitute an event of default under any other Related Document shall have occurred and be continuing.

(vii) Each of the insurance policies obtained by the Borrower and by any applicable Principal Project Party in satisfaction of the conditions in Section 15(f) (*Affirmative Covenants – Insurance*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(viii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct as of each date on which any disbursement of the WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(ix) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since November 6, 2017.

(x) The Borrower shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and the WIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition.

(xi) The Borrower shall have paid in full (A) any outstanding Servicing Fee and (B) all invoices received from the WIFIA Lender as of the date of disbursement of the WIFIA Loan, for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(xii) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have provided to the WIFIA Lender certified, complete and fully executed copies of each performance security instrument delivered to or by the Borrower pursuant to any Principal Project Contract as of the date of disbursement of the WIFIA Loan, each of which shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract and (B) in full force and effect.

(xiii) The Borrower shall have provided the WIFIA Lender records of the Eligible Project Costs requested to be disbursed in form and substance satisfactory to the WIFIA Lender to review such costs.

(xiv) Upon submission of a Requisition for any amount that has not at the time of submission been paid by the Borrower, the Borrower shall have provided evidence that the Borrower has opened the Construction Subaccount with respect to the WIFIA Loan.

Section 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (*Representations and Warranties of Borrower – Officer's Authorization*), Section 13(k) (*Representations and Warranties of*

*Borrower – Credit Ratings*) and the first sentence of Section 13(n) (*Representations and Warranties of Borrower – Principal Project Contracts*), as of each date on which any disbursement of the WIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a political subdivision of the State, duly organized, validly existing and in good standing under the laws of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents to which it is a party, to execute and deliver this Agreement and the WIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby, and has duly authorized the execution, delivery and performance of this Agreement, the WIFIA Bond, and the other Related Documents to which it is a party.

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

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

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

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents to which it is a party, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by any of the Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of any of the

Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or otherwise affecting the Borrower with respect to the System (including the Project) or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or otherwise affecting the Borrower with respect to the System (including the Project), that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending or threatened against or affecting any of the Principal Project Parties, except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive System Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Updated Financial Model, to the extent any Updated Financial Model has been approved by the WIFIA Lender). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Ordinance and Revised Code of Washington, Section 39.46.150 establish, for the benefit of the WIFIA Lender, the valid and binding Liens on the Collateral that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Collateral except for Permitted Liens required by operation of law, and not *pari passu* with any obligations other than the Pari Passu Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Ordinance Documents, and applicable law for the pledge of the Collateral pursuant to and in accordance with the Ordinance Documents. The Borrower is not in breach of any covenants set forth in Section 15(a) (*Affirmative Covenants – Securing Liens*) or in the Ordinance Documents with respect to the matters described in such Section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Collateral in favor of the WIFIA Lender and the other Secured Parties to the extent contemplated by the Ordinance Documents or applicable law, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Ordinance Documents or any instruments, certificates or financing statements in connection with the foregoing have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Collateral granted pursuant to the Ordinance Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

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

(j) Compliance with Federal Requirements. In each case to the extent applicable to the System (including the Project), the Borrower has, and, to the Borrower's knowledge, each of its contractors and subcontractors at all tiers with respect to the Project has, complied in all material respects with all applicable federal laws, rules, regulations and requirements, including (i) 40 U.S.C. §§ 3141-3144, 3146, and 3147 and regulations relating thereto (Davis-Bacon Act Requirements), (ii) 33 U.S.C. § 3914 (relating to American iron and steel products), and (iii) those set forth in **Exhibit E** (*Compliance With Laws*). To ensure such compliance, the Borrower has included in all contracts with respect to the Project to which the Borrower is a party requirements that its contractor(s) shall comply with applicable federal laws, rules, regulations, and requirements set forth in this Section 13(j) and follow applicable federal guidance, and has required that the contractor(s) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by applicable federal laws, rules, regulations and requirements set forth in this Section 13(j). With respect to the Davis-Bacon Act Requirements, the Borrower has inserted in full in all contracts relating to the Project to which the Borrower is a party the contract clauses set forth in the Code of Federal Regulations, Title 29 Part 5.5, and required and ensured that its contractor(s) have inserted such clauses in all subcontracts and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.

(k) Credit Ratings. The WIFIA Loan and the Outstanding Pari Passu Obligations have received a public Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies and written evidence of such ratings has been provided to the WIFIA Lender prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

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

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date and required as of any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and

effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Principal Project Contracts. Attached as **Schedule 13(n)** is a list of the Existing Principal Project Contracts and those Additional Principal Project Contracts that are expected to be entered into. Each Principal Project Contract then in effect is in full force and effect and all conditions precedent to the obligations of the respective parties under each such Principal Project Contract have been satisfied. The Borrower has delivered to the WIFIA Lender a fully executed, complete and correct copy of each such Principal Project Contract (including in each case all exhibits, schedules and other attachments), including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract. The Borrower is not in breach of any material term in or in default under any such Principal Project Contract, and to the knowledge of the Borrower no party to any such Principal Project Contract is in breach of any material term therein or in default thereunder.

(o) Information. The information furnished by or on behalf of the Borrower to the WIFIA Lender pertaining to the System, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements furnished by or on behalf of the Borrower (including the Base Case Financial Model, any Updated Financial Model, and the assumptions therein), except that each of the Base Case Financial Model and any Updated Financial Model (i) is based on assumptions that were reasonable in all material respects when made, (ii) was prepared in good faith and (iii) represents, in the opinion of the Borrower, reasonable projections at the time made of the future performance of the System and the Project (it being understood that projections are not to be considered or regarded as facts and contain significant uncertainties and contingencies, many of which are beyond the control of the Borrower, that actual results may differ significantly from projections and that no representation is made with respect to the accuracy of such projections).

(p) OFAC; Anti-Corruption Laws. The Borrower (i) is not in violation of nor, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act; (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; and (ii) is not a Person (A) that is charged with, or has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws; (B) that has been, since the date that is five (5) years prior to the Effective Date, convicted of any violation of, has been subject to criminal or civil penalties pursuant to, had any of its property seized or forfeited under, or has entered into any agreement with the Government or a state or local government related to violations of any such laws; (C) that is named on the list of "Specially Designated Nationals and Blocked Persons" maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list); or (D) with whom any U.S. Person (as defined by the applicable OFAC regulations) is prohibited from transacting business

of the type contemplated by this Agreement and the other Related Documents under any other applicable law.

(q) Compliance with Law. In each case to the extent applicable to the System (including the Project), the Borrower has, and, to the Borrower's knowledge, each of its contractors and subcontractors at all tiers with respect to the Project has, complied in all material respects with, and has conducted (or caused to be conducted) its management and operation of the System (including the Project) in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(r) (*Representations and Warranties of Borrower – Environmental Matters*)), including those set forth on **Exhibit E** (*Compliance with Laws*), to the extent applicable. To the Borrower's knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws as they relate to the Project, including those set forth on **Exhibit E** (*Compliance with Laws*), to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower, in each case in respect of the Project or the System, or, to the Borrower's knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(r) Environmental Matters. Except as set forth in **Schedule 13(r)**, the Borrower is and, to the Borrower's knowledge, each Principal Project Party is, in compliance in all material respects with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), (vii) other environmental, health or safety matters, including all laws applicable to the Project and (viii) water quality and drinking water standards (collectively, the "**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has provided to the WIFIA Lender copies of all material written communications or notices, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project. To the Borrower's knowledge, except as otherwise disclosed in writing by the Borrower to the WIFIA Lender, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower with any such Environmental Law or Governmental Approval. The Borrower has provided to the WIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower and requested by the WIFIA Lender regarding the Borrower's compliance with (A) Environmental Laws applicable to the Project and (B) Governmental Approvals that are required for the Project and that relate to Environmental Laws.

(s) Sufficient Rights and Utilities. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the System (including the Project), in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the System (including the Project). As of any date on which this representation and warranty



is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower necessary and sufficient as of such date to enable the Borrower to own, construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project on commercially reasonable terms.

(t) Insurance. The Borrower is in compliance with all insurance obligations required of the Borrower under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made. To the extent the Borrower self-insures with respect to the System (including the Project), the Borrower's self-insurance program is actuarially sound and the Borrower has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower's self-insurance program is actuarially sound.

(u) Title. The Borrower has valid legal and beneficial title to, or a valid leasehold interest in, the personal property and other assets and revenues thereof (including the System Revenues and the Collateral) on which it purports to grant Liens pursuant to the Ordinance Documents, in each case free and clear of any Lien of any kind, except for Permitted Liens.

(v) No Liens. Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Collateral, the System, the System Revenues, the Project or the properties or assets in relation to the Project.

(w) Intellectual Property. The Borrower owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of the System. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(x) Financial Statements. Each balance sheet, income statement and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the WIFIA Lender pursuant to Section 22(b) (*System Financial Planning and Reporting – Financial Statements*) has been prepared, except as otherwise expressly noted therein, in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower with respect to the System as of the respective dates of the balance sheets included therein and the results of operations of the Borrower with respect to the System for the respective periods

covered by the statements of income included therein. Except as reflected in the Financial Statements, there are no liabilities or obligations of the Borrower with respect to the System of any nature whatsoever for the periods to which the Financial Statements relate that are required to be disclosed in accordance with GAAP.

(y) Securities Laws. Under existing law, the WIFIA Bond may be issued and sold without registration under the Securities Act of 1933, as amended, and any State blue sky laws.

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

(aa) Sufficient Funds. The aggregate of all funds that are committed for the development and construction of the Project under the various sources of funds set forth in the Base Case Financial Model will be sufficient to pay all Total Project Costs anticipated for the development and construction of the Project and to achieve Substantial Completion by the Projected Substantial Completion Date.

(bb) Sovereign Immunity. Pursuant to Revised Code of Washington, Section 4.08.120, an action may be maintained against the Borrower, either upon a contract made by the Borrower in its corporate character and within the scope of its authority, including this Agreement or any of the other Related Documents to which the Borrower is a party, or for injury suffered by the WIFIA Lender arising from any act or omission of the Borrower.

(cc) Patriot Act. The Borrower is in compliance with the Patriot Act in all material respects.

(dd) Investment Policy. The Borrower has neither made any investment nor entered into any agreements for the purpose of effecting any investment which (i) is not permitted pursuant to the Ordinance Documents in effect as of any date on which this representation and warranty is made or (ii) is contrary to the Investment Policy.

(ee) Federal Debt. The Borrower has no delinquent federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996.

Section 14. Representations and Warranties of WIFIA Lender. The WIFIA Lender represents and warrants that:

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

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

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

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

(a) Securing Liens. The Borrower shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Collateral (whether now existing or hereafter arising) granted for the benefit of the WIFIA Lender pursuant to the Ordinance Documents, or intended so to be granted pursuant to the Ordinance Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Collateral free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that is (i) of equal rank with the Liens created by the Ordinance Documents for the benefit of the WIFIA Lender (other than Permitted Liens) or (ii) senior to the Liens created under the Ordinance Documents for the benefit of the WIFIA Lender (other than Permitted Liens required by operation of law), and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Collateral granted pursuant to the Ordinance Documents and all the rights of the WIFIA Lender under the Ordinance Documents against all claims and demands of all Persons whomsoever.

(b) Copies of Documents. The Borrower shall furnish to the WIFIA Lender a copy of any final offering documents (including any Ordinance Documents) and cash flow projections prepared in connection with the incurrence of any Additional Pari Passu Obligations as well as copies of any continuing disclosure documents, prepared by or on behalf of the Borrower in connection with the incurrence of Additional Pari Passu Obligations, in each case promptly following the preparation or filing thereof. Except as otherwise agreed by the WIFIA Lender in writing, the Borrower will provide to the WIFIA Lender copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof. The Borrower shall provide written notice to the WIFIA Lender of the Borrower's intent to enter into an Additional Principal Project Contract. The Borrower shall provide a copy of the final or near final draft of each Additional Principal Project Contract, together with any related contracts, side letters or other understandings, prior to the execution thereof and shall provide to the WIFIA Lender an executed version of such Additional Principal Project Contract, together with any related contracts, side letters or other understandings, promptly following the full execution thereof.

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

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with prudent utility practice.

(ii) The Borrower shall ensure that each Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to the Borrower and shall ensure that any letter of credit provided pursuant to any Principal Project Contract meets the requirements therefor set forth in such Principal Project Contract.

(iii) The Borrower shall comply with the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320 (relating to debarment).

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the System (including the Project) (A) in a reasonable and prudent manner and (B) in accordance with the Ordinance Documents and (ii) maintain the System (including the Project) in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the operation and maintenance of the System (including the Project).

