City of Tacoma
Office of the City Clerk

CERTIFICATE REGARDING ORDINANCE

I, Doris Sorum, City Clerk of the City of Tacoma, Washington (the "City"), do hereby certify:

1. That the attached Ordinance No. 28690 (the "Ordinance") is a true and correct copy of an ordinance of the City Council, as finally passed at a regular meeting of the City Council held on September 15, 2020, and duly recorded in my office, and that such Ordinance has not been amended or superseded.

2. That the meeting was duly convened and held in all respects in accordance with law, including but not limited to Washington State Governor Inslee's emergency proclamation No. 20-28 issued on March 24, 2020, as amended and supplemented, temporarily suspending portions of the Open Public Meetings Act (chapter 42.30 RCW), and due and proper notice of the meeting was given; a legal quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

Dated this 28th day of September, 2020.

Doris Sorum

Doris Sorum, City Clerk
City of Tacoma, Washington

733 Market Street, Room 11 ▮ Tacoma, Washington 98402 ▮ (253) 591-5505 ▮ Fax (253) 591-5300

ORDINANCE NO. 28690

AN ORDINANCE of the City of Tacoma, Washington, providing for the issuance and sale of a sewer revenue bond of the City in the aggregate principal amount of not to exceed $21,000,000, including any capitalized interest, to evidence the City's obligations under a WIFIA Loan Agreement with the United States Environmental Protection Agency; approving and authorizing execution of the loan agreement and providing for the disposition of the proceeds of the loan, the delivery of the bond to the United States Environmental Protection Agency, and the payment of costs of issuance of the bond; delegating the authority to approve the final terms of the bond; and declaring an emergency, making necessary the passage of this ordinance and its becoming effective immediately.

WHEREAS the City of Tacoma, Washington (as further described herein, the "City"), now owns, operates, and maintains a municipal sewer system, comprising Wastewater Management and Surface Water Management (as further described herein, the "System"), and

WHEREAS the City has issued and has outstanding certain sewer revenue bonds and obligations of the System (as further described herein, the "Outstanding Parity Bonds"), and

WHEREAS the ordinances authorizing the Outstanding Parity Bonds provide that additional sewer revenue bonds or obligations may be issued with a lien on Net Revenues (as defined herein) on a parity with the lien of the Outstanding Parity Bonds if certain conditions are met, and

WHEREAS the City Council (as further described herein, the "Council") desires to determine that it is in the public interest to make certain repairs and improvements to the electrical distribution system at the City's Central Treatment Plant (as further described herein, the "Project"), and

WHEREAS the City has applied for a federal Water Infrastructure Finance and Innovation Act loan (as further described herein, the "WIFIA Loan") from 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 (as further described herein, the "WIFIA Lender") in a principal amount not to exceed $21,000,000, including any interest that is capitalized in accordance with the terms of the WIFIA Loan Agreement, to finance the Project, and

WHEREAS the WIFIA Lender will make the WIFIA Loan and disburse funds from time to time following execution of a loan agreement by and between the City and the WIFIA Lender (as further described herein, the "WIFIA Loan Agreement") setting forth the terms thereof, and

WHEREAS the City's obligations under the WIFIA Loan Agreement will be evidenced by the sewer revenue bond authorized herein, and

WHEREAS the Council wishes to delegate authority to the City Finance Director and Treasurer, or their designee (as further described herein, each, a "Designated Representative"), for a limited time, to approve the interest rate, maturity date, redemption or prepayment rights and other terms of the bond authorized herein and the WIFIA Loan Agreement within the parameters set forth in this ordinance; and

WHEREAS because of the need to coordinate with federal, state and local officials on this ordinance and the WIFIA Loan Agreement, and so that this ordinance becomes effective prior to the end of the Environmental Protection

Agency's fiscal year on September 30th, the City needs this ordinance to be effective as soon as possible; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. Definitions and Interpretation of Terms.

(a) Definitions. As used in this ordinance, the following words shall have the following meanings:

"Accreted Value" means, with respect to any Capital Appreciation Bond, as of the time of calculation, the sum of the amount representing the initial principal amount of such bond plus interest accrued, compounded thereon as of the most recent compounding date. With respect to any particular Payment Date, the Accreted Value is the amount set forth on the Accreted Value Table included as part of the form of Capital Appreciation Bond. In the event the Accreted Value of any Capital Appreciation Bond is required to be determined as of a date other than the Payment Date, the Accreted Value shall be determined by adding to the Accreted Value for the next preceding Payment Date the product obtained by multiplying (a) the difference between the Accreted Value for the next Payment Date and the Accreted Value for the next preceding Payment Date, by (b) the ratio obtained by dividing by 180 the number of days elapsed since the next preceding Payment Date (calculated on the basis of a 360-day year of twelve 30-day months).