(f) Insurance.

(i) The Borrower shall at all times, through a combination of insurance policies and self-insurance programs, maintain or cause its contractors to maintain, all insurance necessary and sufficient to protect the Borrower, the System and the Project as is customarily maintained by the Borrower with respect to works and properties of like character, against accident to, loss of, damage to and liability from such works or properties (including, in the case of the Project, during the Construction Period), and, in each case, satisfying the requirements of the Related Documents.

(ii) The Borrower shall cause all liability insurance policies that it maintains with respect to the Project (and, during the Construction Period, that are maintained by any Principal Project Party), other than workers' compensation insurance or the Borrower's self-insurance program, to reflect the WIFIA Lender as an additional insured. Promptly upon request by the WIFIA Lender, the Borrower shall deliver to the WIFIA Lender copies of any underlying insurance policies obtained by or on behalf of the Borrower in respect of the Project or documents pertaining to the Borrower's self-insurance program. All such policies and documents shall be available at all reasonable times for inspection by the WIFIA Lender, its agents and representatives.

(iii) The Borrower shall comply with the insurance requirements of the Ordinance Documents and shall deliver to the WIFIA Lender within ten (10) Business Days after receipt thereof any certifications or opinions provided to the Borrower pursuant to the Ordinance Documents with respect to the Borrower's program of insurance or self-insurance.

(g) Notice.

(i) The Borrower shall, within ten (10) Business Days after the Borrower learns of the occurrence, give the WIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

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

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

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, by and against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower payable from System Revenues with award amounts in excess of \$25,000,000 (inflated annually by CPI), either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(E) Environmental Notices: any material notice of violation or material change in finding under any Environmental Law related to the System or the Project or any material changes to the NEPA Determination;

(F) Insurance Claim: any insurance claims made by the Borrower or a Principal Project Party in respect of the System or the Project in excess of \$25,000,000 (inflated annually by CPI) either individually or in the aggregate, to the extent related to the Project or to the extent the proceeds from such insurance claim would be deposited into a System Account;

(G) Principal Project Contract and Ordinance Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Principal Project Contract or under any Ordinance Document;

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

(I) Ratings Changes: any change in the non-credit enhanced rating assigned to the WIFIA Loan, any Pari Passu Obligations or any Subordinated Obligations, in each case by any Nationally Recognized Rating Agency that has provided a rating on such indebtedness at the request of the Borrower;

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

(K) Draws on Parity Bond Reserve Account: the occurrence of any draws on the Parity Bond Reserve Account to fund payments of interest on or principal of the WIFIA Bond or any other Pari Passu Obligations when due for which Net System Revenues are not otherwise available; and

(L) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the WIFIA Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters described in Section 15(g)(i) (*Affirmative Covenants – Notice*).

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(g)(i) (*Affirmative Covenants – Notice*) (other than Sections 15(g)(i)(A) (*Substantial Completion*) or 15(g)(i)(I) (*Ratings Changes*) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the WIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto.

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a political subdivision under the laws of the State.

(j) System Accounts; Permitted Investments.

(i) Subject to the provisions of any Supplemental Ordinance adopted in accordance with the provisions of Section 16(b)(ii), (A) the Borrower shall maintain the Parity Bond Reserve Account in an amount equal to the Reserve Requirement, in each case in accordance with the provisions of this Agreement and the applicable Ordinance Documents, and (B) amounts in the Parity Bond Reserve Account shall be

made available to ensure the timely payment of WIFIA Debt Service and debt service with respect to the Pari Passu Obligations.

(ii) Amounts on deposit in the System Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

(k) Rate Covenant.

(i) The Borrower shall at all times establish, maintain and collect rates and charges for sewage disposal service that will provide, in each Borrower Fiscal Year, Net System Revenues in an amount that, together with the interest earned during that Borrower Fiscal Year on investments of money in the Parity Bond Fund, Parity Bond Reserve Account and Construction Account, will equal or exceed 1.15 times the amount required to pay the Annual Parity Debt Service for such Borrower Fiscal Year (the “**Rate Covenant**”). The failure to satisfy the Rate Covenant in any Borrower Fiscal Year shall not constitute an Event of Default except as otherwise provided in Section 19(a)(x) (*System Events of Default and Remedies – Failure to Satisfy Rate Covenant*).

(ii) If the forecast furnished by the Borrower in the most recent Updated Financial Model delivered by the Borrower pursuant to Section 22(a) demonstrates that projected Net System Revenues may be inadequate to satisfy the Rate Covenant for any Borrower Fiscal Year until the Final Maturity Date, or if the Borrower fails to satisfy the Rate Covenant for the most recently ended Borrower Fiscal Year, the Borrower shall (A) within thirty (30) days after request by the WIFIA Lender, engage the Professional Utility Consultant to review and analyze the operations of the System and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net System Revenues so as to satisfy the Rate Covenant, (B) cause the Professional Utility Consultant to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (C) either (1) implement the Professional Utility Consultant’s recommendation or (2) undertake an alternative course of action after demonstrating to the WIFIA Lender’s satisfaction that an alternative plan will generate an equivalent or greater increase to the Net System Revenues so as to satisfy the Rate Covenant.

(iii) Notwithstanding Sections Section 15(k)(i) and Section 15(k)(ii) above, at all times, rates and charges for sewage disposal service will be sufficient to provide funds adequate to operate and maintain the System, to make all payments and to establish and maintain all reserves required by the Ordinance or any other ordinance authorizing obligations of the Borrower payable from System Revenues, to make up any deficit in such payments remaining from prior years and to pay all costs incurred in the construction or acquisition of any portion of the Comprehensive Plan that may be ordered by the Borrower and for the payment of which sewer revenue bonds (or other obligations payable from System Revenues) are not issued.

(l) Compliance with Law. In each case to the extent applicable to the System (including the Project), the Borrower shall, and shall require its contractors and subcontractors at all tiers with respect to the Project to, comply in all material respects with all applicable material federal and State laws, rules, regulations and requirements, including (i) 40 U.S.C. §§ 3141-3144, 3146, and 3147 (Davis-Bacon Act Requirements), (ii) 33 U.S.C. § 3914 (relating to American iron and steel products), and (iii) all items, as applicable, set forth in **Exhibit E** (*Compliance with Laws*). To ensure such compliance, the Borrower shall include in all contracts with respect to the Project to which the Borrower is a party requirements that its contractor(s) shall comply with applicable federal laws, rules, regulations, and requirements set forth in this Section 15(l) and follow applicable federal guidance, and shall require that the contractor(s) incorporate in all subcontracts (and cause all subcontractors to include in all lower tier subcontracts) such terms and conditions as are required to be incorporated therein by applicable federal laws, rules, regulations and requirements set forth in this Section 15(l). With respect to the Davis-Bacon Act Requirements, the Borrower shall insert in full in all contracts relating to the Project to which the Borrower is a party the contract clauses set forth in the Code of Federal Regulations, Title 29 Part 5.5, and require and ensure that its contractor(s) insert such clauses in all subcontracts with respect to the Project and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts with respect to the Project.

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

(n) Hedging.

(i) As a condition to the issuance of any Additional Obligations that are to bear interest at a Variable Interest Rate, to the extent that such issuance would cause the principal amount of all Outstanding Variable Interest Rate Obligations to exceed twenty percent (20%) of the principal amount of all Outstanding Pari Passu Obligations and Subordinated Obligations, the Borrower shall enter into a Qualified Hedge with respect to such Additional Obligations and shall maintain such Qualified Hedge in place until the earliest to occur of (i) the date on which such Additional Obligations no longer bear interest at a Variable Interest Rate, (ii) the date on which the aggregate principal amount of all Outstanding Variable Interest Rate Obligations no longer exceeds twenty percent (20%) of the aggregate principal amount of all Outstanding Pari Passu Obligations and Subordinated Obligations, (iii) the date such Additional Obligations have been repaid in full in cash and (iv) the Final Maturity Date. Each such Qualified Hedge must have an aggregate stated notional amount of at least ninety-eight percent (98%) and not more than one hundred two percent (102%) of the



aggregate principal amount of such Additional Obligations projected to be Outstanding until the earliest to occur of (w) the date on which such Additional Obligations no longer bear interest at a Variable Interest Rate, (x) the date on which the aggregate principal amount of all Outstanding Variable Interest Rate Obligations no longer exceeds twenty percent (20%) of the aggregate principal amount of all Outstanding Pari Passu Obligations and Subordinated Obligations, (y) the date such Additional Obligations have been repaid in full in cash and (z) the Final Maturity Date. Each such Qualified Hedge shall have a payment profile that is reasonably consistent with the expected draw and repayment schedule of such Additional Obligations. Each such Qualified Hedge shall have a stated maturity or termination date not earlier than the earliest to occur of (A) the date on which such Additional Obligations no longer bear interest at a Variable Interest Rate, (B) the date on which the aggregate principal amount of all Outstanding Variable Interest Rate Obligations no longer exceeds twenty percent (20%) of the aggregate principal amount of all Outstanding Pari Passu Obligations and Subordinated Obligations, (C) the date such Additional Obligations have been repaid in full in cash and (D) the Final Maturity Date.

(ii) Each Qualified Hedge required under this Section 15(n) shall provide for a fixed interest rate resulting in fixed payment amounts payable by the Borrower to the Qualified Hedge Provider. The Borrower's obligations to pay Hedging Obligations and Hedging Termination Obligations, in each case pertaining to any Additional Obligations, shall be from the sources and in the priority specified in the Ordinance Documents. The Borrower shall ensure that, as of the date following the termination date of any Qualified Hedge required under this Section 15(n) that for any reason terminates before the earliest to occur of (i) the maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge, (ii) the date on which the aggregate principal amount of all Outstanding Variable Interest Rate Obligations no longer exceeds twenty percent (20%) of the aggregate principal amount of all Outstanding Pari Passu Obligations and Subordinated Obligations and (iii) the Final Maturity Date, (A) a new Qualified Hedge is in full force and effect or (B) the Variable Interest Rate Obligations have been converted to a fixed rate, in each case in accordance with this Agreement and the Ordinance Documents.

(iii) The Borrower shall neither terminate (other than Permitted Hedging Terminations), transfer, nor consent to any transfer (other than to a Qualified Hedge Provider) of any existing Qualified Hedge required under this Section 15(n) without the WIFIA Lender's prior written consent as long as the Borrower is required to maintain a Qualified Hedge pursuant to this Agreement.

(iv) With respect to any Qualified Hedge required under this Section 15(n), if at any time a Hedging Bank no longer satisfies the requirements for a Qualified Hedge Provider, the Borrower shall, within ten (10) days (or such lesser number of days required by the applicable Hedging Agreement, including any credit support annex thereto) after the date on which such Hedging Bank failed to qualify as a Qualified Hedge Provider, either (A) cash collateralize the mark-to-market value of the Hedging Termination Obligations (in accordance with the credit support annex or similar requirements of the applicable Hedging Agreement) or provide a guarantee for such

amount from an entity with an Acceptable Credit Rating, or (B) cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider, whether by means of a transfer of the disqualified Hedging Bank's Hedging Agreement to a Qualified Hedge Provider or by means of a termination of such disqualified Hedging Bank's Hedging Agreement and replacement thereof by a Hedging Agreement with a Qualified Hedge Provider on terms and conditions that satisfy the requirements of this Section 15(n) (*Affirmative Covenants – Hedging*); provided that if the disqualified Hedging Bank's highest credit rating from any Nationally Recognized Rating Agency is less than 'A-', 'A3' or the equivalent, clause (A) shall not apply and the Borrower shall be required to cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider pursuant to clause (B).

(o) SAM Registration. The Borrower shall (i) obtain and maintain an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) prior to the Effective Date and provide such registration information to the WIFIA Lender and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the WIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Lender under this Agreement have been irrevocably paid in full in cash.

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

(q) Events of Loss; Loss Proceeds. If an Event of Loss occurs with respect to the Project or any part thereof, the Borrower (i) shall diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such Event of Loss and (ii) to the extent the Borrower does not apply Net Loss Proceeds in respect of such Event of Loss to repair, reconstruct, reinstate, restore and/or replace the portion of the Project in respect of which the applicable Net Loss Proceeds were received, shall apply such Net Loss Proceeds within one hundred eighty (180) days after receipt thereof to the prepayment of the WIFIA Loan in accordance with Section 10 (*Prepayment*).

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

Section 16. Negative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the WIFIA Lender

no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) The Borrower covenants that it shall not issue Additional Obligations unless the conditions described in this Section 16(a)(i) are satisfied.