"Accreted Value Table" means the Accreted Value Table printed on the Capital Appreciation Bonds reflecting the Accreted Value of such Capital Appreciation Bonds as of each Payment Date.

"Act" means the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America's Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America's Water Infrastructure Act of 2018, codified as 33 U.S.C. §§ 3901-3914, as amended from time to time.

"Adjusted Annual Debt Service" means Annual Debt Service minus (a) an amount equal to ULID Assessments due in that year and not delinquent and (b) any Capitalized Interest to be paid with respect to Parity Bonds.

"Adjusted Net Revenues" has the meaning set forth in Section 17 of this ordinance.

"Annual Debt Service" means the amount required to be paid in a calendar year for (a) interest due in such calendar year on all Parity Bonds, (b) principal of all Serial Bonds due in such calendar year, and (c) any Sinking Fund Requirement for such calendar year.

In the case of Variable Interest Rate Bonds, for the purpose of calculating Annual Debt Service, the interest rate thereon shall be equal to the higher of (i) the average of the SIFMA Municipal Swap Index over the 60-month period immediately preceding the date of computation, or (ii) the average of the SIFMA Municipal Swap Index over the 12-month period immediately preceding the date of computation, in each case as determined within ten days prior to the date of computation; provided, that if on such date of calculation the interest rate on any Variable Interest Rate Bonds shall then be fixed for a specified period, including pursuant to a Payment

Agreement, the interest rate used for such specified period shall be such fixed interest rate.

For purposes of computing Annual Debt Service on any Parity Bonds which constitute Balloon Indebtedness, it shall be assumed that the principal of such Balloon Indebtedness, together with interest thereon at the rate applicable to such Balloon Indebtedness, shall be amortized in equal annual installments over a term equal to the lesser of (a) 25 years or (b) the remaining term to final maturity of the Balloon Indebtedness beginning with the first Fiscal Year following the date of calculation.

For purposes of satisfying the coverage test pursuant to Section 15 or the requirements for the issuance of Future Parity Bonds pursuant to Section 17, Annual Debt Service for any Fiscal Year or calendar year shall exclude any Debt Service Offsets received or expected to be received in such Fiscal Year or calendar year.

"Balloon Indebtedness" means that portion of any series of Parity Bonds that comprises more than 25 percent of the principal of such series which, in accordance with the terms of such Parity Bonds, is due and payable in any one Fiscal Year either by reason of the stated maturity date of such Parity Bonds or pursuant to a Sinking Fund Requirement; provided that with respect to any Parity Bonds issued as Term Bonds, such Term Bonds shall only be treated as Balloon Indebtedness if more than 25 percent of the principal thereof is due in any one Fiscal Year pursuant to the applicable Sinking Fund Requirement or upon the stated maturity date thereof (assuming that the only principal due on the stated

maturity date thereof will be the principal remaining outstanding after all redemptions have been made pursuant to the applicable Sinking Fund Requirement).

"Bond Counsel" means an attorney at law or a firm of attorneys, selected by the City, of nationally recognized standing in matters pertaining to the tax exempt nature of interest on bonds issued by states and their political subdivisions.

"Bond Fund" has the meaning set forth in Section 10(a) hereof.

"Bond Obligation" means, as of any given date of calculation, the sum of (a) the aggregate principal amount of all outstanding Current Interest Bonds and (b) the aggregate Accreted Value of all outstanding Capital Appreciation Bonds calculated as of the date of calculation if that date is a Payment Date or as of the next preceding Payment Date if the date of calculation is not a Payment Date.

"Bond Register" means the registration books showing the name, address, and tax identification number of the Registered Owner.

"Bond Registrar" means, as selected by the Finance Director, either the Treasurer or U.S. Bank National Association, as fiscal agent for local governments in the State as designated by the State, for the purposes of registering and authenticating the Bond, effecting transfer of ownership of the Bond, and paying interest on and principal of the Bond. The Bond Registrar shall serve as registrar, fiscal agent, and paying agent for the Bond.

"Bond" means the sewer revenue bond authorized to be issued pursuant to this ordinance and in substantially the form attached as Exhibit "A" to the WIFIA Loan Agreement.

"Borrower's Authorized Representative" has the meaning set forth in Section 19(c) hereof.

"Capital Appreciation Bonds" mean Parity Bonds, the interest on which accrues and compounds, payable at maturity or earlier redemption.

"Capitalized Interest" means proceeds (not including accrued interest) of Parity Bonds used to pay interest on such Parity Bonds.