(A) Additional Pari Passu Obligations. The Borrower will not issue Additional Pari Passu Obligations unless the following provisions are satisfied:

(1) The issuance of the proposed Additional Pari Passu Obligations is for the purpose of: (x) acquiring, constructing and installing any portion of the Comprehensive Plan; (y) acquiring, constructing and installing any necessary renewals or replacements of the System; or (z) refunding or purchasing and retiring at or prior to their maturity any Outstanding Obligations of the Borrower payable from System Revenues.

(2) At the time of the issuance of any Additional Pari Passu Obligations there is no deficiency in the Parity Bond Fund or any account therein.

(3) Each ordinance providing for the issuance of any Additional Pari Passu Obligations that are refunding bonds must require that all money held in any fund or account of the Borrower created for the purpose of paying the principal of and interest on the bonds being refunded either be used to pay the principal of and interest on such bonds or be transferred or paid into the Parity Bond Fund.

(4) Each ordinance providing for the issuance of Additional Pari Passu Obligations must provide for the payment of the principal thereof and interest thereon out of the Parity Bond Fund. The Additional Pari Passu Obligations may bear such date of issue, interest payment dates, and principal payment dates, and may mature in such year or years as the Metropolitan King County Council provides. Each such ordinance will further provide that upon the issuance of any Additional Pari Passu Obligations, the Borrower will pay into the Parity Bond Reserve Account an amount that will be sufficient to satisfy the Reserve Requirement then applicable or provide Qualified Insurance or a Qualified Letter of Credit to satisfy the Reserve Requirement.

(5) At the time of the issuance of any Additional Pari Passu Obligations, the Borrower must have on file and shall deliver to the WIFIA Lender a certificate from a Professional Utility Consultant (the certificate may not be dated more than 90 days prior to the date of delivery of such Additional Pari Passu Obligations) showing that in his or her professional opinion the "annual income available for debt service on Parity Bonds" for each year during the life of such Additional Pari Passu Obligations shall be at least equal to 1.25 times the amount required in each such year to pay the Annual Parity Debt Service for such year. Such "annual income available for debt service on Parity Bonds" must be determined as follows for each year following the proposed date of issue of such Additional Pari Passu Obligations:

(a) The System Revenues must be determined for a period of any 12 consecutive months out of the 18 months immediately preceding the delivery of the Additional Pari Passu Obligations being issued.

(b) Such System Revenues may be adjusted to give effect on a 12-month basis to the rates in effect on the date of such certificate.

(c) If there were any Customers added to the System during such 12-month period or thereafter and prior to the date of the Professional Utility Consultant's certificate, such System Revenues may be further adjusted on the basis that added Customers were Customers of the System during the entire 12-month period.

(d) There will be deducted from such System Revenues the amount expended for Operations and Maintenance Expenses during such 12-month period.

(e) For each year following the proposed date of issuance of such Additional Pari Passu Obligations, the Professional Utility Consultant may add to the annual System Revenues determined in subsection Section 16(a)(i)(A)(5)(a) through Section 16(a)(i)(A)(5)(d) of this Section an estimate of the income to be received in each such year from the investment of money in the Parity Bond Fund and any account therein, and the Construction Account, which is to be determined by and in the sole discretion of a firm of nationally recognized financial consultants selected by the Borrower.

(f) Beginning with the second year following the proposed date of issue of such Additional Pari Passu Obligations and for each year thereafter, the Professional Utility Consultant may add to the annual System Revenues determined in subsection Section 16(a)(i)(A)(5)(a) through Section 16(a)(i)(A)(5)(e) of this Section his or her estimate of any additional annual System Revenues to be received from anticipated growth in the number of Customers within the area served by the System on the date of such certificate, after deducting therefrom any increased Operations and Maintenance Expenses estimated to be incurred as a result of such growth; provided that the Professional Utility Consultant's estimate of the number of Customers served may not assume growth of more than  $\frac{1}{4}$  of 1% over and above the number of Customers served or estimated to be served during the preceding year.

(g) If extensions of or additions to the System are in the process of construction at the time of such certificate, or if the proceeds of the Additional Pari Passu Obligations being issued are to be used to acquire or construct extensions of or additions to the System, there may be added to the annual net System Revenues as above determined any revenue not included in subsection Section 16(a)(i)(A)(5)(a) through Section 16(a)(i)(A)(5)(f) of this Section that will be derived from such additions and extensions after deducting therefrom the estimated additional Operations and Maintenance Expenses to be incurred as a result of such additions and extensions; provided that such estimated annual System Revenues will be based upon 75% of any estimated Customer growth in the four years following the first full year in which such

additional System Revenues are to be collected and thereafter the estimated Customer growth may not exceed  $\frac{1}{4}$  of 1% per year over and above such reduced estimate.

(6) Instead of the certificate described in subsection (5) of this Section, the Borrower may elect to have on file and deliver to the WIFIA Lender a certificate of the Finance Director demonstrating that during any 12 consecutive calendar months out of the immediately preceding 18 calendar months Net System Revenues were at least equal to 1.25 times the amount required to pay, in each year that such Additional Pari Passu Obligations would be Outstanding, the Annual Parity Debt Service for such year. Such certificate shall be substantially in the form attached hereto as **Exhibit J** (*Form of Pari Passu Obligations Certificate*) or otherwise reasonably acceptable to the WIFIA Lender.

(7) For the purpose of refunding at or prior to their maturity any Outstanding Parity Bonds or any bonds or other obligations of the Borrower payable from System Revenues, the Borrower may at any time issue Additional Pari Passu Obligations without complying with the provisions of subsection (5) or (6) of this Section; provided that the Borrower may not issue Additional Pari Passu Obligations for such purpose under this subsection (7) unless the Finance Director certifies that upon the issuance of such Additional Pari Passu Obligations: (a) total debt service required for all Parity Bonds (including the refunding bonds and not including the bonds to be refunded thereby) will decrease; and (b) the Annual Parity Debt Service for each year that any Parity Bonds (including the refunding bonds and not including the bonds to be refunded thereby) are then Outstanding will not be increased by more than \$5,000 by reason of the issuance of such Additional Pari Passu Obligations. The principal amount of Additional Pari Passu Obligations issued pursuant to this subsection (7) may include amounts necessary to pay the principal of the Parity Bonds or other obligations to be refunded, interest thereon to the date of payment or redemption thereof, any premium payable thereon upon such payment or redemption and the costs of issuance of such Additional Pari Passu Obligations, and if a Payment Agreement (as defined in the Ordinance) has been provided with respect to the obligations to be refunded, may include amounts necessary to make the payment of all amounts, if any, due and payable by the Borrower under such Payment Agreement. The proceeds of such Additional Pari Passu Obligations will be held and applied in such manner as is provided for in the ordinance authorizing the issuance of the Parity Bonds or other obligations to be refunded, so that upon the delivery of such Additional Pari Passu Obligations, the Parity Bonds or other obligations to be refunded thereby will be deemed no longer Outstanding in accordance with the ordinance authorizing their issuance.

(8) Nothing contained in this Agreement prevents the Borrower from issuing Additional Pari Passu Obligations to refund maturing Pari Passu Obligations for the payment of which money is not otherwise available.

(B) Additional Subordinated Obligations. The Borrower will not issue Additional Subordinated Obligations unless such Additional Subordinated Obligations are fully subordinated in right of payment and in right of security in the Collateral to payment of amounts due with respect to the WIFIA Bond, including with respect to

payment from revenues and reserves and payment upon default of the applicable Obligations.

(ii) Except for Permitted Debt, the Borrower shall not without the prior written consent of the WIFIA Lender issue or incur indebtedness of any kind secured by or payable from all or any portion of the System Revenues; provided that the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Collateral, including Permitted Debt, without the prior written consent of the WIFIA Lender, while an Event of Default has occurred and is continuing.

(iii) Upon the incurrence of Permitted Debt described in clauses (c) or (d) of the definition thereof, the Borrower shall provide to the WIFIA Lender a certificate signed by the Borrower's Authorized Representative, (A) specifying the closing date with respect to such indebtedness and (B) demonstrating to the WIFIA Lender's satisfaction that such proposed indebtedness is authorized pursuant to this Section 16(a) (*Negative Covenants – Indebtedness*) and satisfies the applicable requirements under the definitions of "Permitted Debt" and "Additional Pari Passu Obligations" or "Additional Subordinated Obligations," as applicable.

(iv) To the extent any Permitted Debt consists of Tender Option Obligations that are subject to tender for purchase at the option of the purchaser thereof on less than thirty (30) days' notice, either: (A) such Tender Option Obligations must have an Investment Grade Rating assigned by each Nationally Recognized Rating Agency that at the time of issuance of such Tender Option Obligations provides a rating on Parity Bonds at the request of the Borrower; or (B) the Borrower must maintain a Credit Facility that will pay any amounts payable by the Borrower in respect of such Tender Option Obligations that are tendered or deemed tendered for purchase and not remarketed.

(b) No Lien Extinguishment or Adverse Amendments.

(i) The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, either (A) extinguish or impair the Liens on the Collateral granted pursuant to the Ordinance, (B) amend, modify or supplement any Related Document in a manner that could adversely affect the WIFIA Lender (in the WIFIA Lender's determination) in connection with the WIFIA Loan or which could reasonably be expected to have a Material Adverse Effect (in the WIFIA Lender's determination), (C) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the WIFIA Lender (in the WIFIA Lender's determination) in connection with the WIFIA Loan or which could reasonably be expected to have a Material Adverse Effect (in the WIFIA Lender's determination), (D) assign, terminate or replace any WIFIA Loan Document, (E) assign, terminate or replace any Related Document (other than any WIFIA Loan Document) in a manner that could adversely affect the WIFIA Lender (in the WIFIA Lender's determination) in connection with the WIFIA Loan or which could reasonably be expected to have a Material Adverse Effect (in the WIFIA Lender's determination) (subject to Section 20(a)(ii) (*Default under Principal Project Contracts*) or (F) provide in any Ordinance

Document, or in any other financing document with respect to any Pari Passu Obligations, that the holders of such Pari Passu Obligations may accelerate such Obligations, or require the mandatory prepayment in full thereof, in the case of any breach or event of default thereunder, unless the WIFIA Lender is concurrently provided, pursuant to an amendment to this Agreement, with such acceleration or mandatory prepayment right with respect to the WIFIA Loan. Except as otherwise agreed by the WIFIA Lender in writing, the Borrower will provide to the WIFIA Lender (x) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document at least thirty (30) days prior to the effective date thereof and (y) complete, correct and fully executed copies of any amendment, modification or supplement to any Related Document within five (5) Business Days after execution thereof.

(ii) The WIFIA Lender acknowledges that, pursuant to Section 34 of the Ordinance (*Supplemental Ordinances*), the Borrower has reserved the right to adopt Supplemental Ordinances from time to time in accordance with the provisions thereof, and notwithstanding the provisions of Section 16(b)(i):

(A) the WIFIA Lender consents to the adoption by the Borrower of Supplemental Ordinances adopted in accordance with the provisions of Section 34 of the Ordinance (*Supplemental Ordinances*); provided that, without the prior written consent of the WIFIA Lender, the Borrower will not adopt any Supplemental Ordinance that (1) amends Section 12.A. of the Ordinance (*Pledge of Sewer Revenues – Parity Bonds*), Section 14 of the Ordinance (*Sewer Revenue Priorities of Payment*), Section 17.A. of the Ordinance (*Rate Covenants – Parity Bonds*) or Section 23 of the Ordinance (*Future Parity Bonds*) or (2) disproportionately and adversely affects the WIFIA Lender as compared to any other Parity Bondowner; provided, further, that the WIFIA Lender shall be deemed to have consented to any such proposed amendment so long as the Borrower shall have provided the WIFIA Lender with thirty (30) Business Days' advance written notice of such proposed amendment, together with the draft thereof, and the WIFIA Lender shall not have objected in writing to such proposed amendment within such thirty (30) Business Day period; and

(B) the WIFIA Lender consents to the adoption by the Borrower of Supplemental Ordinances described in Section 34.C. of the Ordinance (*Supplemental Ordinances – Amendments Deemed Approved by Parity Bondowners*).

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Project, the Collateral, the System Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Principal Project Contract, unless pursuant to the Ordinance Documents in favor of the Secured Parties.

(d) Restricted Payments and Transfers. The Borrower shall not permit System Revenues or other assets of the System, or any funds in any accounts held under the Ordinance or in any other fund or account held by or on behalf of the Borrower in respect of the

System, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of the System, except with the consent of the WIFIA Lender, which consent shall be in the WIFIA Lender's sole discretion.

(e) No Prohibited Sale or Disposition. The Borrower will not sell or voluntarily dispose of all of the operating properties of the System unless provision is made for payment into the Parity Bond Fund of a sum sufficient to pay in full in cash the principal of and interest on all Outstanding Parity Bonds in accordance with the terms thereof. In addition, the Borrower will not sell or voluntarily dispose of any part of the operating properties of the System (including the Project) unless provision is made for payment into the Parity Bond Fund of an amount that will bear at least the same proportion to the amount of the Outstanding Parity Bonds as the estimated amount of any resulting reduction in System Revenues for the twelve (12) months following such sale or disposition bears to the System Revenues that would have been realized if such sale or disposition had not been made. Such estimates must be made by a Professional Utility Consultant. Any money so paid into the Parity Bond Fund must be used to retire Outstanding Parity Bonds as provided in the Ordinance at the earliest possible date. Notwithstanding the foregoing, the Borrower may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the System (i) with a value of less than five percent (5%) of the net utility plant of the System or (ii) that have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, in each case without making any deposit into the Parity Bond Fund.

(f) Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the WIFIA Lender.

(g) No Defeasance of WIFIA Bond. The Borrower shall not defease the WIFIA Bond pursuant to the Ordinance or otherwise without the prior written consent of the WIFIA Lender.

(h) OFAC Compliance. The Borrower shall not (i) violate (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act, (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State, or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or (ii) be a Person (A) that is charged with, or that has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws, (B) that is convicted of any violation of, is subject to civil or criminal penalties pursuant to, has any of its property seized or forfeited under, or enters into any agreement with the Government or a state or local government related to violations of, any such laws, (C) that is named on the list of "Specially Designated Nationals and Blocked Persons" maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list), (D) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law, (E) that is owned, Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this clause (ii), or (F) that is in violation of any obligation to maintain



appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States of America and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

(i) Hedging. Other than interest rate hedging transactions expressly permitted hereunder, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, “cap” or “collar” transactions, futures, commodity swap transactions, currency swap transactions, or any other hedging transaction, in each case to the extent secured by or payable from all or any portion of the System Revenues, without the prior written consent of the WIFIA Lender.

Section 17. Indemnification. The Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender and any official, employee, agent or representative of the WIFIA Lender (each such Person being herein referred to as an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the WIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters, in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee shall have the right to retain its own counsel, at the Borrower’s expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 (*Indemnification*) is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17 (*Indemnification*). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the WIFIA Lender shall assert, and each of the Borrower and the WIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the WIFIA Loan or the use of the proceeds thereof; provided that nothing in this sentence shall limit the Borrower’s indemnity obligations to the extent such damages are

included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 (*Indemnification*) shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 (*Indemnification*) shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17 (*Indemnification*)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 18. Sale of WIFIA Loan. The WIFIA Lender shall not sell the WIFIA Loan at any time prior to the Substantial Completion Date. After such date, the WIFIA Lender may sell the WIFIA Loan to another entity or reoffer the WIFIA Loan into the capital markets only in accordance with the provisions of this Section 18 (*Sale of WIFIA Loan*). Such sale or reoffering shall be on such terms as the WIFIA Lender shall deem advisable. However, in making such sale or reoffering the WIFIA Lender shall not change the terms and conditions of the WIFIA Loan without the prior written consent of the Borrower in accordance with Section 31 (*Amendments and Waivers*). The WIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of the WIFIA Loan, written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering; provided that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 (*Sale of WIFIA Loan*) shall not (x) obligate the WIFIA Lender to sell or (y) provide the Borrower with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell the WIFIA Loan.

Section 19. System Events of Default and Remedies.

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

(i) Payment Default. The Borrower shall fail to pay any of the principal amount of or interest on the WIFIA Loan (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*)) when and as the payment thereof shall be required under this Agreement or the WIFIA Bond or on the Final Maturity Date (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Bond or any other WIFIA Loan Document (other than in the case of any Payment Default or any Project Event of Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Lender of written notice thereof or (B) the Borrower's knowledge of such failure; provided that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no System Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii) (*System Events of Default and Remedies – Covenant Default*), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure

period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days after the date specified in either (A) or (B) above, as applicable.

(iii) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the WIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no System Event of Default shall be deemed to have occurred under this Section 19(a)(iii) (*System Events of Default and Remedies – Misrepresentation Default*) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (*Representations and Warranties of Borrower – No Debarment*), Section 13(j) (*Representations and Warranties of Borrower – Compliance with Federal Requirements*), Section 13(p) (*Representations and Warranties of Borrower – OFAC; Anti-Corruption Laws*) and Section 13(cc) (*Representations and Warranties of Borrower – Patriot Act*), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured, (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days after the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation, and (F) the Borrower diligently pursues such cure during such thirty (30) day period.

(iv) Acceleration of Pari Passu Obligations. Any acceleration shall occur of the maturity of any Pari Passu Obligation, any event or condition occurs that enables the holder of any Pari Passu Obligation, or any Person acting on such holder's behalf, to accelerate the maturity thereof, or any Pari Passu Obligation shall not be paid in full upon the final maturity thereof.

(v) Cross Default to Ordinance Documents. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the Ordinance Documents, or made in or delivered pursuant to, or in respect of, any other documents, including any Sale Motion (the "**Other Loan Documents**") under which any Pari Passu Obligation is created or incurred, shall prove to be false or misleading in any material respect (each an "**Other Indebtedness Misrepresentation Default**"), or any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under the Ordinance Documents or the Other Loan Documents, and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the Ordinance Documents or the Other Loan Documents (as the case may be) with respect to such default (each an "**Other Indebtedness Covenant Default**"), and, in the case of any such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default,

the Borrower shall have failed to cure such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default or to obtain an effective written waiver thereof in accordance with the terms of such Pari Passu Obligations.

(vi) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of \$25,000,000 (inflated annually by CPI) that are payable from System Revenues and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the System to enforce any such judgment.

(vii) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a political subdivision of the State, unless at or prior to the time the Borrower ceases to exist in such form a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law and has succeeded to the assets of the Borrower and has assumed all of the obligations of the Borrower under the WIFIA Loan Documents and the Ordinance Documents.

(viii) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower; or (B) a Bankruptcy Related Event shall occur with respect to any Principal Project Party; provided that, with respect to clause (B), no System Event of Default shall be deemed to have occurred or be continuing if, within one hundred eighty (180) days after the Borrower becomes entitled to terminate the applicable Principal Project Contract due to such Bankruptcy Related Event, the Borrower replaces such Principal Project Contract with a replacement agreement (1) entered into with another Principal Project Party that (I) is of similar or greater creditworthiness and experience as the Principal Project Party being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the WIFIA Lender) and (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (2) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the WIFIA Lender) and (3) effective within one hundred eighty (180) days after the date of termination of the Principal Project Contract being replaced.

(ix) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, the Borrower contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; or (B) any Ordinance Document ceases (other than as expressly permitted thereunder) to be effective or to grant a valid and

binding security interest in any material portion of the Collateral other than as a result of actions or a failure to act by, and within the control of, any Secured Party, and with the priority purported to be created thereby.

(x) Failure to Satisfy Rate Covenant. In the case that the Borrower shall have failed to satisfy the Rate Covenant for any Borrower Fiscal Year, the Borrower shall have failed to regain compliance with the Rate Covenant for the immediately following Borrower Fiscal Year.

(b) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the WIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan shall automatically be deemed terminated.

(c) Whenever any other System Event of Default shall have occurred and be continuing, the WIFIA Lender, by written notice to the Borrower, may suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan.

(d) Whenever any System Event of Default shall have occurred and be continuing, the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the WIFIA Bond or the other WIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the WIFIA Lender shall have all of the rights and remedies of a creditor with respect thereto, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents then due and thereafter to become due, or, subject, in the case of the Ordinance Documents, to the provisions of Section 21 of the Ordinance (*Trustee for Registered Owners of Parity Bonds*) and Section 22 of the Ordinance (*Events of Default for Parity Bonds; Powers and Duties of Trustee*), to enforce performance and observance of any other obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents.

(e) Whenever any System Event of Default shall have occurred and be continuing, the WIFIA Lender shall be entitled and empowered to bring a writ of mandamus action against the Borrower and its officials seeking the transfer of the amounts then on deposit in the System Accounts, and the transfer of all amounts required to be deposited into such accounts pursuant to the terms of the Ordinance from and after the date of such initial transfer, to (i) the Trustee (if any) appointed under the Ordinance for application to the payment, on a pro rata basis, of all Outstanding Parity Bonds, including the WIFIA Bond, or (ii) the WIFIA Lender for application to the payment (as applicable, on a pro rata basis with the other Parity Bondowners) of the Outstanding WIFIA Loan Balance.

(f) Whenever any System Event of Default shall have occurred and be continuing, the WIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the WIFIA Lender and to notify other departments and agencies of such default.

(g) Whenever a Payment Default shall occur and be continuing, the Default Rate provisions of Section 6 (*Interest Rate*) shall apply.

(h) No action taken pursuant to this Section 19 (*System Events of Default and Remedies*) shall relieve Borrower from its obligations pursuant to this Agreement, the WIFIA Bond or the other WIFIA Loan Documents, all of which shall survive any such action.

Section 20. Project Events of Default and Remedies

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

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

(ii) Default Under Principal Project Contracts. The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract (unless in any case such default could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract.

(iii) Termination Under Principal Project Contracts. Any Principal Project Contract shall be terminated prior to its scheduled expiration, and the Borrower shall have failed to obtain an effective revocation of such termination; provided that no Project Event of Default shall be deemed to have occurred or be continuing under this clause (iii) if the Borrower replaces such Principal Project Contract with a replacement agreement (1) entered into with another Principal Project Party that (I) is of similar or greater creditworthiness and experience as the Principal Project Party being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the WIFIA Lender) and (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (2) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the WIFIA Lender) and (3) effective within one hundred eighty (180) days after the date of termination of the Principal Project Contract being replaced.

(iv) Project Abandonment. The Borrower shall abandon the Project.

(v) Cessation of Project Operations. After the Substantial Completion Date, operation of the Project shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated).

(b) Whenever any Project Event of Default shall have occurred and be continuing, the WIFIA Lender may suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan. In addition,

whenever any Project Event of Default shall have occurred and be continuing, (i) the WIFIA Lender may exercise any right or remedy set forth in Section 19(d), 19(e) or 19(f) (*System Events of Default and Remedies*) and (ii) in the case of any Project Event of Default arising from abandonment of the Project, the Default Rate provisions of Section 6 (*Interest Rate*) shall apply.

Section 21. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) System-Related Accounting and Audit Procedures; Reports and Records.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all System Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP.

(ii) The Borrower shall provide to the WIFIA Lender, promptly after the receipt thereof, copies of (i) final ratings and any notices, reports or other written materials (other than those that are ministerial in nature) received from any Nationally Recognized Rating Agency that has provided at the request of the Borrower, or is being requested by the Borrower to provide, a rating with respect to any Pari Passu Obligation and (ii) all notices and other written communications, other than those that are non-substantive or ministerial in nature, received by the Borrower from the Owner of any Pari Passu Obligation or any trustee acting on behalf of such Owner.

(iii) Within 30 days after the issuance of any Pari Passu Obligation, the Borrower shall provide to the WIFIA Lender a transcript of proceedings for such Pari Passu Obligation, which transcript shall include any official statement or disclosure document that accompanied the sale or issuance of such Pari Passu Obligation.

(iv) The Borrower shall provide the WIFIA Lender within five (5) Business Days any notices or financial information relating to Pari Passu Obligations that the Borrower sends to the Municipal Securities Rulemaking Board.

(b) Project-Related Accounting and Audit Procedures; Inspections; Reports and Records.

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

(ii) Within five (5) years after the Substantial Completion Date, or upon the occurrence of an Event of Default, the WIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any portion of the Project, to examine books of account and records of the Borrower relating to the Project, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts relating to the Project with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the Borrower, it being understood that nothing contained in this Section 21(b) (*Accounting and Audit Procedures; Inspections; Reports and Records – Project-Related Accounting and Audit Procedures; Inspections; Reports and Records*) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the WIFIA Lender may request. The WIFIA Lender will give the Borrower prior notice of its intent to have such discussions with its independent public accountants. The Borrower agrees to pay all out-of-pocket expenses incurred by the WIFIA Lender in connection with the WIFIA Lender's exercise of its rights under this Section 21(b) (*Accounting and Audit Procedures; Inspections; Reports and Records – Project-Related Accounting and Audit Procedures; Inspections; Reports and Records*) at any time when an Event of Default shall have occurred and be continuing.