"Certified Public Accountant" means an independent licensed certified public accountant (or firm of certified public accountants) selected by the City.

"City" means the City of Tacoma, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State.

"City Clerk" means the duly appointed and acting City Clerk of the City or the successor to the duties of that office.

"City Manager" means the duly appointed and acting City Manager of the City or the successor to the duties of that office.

"Code" means the Internal Revenue Code of 1986, or any successor tax code, as amended from time to time, and the applicable regulations proposed or promulgated thereunder.

"Costs of Maintenance and Operation" means all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, insurance premiums and administrative expenses, and reasonable pro rata charges for services provided to the System by City departments, but excludes (a) payments for debt service or into debt service reserve accounts or funds, (b) costs of capital additions to or replacements of the System, (c) money

necessary to pay extraordinary legal claims and judgments against the System or amortized payments to the City's self-insurance fund with respect to extraordinary claims and judgments, (d) depreciation, (e) City taxes (or payments to the City in lieu of taxes) upon the properties and earnings of the System, and (f) any Rebate Amount.

"Council" means the Council of the City, as the same shall be duly and regularly constituted from time to time.

"Covered Bonds" mean:

(a) the 2015 Bonds, and

(b) those Future Parity Bonds designated in the Parity Bond Ordinance authorizing their issuance as Covered Bonds secured by the Reserve Fund.

"Current Interest Bonds" mean Parity Bonds, the interest on which is paid periodically.

"Debt Service Offset" means receipts of the City that are not included in Gross Revenues and that are legally available to pay debt service on Parity Bonds, including, without limitation, federal interest subsidy payments, designated as such by the City.

"Default Rate" has the meaning set forth in the WIFIA Loan Agreement.

"Designated Representative" means the City Finance Director and Treasurer, or his or her designee. The signature of one Designated Representative shall be sufficient to bind the City.

"Engineer" means an independent licensed professional engineer (or firm of licensed professional engineers) selected by the City and experienced and skilled in

the design, construction, and operation of sewer systems of comparable size and character to the System.

"Environmental Services Director" means the duly appointed and acting Environmental Services Director of the City or the successor to the duties of that office.

"EPA" means the United States Environmental Protection Agency.

"Event of Default" has the meaning provided in the WIFIA Loan Agreement.

"Fair Market Value" means the price at which a willing buyer would purchase an investment from a willing seller in a bona fide, arm's-length transaction, except for specified investments as described in Treasury Regulation § 1.148-5(d)(6), including United States Treasury obligations, certificates of deposit, guaranteed investment contracts, and investments for yield restricted defeasance escrows. Fair Market Value is generally determined on the date on which a contract to purchase or sell an investment becomes binding, and, to the extent required by the applicable regulations under the Code, the term "investment" will include a hedge.

"Final Maturity Date" shall have the meaning set forth in the WIFIA Loan Agreement.

"Finance Director" means the duly appointed and acting Finance Director of the City or the successor to the duties of that office.

"Fiscal Year" means the fiscal year used by the City at any time. At the time of the passage of this ordinance, the Fiscal Year is the 12-month period beginning January 1 of each year.

"Fitch" means Fitch, Inc., a corporation duly organized and existing under and by virtue of the laws of the state of Delaware, and its successors and assigns.

"Future Parity Bonds" mean any revenue bonds of the City issued after the date of issuance of the Bond having a charge or lien upon the Net Revenues and ULID Assessments for payment of the principal thereof and interest thereon equal in priority to the charge or lien upon the Net Revenues and ULID Assessments for the payment of the principal of and interest on the Outstanding Parity Bonds and the Bond.

"Gross Revenues" mean (a) all revenues received for the use of the System, (b) revenues received from the sale of by-products from a treatment facility of the System or from any other source for rental, use, or services rendered by the System, (c) ULID Assessments, (d) the proceeds received by the City from the sale or other disposition of any of the properties of the System, (e) investment income earned on money held in any fund or account of the City in connection with the ownership and operation of the System, including any bond redemption funds, and (f) federal or state reimbursement of operating expenses to the extent that such expenses are included as Costs of Maintenance and Operation, but excluding (i) insurance proceeds, (ii) investment income irrevocably pledged to the payment of any specific sewer revenue bonds of the City refunded or defeased pursuant to a plan of refunding heretofore or hereafter adopted by the City, (iii) investment income earned on money in any rebate fund, and (iv) grants, gifts or donations. Amounts withdrawn from the Rate Stabilization Fund and deposited into the Sewer Fund shall increase Gross Revenues for the period in which they are withdrawn,

and amounts deposited in the Rate Stabilization Fund shall reduce Gross Revenues for the period during which they are deposited.