(iii) The Borrower shall maintain and retain all files relating to the Project and the WIFIA Loan until five (5) years after the later of the date on which (i) all rights and duties under this Agreement and under the WIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the WIFIA Loan or this Agreement is finally resolved or, if the WIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the WIFIA Lender and the Borrower. The Borrower shall provide to the WIFIA Lender in a timely manner all records and documentation relating to the Project that the WIFIA Lender may reasonably request from time to time.

(iv) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in 2018 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 31 U.S.C. § 7503(b) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the WIFIA Loan, to the WIFIA Lender, or any designee thereof, for any such project or programmatic audit.

## Section 22. System Financial Planning and Reporting.

(a) Updated Financial Model. Within ten (10) days after the Borrower's adoption of its monthly sewer rate for the next calendar year, but in no event later than one hundred eighty (180) days after the beginning of each Borrower Fiscal Year, the Borrower shall provide to the WIFIA Lender an Updated Financial Model for the System setting forth (i) the



Borrower's capital improvement plan, projected rates and charges, projected debt outstanding, annual debt service and projected operations and maintenance expenses and (ii) evidence of compliance with the Rate Covenant for the most recent Borrower Fiscal Year and the projected Rate Covenants through the Final Maturity Date. Each Updated Financial Model required under this Section 22(a) shall demonstrate to the satisfaction of the WIFIA Lender that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the System over the useful life of the System assets.

(i) The Updated Financial Model shall be either substantially in the form of the Base Case Financial Model or in form and substance satisfactory to the WIFIA Lender. Through the Substantial Completion Date, the Updated Financial Model shall include the Total Project Costs that have been incurred and are expected to be incurred for the Project. The Updated Financial Model shall show that the Borrower has sufficient financial resources to complete the Project by the Projected Substantial Completion Date.

(ii) The Updated Financial Model shall include: (A) a certificate signed by the Borrower's Authorized Representative to the effect that the Updated Financial Model, including the assumptions and supporting documentation, as of its date, is accurate and reasonable to the best of the Borrower's knowledge and belief; (B) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model; (C) a certificate signed by the Borrower's Authorized Representative demonstrating that annual projected Net System Revenues will be sufficient to meet the Loan Amortization Schedule and to satisfy the Rate Covenant through the Final Maturity Date; and (D) a certificate signed by the Borrower's Authorized Representative that (1) the Borrower is in compliance with its obligations in respect of the Rate Covenant pursuant to Section 15(k) (*Affirmative Covenants – Rate Covenant*) and (2) in the case that the Borrower failed to satisfy the Rate Covenant for the Borrower Fiscal Year preceding the most recent Borrower Fiscal Year, the Borrower satisfied the Rate Covenant for the most recent Borrower Fiscal Year.

(b) Financial Statements.

(i) The Borrower shall furnish to the WIFIA Lender as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower with respect to the System as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower with respect to the System for such Borrower Fiscal Year, setting forth in each case in comparative form the figures for the previous Borrower Fiscal Year, certified without qualification or exception, or qualification as to the scope of the audit, by the State auditor's office (or other State department or agency as may be authorized and directed by law to make such audits) or by an independent public accounting firm selected by the Borrower.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect

to the annual financial statements, for changes approved or required by the State auditor's office (or other State department or agency as may be authorized and directed by law to make such audits) or by the independent public accountants certifying such statements and disclosed therein).

(c) Officer's Certificate. The Borrower shall furnish to the WIFIA Lender, together with each delivery of annual audited financial statements of the Borrower pursuant to Section 22(b) (*System Financial Planning and Reporting – Financial Statements*), a certificate signed by the Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the annual period covered by such financial statements, there occurred any Default or Event of Default and, if any Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the Borrower has taken or intends to take in respect thereof.

### Section 23. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) at its own cost (or upon the occurrence of an Event of Default, at the expense of the Borrower) the development, including environmental compliance, design, and construction, of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation or other information as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information.

(b) Reporting. During the period through Substantial Completion, the Borrower shall furnish to the WIFIA Lender, on a monthly basis, a report on the status of the Project, in substantially the form of **Exhibit K**. The report shall be executed by the Borrower's Authorized Representative and, for any month, shall be delivered to the WIFIA Lender not later than the thirtieth (30<sup>th</sup>) day of the following month (or if such day is not a Business Day, on the next following Business Day). Each report shall include the following information:

(i) the amount of Total Project Costs expended on each Principal Project Contract as well as the amount expended during the preceding calendar month and the amount of costs estimated to be required to complete each of the Principal Project Contracts;

(ii) an assessment of the overall construction progress of the Project, including notice of the receipt of relevant Governmental Approvals, since the Effective Date and since the date of the last report, together with an assessment of how such progress compares to the Construction Schedule set forth as **Schedule II**, as updated pursuant to previous reports delivered under this Section 23(b) (*Project Oversight and Monitoring – Reporting*);

(iii) the then-current projection for the Substantial Completion Date as compared to the Projected Substantial Completion Date;

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

(v) any proposed or pending change orders greater than \$1,000,000;  
and

(vi) a discussion or analysis of such other matters related to the Project as the WIFIA Lender may reasonably request.

The Borrower shall respond, and use commercially reasonable efforts to cause the Principal Project Parties to respond, to the WIFIA Lender's inquiries regarding such report, the construction of the Project and any Principal Project Party's performance of its obligations under the Principal Project Contract to which such Principal Project Party is a party.

(c) Report Following Substantial Completion. Within ninety (90) days following Substantial Completion, the Borrower shall deliver to the WIFIA Lender a report including the information required pursuant to Section 23(b) (*Project Oversight and Monitoring – Reporting*), and which shall additionally include the following information:

(i) the estimated interest savings the Borrower is realizing through the use of the WIFIA Loan compared to comparable market rate financing;

(ii) the number of jobs created by the Project on an annual basis during the period between the Effective Date and Substantial Completion;

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

(iv) the amount by which the Project will assist the Borrower (measured by percent as determined at Substantial Completion) in reducing levels of total suspended solids (TSS).

(d) Requested Information. The Borrower shall, at any time while the WIFIA Loan remains Outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower with respect to the System or regarding the Project (including construction progress reports delivered by the applicable Principal Project Parties to the Borrower and any Project risk register) or the System Revenues as the WIFIA Lender may from time to time reasonably request. The Borrower agrees that information described under Section 23(c) (*Project Oversight and Monitoring – Report*

*Following Substantial Completion*) may be made publicly available by the WIFIA Lender at its discretion.

(e) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide notice to the WIFIA Lender at least thirty (30) days prior to implementing any increase in Total Project Costs that would cause Total Project Costs to equal an amount at least 5% greater than the amount of Total Project Costs set forth in the Project Budget. The Borrower's notice shall demonstrate that the increase is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the WIFIA Lender's security or the Borrower's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(f) Project Operations. The WIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and, as the WIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation and maintenance of the Project. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation, or other information requested by the WIFIA Lender. The WIFIA Lender has the right, in its sole discretion, to retain such consultants or advisors to carry out the provisions of this Section 23, at its own cost or, upon the occurrence of an Event of Default, at the cost of the Borrower.

Section 24. Disclaimer of Warranty. The WIFIA Lender makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Lender be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 25. No Personal Recourse. No official, employee or agent of the WIFIA Lender or the Borrower or any Person executing this Agreement or any of the other WIFIA Loan Documents shall be personally liable on this Agreement or such other WIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 26. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the WIFIA Lender, solely by virtue of the WIFIA Loan, and the Borrower agrees to indemnify and hold the WIFIA Lender, the Servicer (if any), the Administrator, and the Government harmless, to the extent permitted by law and in accordance with Section 17 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the WIFIA Loan, and that no third party creditor of the Borrower shall have any right against the WIFIA Lender with respect to the WIFIA Loan made pursuant to this Agreement.

Section 27. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons

from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the WIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 28. WIFIA Lender's Authorized Representative. The WIFIA Lender shall at all times have appointed the WIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the WIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the WIFIA Lender.

Section 29. Servicer. The WIFIA Lender may from time to time designate another entity or entities to perform, or assist the WIFIA Lender in performing, the duties of the Servicer or specified duties of the WIFIA Lender under this Agreement and the WIFIA Bond. The WIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Lender shall have delegated to such Servicer. The WIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the WIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 30. Fees and Expenses.

(a) Servicing Set-Up Fee. On the Effective Date, the Borrower shall pay to the WIFIA Lender a servicing set-up fee equal to \$15,000 (the "**Servicing Set-Up Fee**").

(b) Construction Period Servicing Fee.

(i) For the period from the Effective Date until the Substantial Completion Date, the Borrower shall pay to the WIFIA Lender an annual servicing fee equal to \$15,000 (the "**Construction Period Servicing Fee**").

(ii) The initial Construction Period Servicing Fee shall be due and payable on the Effective Date in a pro-rated amount equal to \$[6,250].

(iii) Each Construction Period Servicing Fee following the initial Construction Period Servicing Fee shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to November 15 of each calendar year during the Construction Period; provided that the Construction Period Servicing Fee shall be payable for the Federal Fiscal Year during which (and regardless of the date on which) the Substantial Completion Date occurs.

(iv) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year during which such fee is due. The WIFIA Lender shall notify the Borrower of the

amount of each such Construction Period Servicing Fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(c) Operating Period Servicing Fee.

(i) Following the Substantial Completion Date, the Borrower shall pay to the WIFIA Lender an annual servicing fee equal to \$7,500 (the “**Operating Period Servicing Fee**”).

(ii) Each Operating Period Servicing Fee shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to November 15 of each calendar year, beginning with the first November 15 that occurs after the end of the Federal Fiscal Year during which the Substantial Completion Date occurs.

(iii) The amount of the initial Operating Period Servicing Fee shall be adjusted in proportion to the aggregate percentage change in CPI from the calendar year during which the Effective Date occurs through the calendar year immediately preceding the calendar year during which such initial Operating Period Servicing Fee is due. The amount of each Operating Period Servicing Fee (other than the initial Operating Period Servicing Fee) shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year for which such fee is due.

(iv) The Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date occurs shall be equal to the pro-rated monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between November 15 and the Final Maturity Date (i.e. three months for the period between November 15 and January 1).

(v) The WIFIA Lender shall notify the Borrower of the amount of each Operating Period Servicing Fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(d) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Loan Documents and the transactions hereby and thereby contemplated, including attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other WIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under, this Agreement, any other Related Document, or the Collateral, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the WIFIA Lender thereunder; and

(iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 30 (*Fees and Expenses*) shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other WIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 31. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 32. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 33. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 34. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the WIFIA Lender.

Section 35. Remedies Not Exclusive. No remedy conferred herein or reserved to the WIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 36. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the WIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Lender.

Section 37. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 38 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 38. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Lender:

Environmental Protection Agency  
WIFIA Director  
WJC-W 6201A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
Attention: [ ]  
Email: [ ]

If to Borrower:<sup>1</sup>

King County Wastewater Treatment Division  
201 S. Jackson St., KSC-NR-0501  
Seattle, WA 98104  
Attention: [ ]  
Email: [ ]

Unless otherwise specified herein or instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email to the email address noted above for the WIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by the Borrower's Authorized Representative, with respect to notices to the Borrower, or by the WIFIA Lender's Authorized Representative, with respect to notices to the WIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the WIFIA Bond in accordance with Section 9(e) (*Payment of Principal and Interest – Manner of Payment*) and the payment instructions hereafter provided by the WIFIA Lender's Authorized Representative, as modified from time to time by the WIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 38 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 38 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the

<sup>1</sup> **Note to Borrower:** Please confirm notice details and provide missing information.



receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 39. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 40. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto; provided that the indemnification requirements of Section 17 (*Indemnification*), the reporting and record keeping requirements of Section 21 (*Accounting and Audit Procedures; Inspections; Reports and Records*) and the payment requirements of Section 30 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 41. Integration. This Agreement, together with the other WIFIA Loan Documents, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**KING COUNTY, WASHINGTON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**, acting by and through  
the Administrator of the Environmental Protection  
Agency

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE I**  
**PROJECT BUDGET**

<b>COST CATEGORY</b>	<b>AMOUNT</b>
<i>Construction</i>	\$161,676,882
<i>Non-Construction</i>	\$84,756,463
Design and Construction Consulting	\$47,591,709
Other Consulting Services	\$359,081
Permitting & Local Agency	\$567,659
Right-of-Way	\$10,929,176
Misc. Service & Materials	\$1,899,653
Non-WTD Support	\$2,471,606
WTD Staff Labor	\$10,982,660
Indirect Costs	\$3,225,386
<i>Project Reserve (Contingency)</i>	\$16,441,616
<b>Project Total</b>	<b>\$262,874,960</b>
Required Parity Bond Reserve Account Deposits	\$7,908,840
Interest on Project debt during Construction	\$3,196,765
Issuance Costs	\$694,499
<b>Total Eligible Project Costs</b>	<b>\$274,675,065</b>

**SCHEDULE II**  
**CONSTRUCTION SCHEDULE**

[To be provided by Borrower]

**SCHEDULE III**  
**EXISTING INDEBTEDNESS**  
[To be provided by Borrower]

## SCHEDULE IV

### SECTION 14 OF ORDINANCE

All terms used in this Schedule IV that are not otherwise defined in this Agreement shall have the meaning assigned to such terms as provided for in the Ordinance.