"Interest Account" means the Interest Account in the Bond Fund created by Ordinance No. 25562.

"Maximum Annual Debt Service" means at the time of calculation, the maximum amount of Annual Debt Service that will mature or come due in the current Fiscal Year or any future Fiscal Year on the Parity Bonds.

"Maximum Annual Adjusted Debt Service" means Maximum Annual Debt Service minus the amount of ULID Assessments due in that year and not delinquent.

"Maximum Interest Rate" means, with respect to any particular Variable Interest Rate Bond, a numerical rate of interest, which shall be set forth in any Parity Bond Ordinance authorizing such Variable Interest Rate Bond, which shall be the maximum rate of interest such Variable Interest Rate Bond may at any time bear.

"Maximum Reserve Requirement" means the maximum dollar amount permitted by the Code to be allocated to a reserve fund from tax-exempt bond proceeds without requiring a balance to be invested at a restricted yield.

"Moody's" means Moody's Investors Service, Inc. or its comparable recognized business successor.

"Net Revenues" mean, for any period, the excess of Gross Revenues over Costs of Maintenance and Operation for such period, excluding from the computation of Gross Revenues (a) ULID Assessments, (b) any profit or loss

derived from the sale or other disposition, not in the ordinary course of business, of properties, rights or facilities of the System, or (c) gains or losses resulting from the early extinguishment of debt.

"Outstanding Parity Bond Ordinances" mean the ordinances and resolutions identified herein authorizing the issuance of the Outstanding Parity Bonds.

"Outstanding Parity Bonds" mean, as of the date of this ordinance, the 2015 Bonds, the 2016 Bonds and the 2018 Bonds.

"Outstanding WIFIA Loan Balance" has the meaning set forth in the WIFIA Loan Agreement.

"Parity Bond Ordinances" mean the Outstanding Parity Bond Ordinances, this ordinance, and any ordinance hereafter passed for the purpose of authorizing Future Parity Bonds.

"Parity Bonds" mean the Outstanding Parity Bonds, the Bond, and any Future Parity Bonds.

"Payment Date" means each date on which principal and/or interest on the Parity Bonds is due and payable.

"Permitted Investments" mean any investments that are now or may hereafter be permitted to the City by the laws of the State.

"Principal Account" means the Principal Account of the Bond Fund created by Ordinance No. 25562.

"Project" means the repair and rehabilitation of the entire 15 kilovolt (kV) Medium Voltage (MV) electrical distribution system at the City's Central Treatment Plant, located at 2201 Portland Avenue, Tacoma, WA 98421, including (a) the

construction of over 3,000 lineal feet of concrete encased reinforced duct bank, (b) the installation of over twenty (20) miles of electrical cables, (c) the construction of a 3,400 square-foot building for protecting and operating the new electrical equipment, and (d) the installation of a new 15-kV switchgear comprised of 41 circuit breakers. Some of the existing reinforced concrete duct banks will be reused, but all the MV feeder cables will be replaced. The Project also includes the modification of the local electric utility's transmission overhead lines and support poles.

"Project Fund" means the account created pursuant to Section 8 of this ordinance.

"Qualified Insurance" means any non-cancellable 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 companies, as of the time of issuance of such policy or surety bond, are rated in one of the two highest rating categories by Moody's, S&P or Fitch, or any other rating agency then maintaining a rating on the Bond.

"Qualified Letter of Credit" means any irrevocable letter of credit issued by a financial institution for the account of the City on behalf of the owners of one or more series of Parity Bonds, which institution maintains an office, agency, or branch in the United States and as of the time of issuance of such letter of credit is rated in one of the two highest rating categories by Moody's, S&P or Fitch, or any other rating agency then maintaining a rating on the Bond.

"Rate Stabilization Fund" means the fund of that name in the Sewer Fund.

"Rebate Amount" means the amount, if any, determined to be payable with respect to a series of Parity Bonds by the City to the United States of America in accordance with Section 148(f) of the Code.

"Record Date" means the close of business for the Bond Registrar that is 15 days preceding any interest and/or principal payment or redemption date.

"Registered Owner" means the person named as the registered owner on the Bond Register, initially the WIFIA Lender.

"Requisition" has the meaning set forth in the WIFIA Loan Agreement.

"Reserve Fund" means the Reserve Fund created in the Bond Fund.

"Reserve Fund Requirement" is the dollar amount to be calculated with respect to all Covered Bonds and separately with respect to other Parity Bonds.