**Sewer Revenue Priorities of Payment.** So long as any Bond is outstanding, all Revenue of the System will be deposited into the Revenue Fund and used and applied in the following order of priority:

**First**, to pay all Operating and Maintenance Expenses;

**Second**, to make all required deposits into the Debt Service Account in the Parity Bond Fund to provide for the payment of principal of and interest on Parity Bonds as the same become due and payable and to make any Payment Agreement Payments with respect to any Parity Payment Agreements;

**Third**, to make all payments required to be made pursuant to a reimbursement agreement or agreements (or other equivalent documents) in connection with Qualified Insurance or a Qualified Letter of Credit; provided, that if there is not sufficient money to make all payments under such reimbursement agreements, the payments will be made on a pro rata basis;

**Fourth**, to establish and maintain the Parity Bond Reserve Account (including making deposits into such account and paying the costs of obtaining Qualified Insurance or a Qualified Letter of Credit therefor);

**Fifth**, to make all required payments of principal and interest on the Parity Lien Obligations and to make any Payment Agreement Payments with respect to any Parity Lien Obligation Payment Agreements;

**Sixth**, to make all required payments of principal of and interest on the Junior Lien Obligations as the same become due and payable, to make all Payment Agreement Payments with respect to any Payment Agreements entered into with respect to Junior Lien Obligations, and to make any payments required to be made to providers of any credit enhancements or liquidity facilities for Junior Lien Obligations;

**Seventh**, to make all required payments of principal of and interest on the Multi-Modal LTGO/Sewer Revenue Bonds as the same become due and payable, to make all Payment Agreement Payments for any Payment Agreements entered into with respect to Multi-Modal LTGO/Sewer Revenue Bonds, and to make any payments required to be made to providers of credit enhancements or liquidity facilities for any Multi-Modal LTGO/Sewer Revenue Bonds;

**Eighth**, to make all required payments of principal of and interest on the Subordinate Lien Obligations as the same become due and payable;

**Ninth**, to make all required payments of principal of and interest on bonds, notes, warrants and other evidences of indebtedness, the lien and charge on Revenue of the System of

which are junior and inferior to the Subordinate Lien Obligations, as the same become due and payable; and

**Tenth**, to make all required payments of principal of and interest due on the SRF Loans and the Public Works Trust Fund Loans.

Any surplus money that the county may have on hand in the Revenue Fund after making all required payments set forth above may be used by the county (i) to make necessary improvements, additions and repairs to and extensions and replacements of the System, (ii) to purchase or redeem and retire outstanding sewer revenue bonds of the county, (iii) to make deposits into the Rate Stabilization Fund, or (iv) for any other lawful purposes of the county related to the System.

## SCHEDULE 13(n)

### PRINCIPAL PROJECT CONTRACTS

A. Existing Principal Project Contracts (effective as of the date of this Agreement)<sup>2</sup>

Contract	Date	Parties	Description
C01025C17: Georgetown Wet Weather Treatment Station – Treatment Station Ballasted Sedimentation Package		Borrower; Veolia Water Technologies, Inc. dba Kruger	Process design and equipment procurement required for the ACTIFLO process.
C01026C17: Georgetown Wet Weather Treatment Station – Demolition, Remediation, and Site Preparation		Borrower; TITAN Earthworks, LLC	Removal of foundations, curbs, gutters, sidewalks, bollards, fences, canopies, pavement, underground storage tanks, and utilities; hazardous materials abatement; removal of oil/water separators and associated storm drains; removal and remediation of contaminated soils; construction of geotechnical cultural resources investigation and site preparation in connection with the construction of the Project.
C01025C17: Georgetown Wet Weather Treatment Station		Borrower; Flatiron West, Inc.	Construction of a new 70 million-gallon-per-day capacity wet weather treatment station for treating combined sewer overflow (CSO) wastewater.
C01072C17: Georgetown Wet Weather Treatment Station – Outfall		Borrower; Pacific Pile and Marine	[Construction of outfall, effluent conveyance, drop structure, and stormwater treatment system (pending).]
C01071C17: Georgetown Wet Weather Treatment Station - Conveyance		Borrower; [TBD]	Construct influent conveyance piping and connections to the existing pipelines in S. Michigan Street and East Marginal Way and modifications to the King County Wastewater Treatment Division (WTD)'s existing Brandon Street and South Michigan Street regulator stations.

B. Expected Additional Principal Project Contracts (expected to either be executed, or are executed and expected to become effective, at a future date)

<sup>2</sup> **Note to Borrower:** Please advise as to bracketed items and provide missing information.



**SCHEDULE 13(r)**  
**ENVIRONMENTAL MATTERS**

[To be provided by Borrower]

**EXHIBIT A**  
**FORM OF WIFIA BOND**  
**KING COUNTY, WASHINGTON**  
**GEORGETOWN WET WEATHER TREATMENT STATION PROJECT**  
**(WIFIA – N17107WA)**  
**WIFIA BOND**

**Maximum Principal Amount: \$ 134,500,000**

**Effective Date: \_\_\_\_\_**

**Due: January 1, 2051, or if earlier in accordance with the WIFIA Loan Agreement, the Final Maturity Date**

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

Payments hereon are to be made in accordance with Section 9(e) (*Payment of Principal and Interest – Manner of Payment*) and Section 38 (*Notices; Payment Instructions*) of the WIFIA Loan Agreement as the same become due. Principal of and interest on this WIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United

States of America that at the date of payment is legal tender for the payment of public and private debts.

This WIFIA Bond is a special limited obligation of the Borrower, payable solely from the special fund of the Borrower known as the Water Quality Revenue Bond Account (the "**Parity Bond Fund**"), and is not an obligation of the State or any political subdivision thereof other than the Borrower, and neither the full faith and credit nor the taxing power of the Borrower or the State or any political subdivision thereof is pledged to the payment of this WIFIA Bond.

This WIFIA Bond has been executed under and pursuant to that certain WIFIA Loan Agreement, dated as of the date hereof, between the WIFIA Lender and the Borrower (the "**WIFIA Loan Agreement**") and is issued to evidence the obligation of the Borrower under the WIFIA Loan Agreement to repay the loan made by the WIFIA Lender and any other payments of any kind required to be paid by the Borrower under the WIFIA Loan Agreement or the other WIFIA Loan Documents referred to therein. Reference is made to the WIFIA Loan Agreement for all details relating to the Borrower's obligations hereunder. All capitalized terms used in this WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

This WIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Loan Agreement; provided that such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the WIFIA Lender all or part of the principal amount of the WIFIA Bond in accordance with the WIFIA Loan Agreement.

This WIFIA Bond shall be subject to prepayment on the terms and conditions set forth in the WIFIA Loan Agreement.

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to the Ordinance referred to in the WIFIA Loan Agreement.

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

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

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

**KING COUNTY, WASHINGTON**

(SEAL)

By \_\_\_\_\_  
Name: Dow Constantine  
Title: County Executive

ATTEST:

\_\_\_\_\_  
Clerk of the County Council

**CERTIFICATE OF AUTHENTICATION**

This is the fully registered [WIFIA Bond] of King County, Washington, dated [\_\_\_\_], described in the within mentioned Ordinance.

[\_\_\_\_]  
as Registrar

By: \_\_\_\_\_  
Authorized Signer

(FORM OF ASSIGNMENT)

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

*(Please Insert Social Security or other identifying number of Assignee(s)):*

the within bond and all rights thereunder.

Dated: \_\_\_\_\_

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

**EXHIBIT B****ANTICIPATED WIFIA LOAN DISBURSEMENT SCHEDULE**

<u>Federal Fiscal Year</u>	<u>Amount</u>
2018	\$60,000,000
2019	\$64,148,000
2020	\$10,352,000
2021	-
<b>Total</b>	<b>\$134,500,000</b>

**EXHIBIT C**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS**

The undersigned, on behalf of KING COUNTY, WASHINGTON, hereby certifies that KING COUNTY, WASHINGTON has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995):

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

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

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

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

Dated: \_\_\_\_\_

**KING COUNTY, WASHINGTON<sup>3</sup>**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>3</sup> To be executed by Borrower's Authorized Representative.

## EXHIBIT D

### REQUISITION PROCEDURES

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

Section 1. General Requirements. All requests by the Borrower for the disbursement of WIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the WIFIA Lender, in accordance with Section 38 (*Notices; Payment Instructions*) of the WIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the WIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as **Appendix One** (*Form of Requisition*) to this **Exhibit D**. Supporting documentation should be submitted with the requisition.

The WIFIA Lender agrees to promptly send to the Borrower in accordance with Section 38 (*Notices; Payment Instructions*) of the WIFIA Loan Agreement, an acknowledgement of receipt of each Requisition in the form attached as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to this **Exhibit D** setting forth the date of receipt by the WIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Lender. All disbursement requests must be received by the WIFIA Lender at or before 5:00 P.M. (EST) on the first (1<sup>st</sup>) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15<sup>th</sup>) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the WIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than the Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the WIFIA Loan; or



(d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid.

The WIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Lender will so notify the Borrower.

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

Section 4. Withholding. The WIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of WIFIA Loan proceeds if:

(a) any Default or Event of Default under the WIFIA Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated under the WIFIA Loan Agreement; or

(ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with prudent utility practice, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the WIFIA Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the WIFIA Loan Agreement; or

(iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 12(b) (*Conditions Precedent – Conditions Precedent to All Disbursements*) of the WIFIA Loan Agreement; or

(v) fails to deliver documentation satisfactory to the WIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the WIFIA Loan Agreement; provided that in such case the WIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

**APPENDIX ONE TO EXHIBIT D**  
**FORM OF REQUISITION**

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

Re: GEORGETOWN WET WEATHER TREATMENT STATION PROJECT (WIFIA – N17107WA)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [●], 2018 (the “**WIFIA Loan Agreement**”), by and between KING COUNTY, WASHINGTON (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), we hereby request disbursement in the amount of \$[\_\_\_\_\_] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [\_\_\_\_\_].
2. The requested date of disbursement is [\_\_\_\_\_] 15, 20[\_\_\_] (the “**Disbursement Date**”)[, which is the first Business Day following [\_\_\_\_\_] 15, 20[\_\_\_\_\_]].
3. The amounts previously disbursed under the WIFIA Loan Agreement equal, in the aggregate, \$[\_\_\_\_\_].
4. The amounts hereby requisitioned have been paid, or incurred and approved for payment, by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Loan proceeds.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the WIFIA Loan, and the amount of this Requisition together with the sum of all disbursements of WIFIA Loan proceeds made and to be made for the current Federal Fiscal Year will not exceed the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule.
6. All documentation evidencing the Eligible Project Costs to be reimbursed to the Borrower [or to be used to pay Eligible Project Costs previously paid by the Borrower] by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the WIFIA Loan Agreement.

7. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
8. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 12(a)(xvi) (*Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the WIFIA Lender and in accordance with prudent utility practice.
10. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), (a) no Default or Event of Default, and no event of default under any other Related Document and (b) no event that with the giving of notice or the passage of time or both would constitute an event of default under any other Related Document, in each case, has occurred and is continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since November 6, 2017 and is continuing.
13. Included with this requisition is a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied.
14. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.
15. A copy of this Requisition has been delivered to each of the above named addressees.
16. The undersigned is duly authorized to execute and deliver this Requisition on behalf of the Borrower.

Date: \_\_\_\_\_

KING COUNTY, WASHINGTON<sup>4</sup>

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

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

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

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<sup>4</sup> To be executed by the Borrower's Authorized Representative.

**APPENDIX TWO TO EXHIBIT D**  
**[APPROVAL/DISAPPROVAL] OF THE WIFIA LENDER**  
**(To be delivered to the Borrower)**

Requisition Number [ \_\_\_\_\_ ] is [approved in the amount of \$[ \_\_\_\_\_ ]]  
[approved in part in the amount of \$[ \_\_\_\_\_ ]] [not approved] by the WIFIA Lender (as  
defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement,  
dated as of [●], 2018, by and between King County, Washington (the “**Borrower**”) and the  
United States Environmental Protection Agency, acting by and through the Administrator (the  
“**WIFIA Lender**”).