(a) With respect to Covered Bonds, the Reserve Fund Requirement means as of any date an amount equal to the lesser of (1) the Maximum Annual Debt Service for Covered Bonds then outstanding, (2) 125 percent of average Annual Debt Service for Covered Bonds then outstanding, or (3) 10 percent of the initial face amount of the Covered Bonds then outstanding; provided, however, that the dollar amount required to be contributed, if any, as a result of the issuance of a series of Future Parity Bonds shall not be greater than the Maximum Reserve Requirement. If the dollar amount required to be contributed at the time of issuance of a series of Future Parity Bonds exceeds the Maximum Reserve Requirement, then the amount required to be contributed shall be equal to the Maximum Reserve Requirement.

(b) With respect to other series of Parity Bonds, the Reserve Fund Requirement shall be equal to the amount, if any, specified in the Parity Bond Ordinance authorizing the issuance of such Parity Bonds or in a certificate or other document referenced in such Parity Bond Ordinance; provided, however, such Reserve Fund Requirement shall not exceed the Maximum Reserve Requirement for such series of Parity Bonds.

"S&P" means S&P Global Ratings, or its comparable recognized business successor.

"Serial Bonds" mean Parity Bonds other than Term Bonds.

"Sewer Fund" means the fund of the City of that name created by Section 13 of Ordinance No. 13989, as amended by Ordinance No. 14015, and reenacted by Section 38 of Ordinance No. 21632.

"Sinking Fund Requirement" means, for any Fiscal Year, the principal amount of Term Bonds required to be purchased, redeemed, or paid in such year as established by the ordinance or resolution of the City authorizing the issuance of such Term Bonds.

"State" means the state of Washington.

"System" means the "Tacoma Municipal Sewer System," comprising Wastewater Management and Surface Water Management, as the same is defined in Section 1 of Ordinance No. 13989, as amended by Ordinance No. 14015, and reenacted in and referred to as the "Municipal Sewer System" in Section 1 of Ordinance No. 21632, as amended by Ordinance No. 21681 and as supplemented by Ordinance No. 21638, by adding thereto the system of storm and surface water

drainage of the City, as the same has heretofore been added to, improved, and extended and as the same will be added to, improved, and extended for as long as any of the Parity Bonds are outstanding. Such additions, improvements, and extensions shall include the water system of the City, should the municipal sewer system ever be combined with such water system.

"Term Bond Retirement Account" means the Term Bond Retirement Account of the Bond Fund created by Ordinance No. 25562.

"Term Bonds" mean Parity Bonds designated by the City as term bonds.

"Treasurer" means the duly appointed and acting Treasurer of the City or the successor to the duties of that office.

"2015 Bonds" mean the outstanding Sewer Revenue and Refunding Bonds, 2015, issued pursuant to Ordinance No. 28287.

"2016 Bonds" mean the 2016A Bonds and the 2016B Bonds.

"2016A Bonds" mean the City of Tacoma, Washington, Sewer Revenue Refunding Bonds, 2016A, issued pursuant to Ordinance No. 28355.

"2016B Bonds" mean the City of Tacoma, Washington, Sewer Revenue Refunding Bonds, 2016B, issued pursuant to Ordinance No. 28355.

"2018 Bonds" mean the City of Tacoma, Washington, Sewer Revenue Bonds, 2018, issued pursuant to Ordinance No. 28534.

"ULID Assessments" mean all assessments (including any interest and penalties) levied in a utility local improvement district for the acquisition or construction of improvements to and extensions of the System if those assessments are pledged to be paid into the Bond Fund. In the case of ULID

Assessments payable in installments, ULID Assessments shall be allocated to the years in which they would be received if the unpaid principal balance of each assessment roll were paid over the remaining number of installments with interest thereon at the rate and in the manner provided in the ordinance confirming the assessment roll.

"Variable Interest Rate" means a variable interest rate or rates to be borne by a series of Parity Bonds or any one or more maturities within a series of Parity Bonds. The method of computing such variable interest rate shall be specified in the bond ordinance authorizing such series of Parity Bonds. Such variable interest rate shall be subject to a Maximum Interest Rate and there may be an initial rate specified, in each case as provided in such bond ordinance, or a stated interest rate that may be changed from time to time as provided in the bond ordinance authorizing such bonds. Such bond ordinance shall also specify either (a) the particular period or periods of time or manner of determining such 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 Bonds" for any period of time means Parity Bonds that during such period bear a Variable Interest Rate, provided that Parity Bonds the interest rate on which shall have been fixed for the remainder of the term thereof shall no longer be Variable Interest Rate Bonds.

"WIFIA Interest Rate" equals the fixed interest rate per annum as approved pursuant to this ordinance.

"WIFIA Lender" means 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.

"WIFIA Loan" means the loan made by the WIFIA Lender to the City pursuant to the WIFIA Loan Agreement in accordance with the Act.

"WIFIA Loan Agreement" means that certain WIFIA Loan Agreement by and between the City and the WIFIA Lender, authorized to be executed and delivered by the City pursuant to this ordinance, in substantially the form set forth at Exhibit "A" with appropriate or necessary revisions, insertions, or deletions, depending upon the omissions and variations as permitted or required hereby.

(b) Interpretation. In this ordinance, unless the context otherwise requires:

(1) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision, or clause hereof, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this ordinance;

(2) Words of the masculine or feminine gender shall mean and include correlative words of any gender and words importing the singular number shall mean and include the plural number and vice versa;

(3) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, and other legal entities, including public bodies, as well as natural persons;

(4) Any headings preceding the text of the several articles and sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect; and

(5) All references herein to "articles," "sections," and other subdivisions or clauses are to the corresponding articles, sections, subdivisions, or clauses hereof.

Section 2. Findings; Compliance with Parity Conditions.

The City Council hereby finds that it is in the public interest for the City to undertake the Project, to enter into the WIFIA Loan Agreement, and to issue the Bond to finance a portion of the costs of the Project.

On or prior to the closing of the Bond the City shall satisfy, or cause to be satisfied, the conditions relating to the execution and delivery of Future Parity Bonds (as defined in the Outstanding Parity Bond Ordinances), as set forth in the Outstanding Parity Bond Ordinances for the then-outstanding Outstanding Parity Bonds. Upon the satisfaction of such conditions, the Bond authorized herein shall constitute a "Parity Bond" under (and as defined in) the Outstanding Parity Bond Ordinances and shall have a lien and charge on Net Revenues and ULID Assessments equal in rank with the lien and charge upon the Net Revenues and ULID Assessments to pay and secure the payment of the then-outstanding Outstanding Parity Bonds.

Section 3. Authorization and Description of Bond.

The City is hereby authorized to issue and sell the Bond in the principal amount of not to exceed $21,000,000, including any interest that is capitalized in accordance with the terms of the WIFIA Loan Agreement, to finance costs of the Project, all as described in and in accordance with the WIFIA Loan Agreement, substantially in the form presented to the Council and attached hereto as Exhibit "A" and incorporated herein by this reference. The cost of all necessary appraisals, negotiation, closing, architectural, engineering, financial, legal and other consulting services, inspection and testing, demolition, administrative expenses, and other costs incurred in connection with the foregoing capital improvements shall be deemed a part of the capital costs of such Project. Such Project shall be complete with all necessary equipment, extensions, and appurtenances.

The Bond shall be dated as of its date of delivery to the WIFIA Lender; shall mature on the Final Maturity Date; shall be in one denomination; shall bear interest on the Outstanding WIFIA Loan Balance at the WIFIA Interest Rate, 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, thirty-day months; provided, however, the Outstanding WIFIA Loan Balance shall bear interest at the Default Rate upon the occurrence and continuation of an Event of Default as provided in the WIFIA Loan Agreement.

Interest on the Outstanding WIFIA Loan Balance shall be payable semiannually on each June 1 and December 1 in accordance with the WIFIA Loan

Agreement, and principal on the Outstanding WIFIA Loan Balance shall be payable annually on each December 1 as provided in the WIFIA Loan Agreement.

The Bond shall be a special obligation of the City payable only from the Bond Fund and shall be payable and secured as provided herein. The Bond shall not be a general obligation of the City, the State, or any political subdivision thereof.

Section 4. Registration, Exchange and Payments.

(a) Bond Registrar. The Finance Director, in its sole discretion, is hereby authorized to designate either the City Treasurer or U.S. Bank National Association, as fiscal agent for local governments in the State as designated by the State, as the Bond Registrar for the Bond. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond if transferred or exchanged in accordance with the provisions of the Bond and this ordinance and to carry out all of the Bond Registrar's powers and duties under this ordinance and the WIFIA Loan Agreement.

(b) Registered Ownership. The City and the Bond Registrar may deem and treat the Registered Owner as the absolute owner of the Bond for all purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

(c) Transfer or Exchange of Registered Ownership. The Bond shall not be transferred, except as provided in the WIFIA Loan Agreement or unless (i) the corporate name of the Registered Owner is changed and the transfer is necessary to effect such change, or (ii) the transferee is a successor in interest of the Registered Owner by operation of law.

(d) Place and Medium of Payment. Payments under the WIFIA Loan Agreement, including principal of and interest on the Bond, shall be payable to the Registered Owner 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 by wire transfer or other means mutually acceptable to the Registered Owner and the City, and in accordance with the WIFIA Loan Agreement.