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

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

By: \_\_\_\_\_  
WIFIA Lender’s Authorized Representative  
Name:  
Title:  
Dated:

**EXHIBIT E****UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
COMPLIANCE WITH LAWS**

In each case to the extent applicable to the System (including the Project), the Borrower shall, and shall require its contractors and subcontractors at all tiers with respect to the Project to, comply in all material respects with all federal, state and local laws, including, as applicable, the following federal laws listed below, which list is not intended to be exhaustive.

**Environmental Authorities**

- Archeological and Historic Preservation Act, Pub. L. 93-291, as amended
- Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-mm
- Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668c
- Clean Air Act, Pub. L. 95-95, as amended
- Clean Water Act, Titles III, IV and V, Pub. L. 92-500, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Farmland Protection Policy Act, Pub. L. 97-98
- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations Environmental Justice, Executive Order 12898
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- Floodplain Management, Executive Order 11988, 42 FR 26951, May 24, 1977, as amended by Executive Order 13690, 80 FR 6425, February 4, 2015
- Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407
- Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712
- National Historic Preservation Act, Pub. L. 89-655, as amended
- National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.

- Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001 et seq.
- Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608
- Rivers and Harbors Act, 33 U.S.C. 403
- Safe Drinking Water Act, Pub L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-54, as amended
- Wilderness Act, 16 U.S.C. §§ 1131 et seq.

#### Economic and Miscellaneous Authorities

- Debarment and Suspension, Executive Order 12549
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89 -754, as amended, and Executive Order 12372
- Drug-Free Workplace Act, Pub. L. 100-690
- Labor Standards, 33 U.S.C. § 1372 and 40 U.S.C. §§ 3141-3144, 3146 and 3147
- New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601 et seq.)

#### Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- Age Discrimination Act, Pub. L. 94-135
- Equal Employment Opportunity, Executive Order 11246
- Section 13 of the Clean Water Act, Pub. L. 92-500
- Section 504 of the Rehabilitation Act, Pub. L 93-112 supplemented by Executive Orders 11914 and 11250
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.)
- Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements

**EXHIBIT F**  
**WIFIA DEBT SERVICE**



**EXHIBIT G-1****OPINIONS REQUIRED OF COUNSEL TO BORROWER**

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

(a) the Borrower has all requisite power and authority to conduct the business of the System and to execute and deliver, and to perform its obligations under, the Existing Principal Project Contracts;

(b) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Existing Principal Project Contracts have been duly authorized by all necessary organizational or regulatory action;

(c) the Borrower has duly executed and delivered each Existing Principal Project Contract, and each Existing Principal Project Contract constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms;

(d) no authorization, consent or other approval of, or registration, declaration or other filing with, any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by the Borrower of, and the performance of the Borrower under, any Existing Principal Project Contract, other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;

(e) the execution and delivery by the Borrower of, and compliance by the Borrower with the provisions of, the Existing Principal Project Contracts in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument to which the Borrower is a party or any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject or by which it is bound; and

(f) there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority that are pending, or to the knowledge of such counsel after due inquiry, threatened in connection with the Ordinance Documents, the WIFIA Loan Documents or the Existing Principal Project Contracts, in each case in effect as of the Effective Date, or the Project.

**EXHIBIT G-2****OPINIONS REQUIRED FROM BOND COUNSEL**

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

(a) the Borrower has been duly created and validly exists as a political subdivision of the State under and pursuant to the laws of the State, with all necessary right, power and authority (including pursuant to the Ordinance and the WIFIA Sale Motion) to execute and deliver the Ordinance Documents and the other WIFIA Loan Documents.

(b) each of the Ordinance and the WIFIA Sale Motion has been duly passed by the Borrower, and each of the Ordinance Documents and the other WIFIA Loan Documents has been duly authorized by all necessary action of the Borrower, in each case in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws;

(c) each of the Ordinance Documents and the other WIFIA Loan Documents has been duly executed and delivered by the Borrower, in each case in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws;

(d) each of the Ordinance Documents and the other WIFIA Loan Documents is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms and conditions, except only to the extent that enforcement of payment may be limited by bankruptcy, insolvency or other laws affecting creditors' rights and by the application of equitable principles and the exercise of judicial discretion in appropriate cases;

(e) no authorization, consent, or other approval of, or registration, declaration, or other filing with, any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by the Borrower of, and the performance of the Borrower under, any Ordinance Document or other WIFIA Loan Document, other than authorizations, consents, approvals, registrations, declarations, and filings that have already been timely obtained or made by the Borrower;

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

(g) the WIFIA Bond is a Parity Bond entitled to all of the benefits of a Parity Bond under the Ordinance. The WIFIA Bond is enforceable under the laws of the State without any further action by the Borrower or any other Person, and the obligations under the WIFIA Bond are pari passu in right of payment and right of security with all Pari Passu Obligations and are senior in right of payment and right of security to all Subordinated Obligations;

(h) the WIFIA Bond is secured by the Collateral. The Ordinance creates the valid and binding assignment and pledge of the Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act. No documents or instruments are required to be recorded or filed for record in any place to establish, or maintain the validity and enforceability of, the pledge of the Collateral to secure the obligations under the WIFIA Bond;

(i) the Borrower has complied with all applicable requirements of State law to lawfully pledge the Collateral for the benefit of the WIFIA Lender and to apply the System Revenues as required by the terms of the Ordinance and the WIFIA Loan Agreement;

(j) all actions by the Borrower that are required for the application of System Revenues as required under the Ordinance and under the WIFIA Loan Agreement have been duly and lawfully made;

(k) the Borrower is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Loan Agreement or the WIFIA Bond or by the Trustee under the Ordinance Documents;

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

(m) under the laws of the State, an action may be maintained against the Borrower in respect of, or relating to, the Ordinance Documents and the other WIFIA Loan Documents.

## EXHIBIT H

### FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [●], 2018 (the “**WIFIA Loan Agreement**”), by and among King County, Washington (the “**Borrower**”) and the United States Environmental Protection Agency (the “**EPA**”), acting by and through the Administrator of the EPA (the “**WIFIA Lender**”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement.

The undersigned, [\_\_\_], as Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 12(a)(ii) of the WIFIA Loan Agreement, attached hereto as **Exhibit A** are complete and fully executed copies of each Ordinance Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the WIFIA Lender in its sole discretion;

(b) pursuant to Section 12(a)(vi) of the WIFIA Loan Agreement, attached hereto as **Exhibit B** is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed the Borrower’s Authorized Representative in accordance with Section 27 (*Borrower’s Authorized Representative*) of the WIFIA Loan Agreement;

(c) the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and such funds are sufficient to pay all Total Project Costs necessary to achieve Substantial Completion;

(d) pursuant to Section 12(a)(viii) of the WIFIA Loan Agreement, attached hereto as **Exhibit C** are complete and fully executed copies of each Existing Principal Project Contract (as listed below), and each such Existing Principal Project Contract is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of **Exhibit C**:

- (i) Georgetown Wet Weather Treatment Station – Ballasted Sedimentation Package;
- (ii) Georgetown Wet Weather Treatment Station – Demolition, Remediation, and Site Preparation;
- (iii) Georgetown Wet Weather Treatment Station – Construction;
- (iv) Georgetown West Weather Treatment Station – Outfall; and

(v) Georgetown Wet Weather Treatment Station – Conveyance;

(e) the Borrower has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(f) pursuant to Section 12(a)(x) of the WIFIA Loan Agreement, attached hereto as **Exhibit D** is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected System Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender and (iv) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project;

(g) the Borrower (i) is authorized, pursuant to the Ordinance and Revised Code of Washington, Section 39.46.150, to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the Ordinance Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (ii) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Lien on the Collateral (for the benefit of the WIFIA Lender and the other Secured Parties) to the extent contemplated by the Ordinance Documents or required pursuant to applicable law, and (iii) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Ordinance Documents or any instruments, certificates or financing statements in connection with the foregoing;

(h) (i) pursuant to Section 12(a)(xiii) of the WIFIA Loan Agreement, attached hereto as **Exhibit E** is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof; (ii) the Borrower has complied with all other applicable federal, state or local environmental review and approval requirements with respect to the Project and (iii) the Borrower has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);

(i) pursuant to Section 12(a)(xv) of the WIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 91-6001327, (ii) the Borrower's Data Universal Numbering System Number is 135108934, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov)), and attached hereto as **Exhibit F** is evidence of each of (i), (ii) and (iii);

(j) pursuant to Section 12(a)(xvi) of the WIFIA Loan Agreement, attached hereto as **Exhibit G** are true, correct and complete copies of certificates of insurance or

documents pertaining to the Borrower's self-insurance program, in each case that demonstrate satisfaction of the insurance requirements of Section 15(f) of the WIFIA Loan Agreement;

(k) pursuant to Section 12(a)(xvii) of the WIFIA Loan Agreement, attached hereto as (i) **Exhibit H-1** is a copy of the Borrower's Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate and (ii) **Exhibit H-2** is a copy of such further instruments and documents as are necessary, appropriate or advisable to consummate and implement the transactions contemplated by the Ordinance Documents and the WIFIA Loan Documents;

(l) the Borrower has duly passed the WIFIA Sale Motion, which (i) confirms the terms and conditions of the WIFIA Bond and authorizes the execution of the WIFIA Loan Agreement and (ii) is and shall remain in full force and effect;

(m) pursuant to Section 12(a)(xx) of the WIFIA Loan Agreement, attached hereto as **Exhibit I** are complete and fully executed copies of each performance security instrument delivered to or by the Borrower pursuant to any Principal Project Contract as of the Effective Date, each of which performance security instruments is (i) in compliance with the requirements for such performance security instrument pursuant to the applicable Principal Project Contract and (ii) is in full force and effect;

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

(o) (i) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 3908(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.

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

[ ]

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

Name:

Title: Authorized Person

**EXHIBIT B TO EXHIBIT H**  
**INCUMBENCY CERTIFICATE**

The undersigned certifies that he/she is the Clerk of the Metropolitan King County Council of King County, Washington, a political subdivision of the State of Washington (the "**Borrower**"), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents and/or the Ordinance Documents as the Borrower's Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of [\_\_\_\_], 20[\_\_\_\_].

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT I**  
**FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION**

[*Letterhead of Borrower*]

[*Date*]

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

**Project:** Georgetown Wet Weather Treatment Station Project – N17107WA

Dear Director:

This notice is provided pursuant to Section 15(g)(i)(A) (*Affirmative Covenants – Notice – Substantial Completion*) of that certain WIFIA Loan Agreement (the “**WIFIA Loan Agreement**”), dated as of [●], 2018, by and between King County, Washington (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through its Administrator (the “**WIFIA Lender**”).

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

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

- (a) on [*insert date Substantial Completion requirements were satisfied*], the Project satisfied each of the requirements for Substantial Completion set forth in the [*Insert reference to the design-build or similar agreement for the Project*];
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved.