Section 5. Redemption and Prepayment.

The Bond shall be subject to mandatory and optional redemption or prepayment, in whole or in part, on the dates and under the terms set forth in the WIFIA Loan Agreement. Notice of redemption or prepayment of the Bond shall be provided by the City to the Registered Owner in accordance with the WIFIA Loan Agreement.

Section 6. Form of Bond.

The Bond shall be in substantially the form set forth at Exhibit "A" to the WIFIA Loan Agreement, with appropriate or necessary insertions or deletions, depending upon the omissions and variations as permitted or required hereby and by the WIFIA Loan Agreement.

Section 7. Execution of the Bond.

The Bond shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and City Clerk of the City, and the seal of the City shall be impressed, imprinted, or otherwise reproduced thereon.

Only a Bond that bears a Certificate of Authentication in the form set forth in Exhibit "A" to the WIFIA Loan Agreement, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that such Bond has been duly executed, authenticated, and delivered and is entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bond shall cease to be an officer or officers of the City before the Bond shall have been authenticated or delivered by the Bond Registrar, or issued by the City, such Bond may nevertheless be authenticated, delivered, and issued and upon such authentication, delivery, and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Bond may also be signed and attested on behalf of the City by such persons who at the date of the actual execution of the Bond, are the proper officers of the City, although at the original date of such Bond any such person shall not have been such officer of the City.

Section 8. Application of Bond Proceeds.

The Bond shall be issued as a draw-down obligation to evidence a non-revolving loan established with the WIFIA Lender. Draws on the Bond shall be made pursuant to Requisitions pursuant to the terms of the WIFIA Loan Agreement. The City shall maintain, or caused to be maintained, records of amounts drawn on the Bond. The Council hereby delegates to each Designated Representative

authority to execute Requisitions pursuant to the terms of this ordinance and the WIFIA Loan Agreement.

Proceeds of draws shall be deposited into a fund or account created by the Finance Director ("Project Fund"), and subaccounts therein as necessary. Such proceeds shall be used to pay and/or reimburse the City for costs of the Project as provided in the WIFIA Loan Agreement.

Section 9. Sewer Fund.

A special fund of the City has been created and designated the "Sewer Fund." The City covenants and agrees that so long as any of the Parity Bonds are outstanding, it will pay or cause to be paid into the Sewer Fund all Gross Revenues exclusive of ULID Assessments and earnings on money and investments in any construction fund, the Rate Stabilization Fund, the Bond Fund, and any rebate fund, which earnings may be retained in such funds or accounts or transferred to other funds or accounts as permitted or required by this ordinance.

The amounts on deposit in the Sewer Fund shall be used only for the following purposes and in the following order of priority:

(a) To pay or provide for Costs of Maintenance and Operation.

(b) To make all payments required to be made into the Interest Account in the Bond Fund or to make any Payment under Payment Agreements that meet the requirements to be on a parity of lien with the Parity Bonds in accordance with Section 16.

(c) To make all payments required to be made into the Principal Account in the Bond Fund and to make all payments into the Term Bond Retirement Account in the Bond Fund.

(d) To make all payments pursuant to a reimbursement agreement ranking on a parity of lien with the Parity Bonds and entered into in connection with a Qualified Letter of Credit, Qualified Insurance, or other equivalent credit facility with respect to the Reserve Fund, and into any other reserve fund created in the future for the payment of debt service on Parity Bonds; and to make all payments pursuant to a reimbursement agreement ranking on a parity of lien with the Parity Bonds and entered into in connection with a letter of credit, insurance, or other equivalent credit enhancement with respect to Variable Interest Rate Bonds; provided, that if there is not sufficient money to make all payments under reimbursement agreements, the payments will be made on a pro rata basis.

(e) To make all payments required to be made into the Reserve Fund to secure the payment of any Covered Bonds, and into any other reserve fund created in the future for the payment of debt service on Parity Bonds.

(f) To make all payments required to be made into any special fund or account created to pay or secure the payment of obligations issued having a lien upon amounts in the Sewer Fund junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds.

(g) To pay any taxes (or payments in lieu of taxes) upon the System payable to the City.

(h) To make payments into the Rate Stabilization Fund for the purposes set forth in Section 11 or for any lawful purpose of the City related to the System.

To the extent that fees and expenses (other than debt service) due by the City to the WIFIA Lender qualify as Costs of Maintenance and Operation, such fees and expenses shall be paid under subsection (a) above. Otherwise such fees shall be paid under subsection (h) above.

Section 10. Bond Fund.