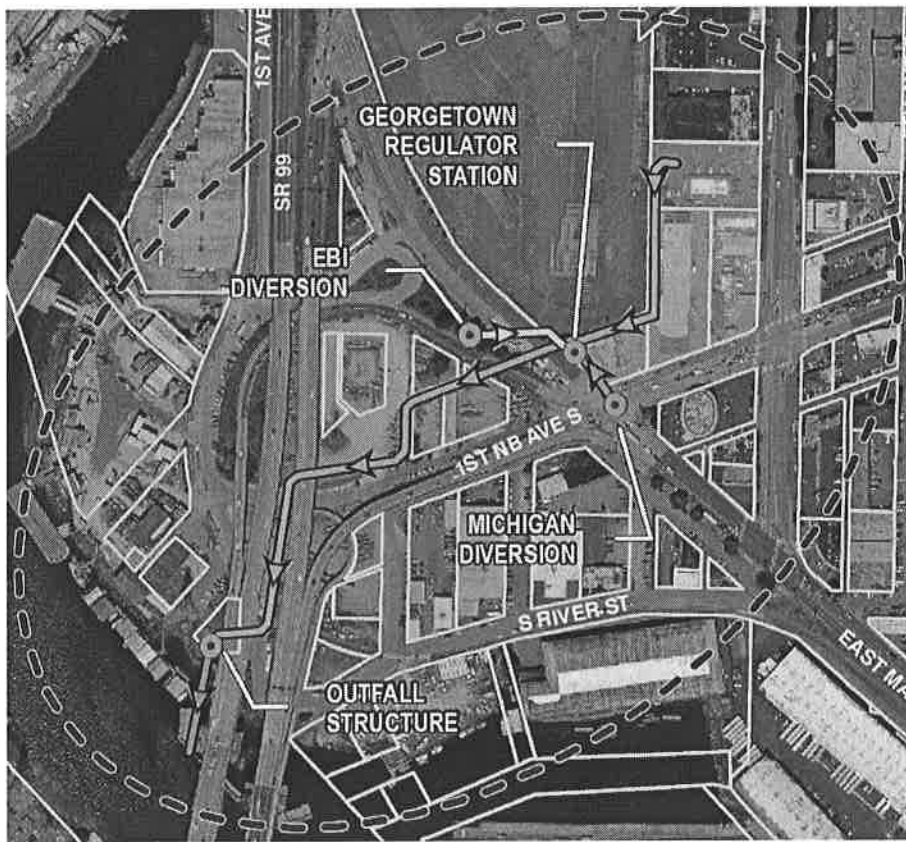
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[Borrower’s Authorized Representative]

**EXHIBIT J**  
**FORM OF PARI PASSU OBLIGATIONS CERTIFICATE**

EXHIBIT K  
FORM OF MONTHLY REPORT

Monthly Report on Georgetown Wet Weather  
Treatment Station Construction Progress

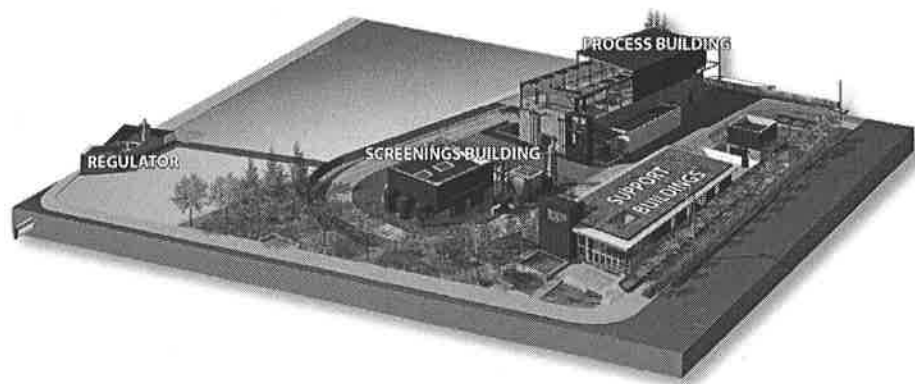
January 2018



**CONTENTS**

Page

<b>1</b>	<b>Milestone Status</b>	<b>1</b>
<b>2</b>	<b>Treatment Station Contract</b>	<b>2</b>
<b>3</b>	<b>Conveyance Contract</b>	<b>3</b>
<b>4</b>	<b>Outfall Contract</b>	<b>4</b>
	<b>Appendix</b>	
	<b>A. WIFIA Project Summary Report</b>	<b>6</b>



## 2. TREATMENT STATION CONTRACT

Summary of Progress at January 31, 2018

### Schedule Status – Key Milestones

Table 1 summarizes key milestones in the Georgetown Wet Weather Treatment Station (GWWTs) program. This section of the report addresses changes in the contract schedules that may affect the key milestones. The remainder of this report tracks the progress of each construction contract relative to the contract milestones established when the Notice to Proceed is issued or as modified by subsequent Change Orders.

**Table 1**  
**Key Milestones**

Activity	Contract	Projected Completion <sup>1</sup>	Follow-on Activity	Scheduled Start of Follow-on <sup>2</sup>
<b>MS 1: Regulator below grade completion</b>	Treatment Station	11/19/2018	Conveyance Contract effluent pipeline	April 2019
<b>MS 2: Infrastructure for SCL transformers</b>	Treatment Station	4/20/2020	SCL work	April 2020
<b>MS 3: Infrastructure for SCL duct bank</b>	Treatment Station	10/15/2020	SCL work	October 2020
<b>MS 1: Effluent Pipeline and power duct bank Sta. 19+20 to Sta. 22+60</b>	Conveyance	8/24/2020	SCL work	August 2020
<b>MS 2: Complete all Work on the TS Site and sidewalk adjacent to site</b>	Conveyance	4/14/20	Regulator above grade work	April 2020
<b>Construction Completion (consent decree)</b>	All	12/31/2022	N/A	N/A

Note 1: Projected completion of milestones taken from the contract documents. Future reporting will be taken from the contractors' most recent Schedule Updates or from the Program Schedule.

Note 2: Scheduled start projected from the contract documents. Future reporting will be per most recent Schedule Updates or the Program Schedule.

**Treatment Station Contract:** Notice to Proceed was issued on November 30, 2017.

**Conveyance Contract:** Advertisement to bid is scheduled for mid-February 2018.

**Outfall Contract:** Notice to Proceed was issued on January 17, 2018.



## 2. TREATMENT STATION CONTRACT

Summary of Progress at January 31, 2018

### Contract C01025C17 Summary

<b>Major Components</b>	<ul style="list-style-type: none"> <li>- Georgetown Regulator and associated electrical building</li> <li>- Integration with Brandon Regulator Modifications</li> <li>- Integration with Michigan Regulator Modifications</li> <li>- IPS, Equalization Basin and Screening</li> <li>- Ballasted Sedimentation</li> <li>- UV Disinfection</li> <li>- Solids Holding Tank</li> <li>- Odor Control</li> <li>- Electrical Building</li> <li>- Operations and Maintenance Support Building and Generator Building</li> </ul>
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**Contractor** Flatiron West, Inc.

#### Contract Cost Summary

#### Schedule Summary

Original Contract Value	\$96,169,322.12	NTP Effective Date	November 30, 2017
Changes to Date	\$0.00	Original Time for Completion	1,500 days
Current Contract Value	\$96,169,322.12	Original Contract Completion	January 8, 2022
Changes to Date	0.00%	Time Added to Date	0 Days
		Current Contract Completion	January 8, 2022

Earned to Date (Prism)*	\$0.00	Days Elapsed	62 days
% Earned to Date (Prism)*	0.00%	% Duration Worked	4.1%

\* includes retainage, does not include sales tax

### Construction Progress Summary

#### Submittals

Received	39
Returned	32
In Review	7

#### Requests for Information

Received	12
Responded	11
In Review	1

#### Major work activities this work period:

- Submittal processing. Key submittals included – excavation support systems, dewatering plan, construction stormwater control plan, wastewater pretreatment plan, contaminated soil handling plan, vibration monitoring plan, settlement and utility monitoring plan, traffic control plans, HASP and draft project schedule.
- Shoring permit revision approvals for project excavations (Post Issuance Submittal).

#### Major activities planned in next work period:

- Mobilization to site.
- Continued submittal processing and pre-planning activities.

## 2. TREATMENT STATION CONTRACT

Summary of Progress at January 31, 2018

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- Continued shoring permit revision approvals.

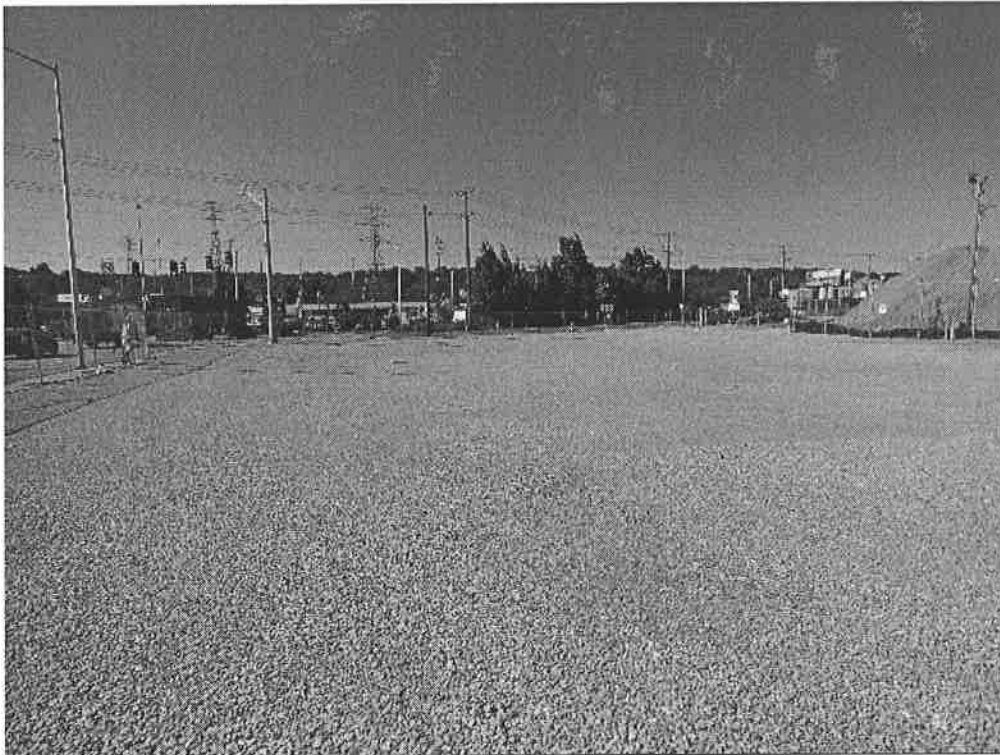
### Cash Flow

The Draft Project Schedule, which is not cost loaded, was received at the end of January. To date, no contractor progress payments have been received. Cash flow information will be provided in future reports after receipt of these items.

### Changes

A list of potential changes is provided below. Once negotiations are in progress, an appendix for changes will be included with this report to provide a more comprehensive change summary.

RCO-001	Regulator Shoring
RCO-002	Schedule Delay for COS Submittal Reviews
RCO-003	Secant Pile Demonstration Program
RCP-001	UV System Contract Amendment 2
RCP-002	Structural Shoring Clarifications
RCP-003	Contractor's Construction Facilities



Preconstruction view of project site looking west

### 3. CONVEYANCE CONTRACT

Summary of Progress at January 31, 2018

#### Contract C01071C17 Summary

- Major Components**
- 30-inch and 60-inch diameter and 4-foot by 8-foot square combined sewers, associated diversion manholes, and a 36-inch and 60-inch diameter effluent pipeline.
  - Effluent pipe drain pump.
  - Brandon Regulator slide gate replacement.

**Contractor**                      **TBD**

#### Contract Cost Summary

#### Schedule Summary

Original Contract Value	TBD	NTP Effective Date	TBD
Changes to Date	N/A	Original Time for Completion	750 days
Current Contract Value	TBD	Original Contract Completion	TBD
Changes to Date	N/A	Time Added to Date	N/A
		Current Contract Completion	TBD

Earned to Date (Prism)*	N/A	Days Elapsed	N/A
% Earned to Date (Prism)*	N/A	% Duration Worked	N/A

\* includes retainage, does not include sales tax

#### Construction Progress Summary

Advertisement to bid is scheduled for mid-February 2018.





## 4. OUTFALL CONTRACT

Summary of Progress at January 31, 2018

### Contract C01072C17 Summary

- Major Components**
- Outfall: Approximately 306 lineal feet of 54-inch-outside-diameter high density polyethylene (HDPE) outfall pipe into the Lower Duwamish Waterway (LDW).
  - Effluent Conveyance: Approximately 19 lineal feet of 60-inch-inside-diameter lined and coated steel effluent conveyance pipe.
  - Drop Structure: Cast-in-place concrete structure within a shored and dewatered excavation.

**Contractor** Pacific Pile and Marine

#### Contract Cost Summary

#### Schedule Summary

Original Contract Value	\$4,672,000.00	NTP Effective Date	January 17, 2018
Changes to Date	\$0.00	Original Time for Completion	425 days
Current Contract Value	\$4,672,000.00	Original Contract Completion	March 18, 2019
Changes to Date	0.00%	Time Added to Date	0 days
		Current Contract Completion	March 18, 2019
Earned to Date (Prism)*	\$0.00	Days Elapsed	14 days
% Earned to Date (Prism)*	0%	% Duration Worked	3.3%

\* includes retainage, does not include sales tax

### Construction Progress Summary

Notice to Proceed was issued on January 17, 2018. Pacific Pile and Marine will begin transmitting submittals in February. Submittals and planning activities will continue through May of this year. Mobilization to the site is planned for early June 2018.

## APPENDIX

Summary of Progress at January 31, 2018

### A. Water Infrastructure Finance and Innovation Act (WIFIA) Project Summary Report

#### Project Schedule Status

Projected Substantial Completion Date	Current Substantial Completion	Variance (days)
1/8/2022	1/8/2022	

#### Project Budget Status

Construction Costs Incurred to Date	January 2018 Construction Costs	Total Costs Incurred to Date	Estimated Construction Costs to Completion	Total Estimated Construction Costs for Georgetown

#### Critical Issues / Material Problems

- None for this period.