(a) A special fund of the City designated the "City of Tacoma Sewer Revenue Bond Fund" ("Bond Fund") has previously been created by the City. The Bond Fund shall be used solely for the purposes of paying the principal of, premium, if any, and interest on Parity Bonds and retiring Parity Bonds prior to maturity in the manner provided herein or in any Parity Bond Ordinance.

The Bond Fund contains four funds and accounts: the Interest Account, the Principal Account, the Term Bond Retirement Account, and the Reserve Fund. At the option of the City, separate funds and accounts may be created in the Bond Fund for the purpose of paying or securing the payment of principal, premium, if any, and interest on any series of Parity Bonds.

The City hereby obligates and binds itself irrevocably to set aside and to pay into the Bond Fund all ULID Assessments and out of the Sewer Fund certain fixed amounts sufficient (together with other available funds on hand and paid into the Bond Fund) to pay the principal of, premium, if any, and interest on the Bond in accordance with its terms and the terms of the WIFIA Loan Agreement and all other Parity Bonds outstanding pursuant to this ordinance and all other Parity Bond

Ordinances when due, either at maturity or in accordance with the terms of any Sinking Fund Requirement schedule established for the retirement of Term Bonds. The fixed amounts to be paid into the Bond Fund, to the extent that such payments are not made from ULID Assessments, bond proceeds, or from other legally available money, shall be made out of the Sewer Fund in the following order of priority: first, into the Interest Account; second, into the Principal Account and Term Bond Retirement Account; and third, into the Reserve Fund. The City may create subaccounts within such funds and accounts for the purpose of paying the Bond.

(1) Interest Account. In the case of all Parity Bonds, no later than the day prior to the date on which an installment of interest is due on any Parity Bonds, the City shall transfer from the Sewer Fund to the Interest Account in the Bond Fund an amount (together with other money as is on hand and available in such Account) equal to the installment of interest then due on all outstanding Parity Bonds.

(2) Principal Account and Term Bond Retirement Account. No later than the day prior to the date upon which an installment of principal on Parity Bonds that are Serial Bonds is due, the City shall transfer from the Sewer Fund to the Principal Account in the Bond Fund an amount (together with such other money as is on hand and available in such Account) equal to the installment of principal then due on all outstanding Parity Bonds that are Serial Bonds.

No later than the day prior to each Sinking Fund Requirement date, the City will transfer from the Sewer Fund to the Term Bond Retirement Account an amount

(together with such other money as is available and on hand in such account) equal to the Sinking Fund Requirement for such date.

The City will apply all the money paid into the Term Bond Retirement Account to the redemption or purchase of Term Bonds on the next ensuing Sinking Fund Requirement due date (or may so apply such money prior to the Sinking Fund Requirement due date). In addition to redeeming Term Bonds, the City may apply the money paid into the Term Bond Retirement Account to retire Term Bonds by purchasing such Term Bonds at a purchase price (including any brokerage charge) that is not in excess of the principal amount thereof, in which event the principal of such Term Bonds so purchased will be credited against the ensuing Sinking Fund Requirement. If, as of any January 1, the principal amount of Term Bonds retired by purchase or redemption exceeds the cumulative amount required to be redeemed by Sinking Fund Requirement on or before such January 1, then the excess may be credited against Sinking Fund Requirements in the manner determined by the City at the time of the purchase or redemption. Any such purchase of Term Bonds by the City may be made with or without tenders of such Term Bonds in such manner as the City will deem, in its discretion, to be in its best interest.

(3) Reserve Fund.

(A) A Reserve Fund has been created in the Bond Fund for the purpose of securing the payment of the principal of and interest on the Covered Bonds. The City may create separate reserve funds and establish separate Reserve Fund Requirements, which may be zero to secure the payment of the

principal of and interest on other Parity Bonds. Any such Reserve Fund Requirement and related provisions shall be as set forth in the Parity Bond Ordinance relating to such Covered Bonds. The Bond shall not be issued as a Covered Bond. The Reserve Fund Requirement for the Bond is zero.

The City may, at any time, substitute Qualified Insurance or a Qualified Letter of Credit for the money and investments in the Reserve Fund or may substitute money and investments for Qualified Insurance or a Qualified Letter of Credit in accordance with this subsection. The face amount of such Qualified Insurance or Qualified Letter of Credit shall be at least equal to the amount of the money or investments for which the Qualified Insurance or Qualified Letter of Credit is substituted.

(B) Valuation of the amount in the Reserve Fund and all subaccounts therein shall be made by the City on each December 31 and may be made on any other date. Such valuation shall be at the market value of the obligations in such fund and such subaccounts (including accrued interest); provided, that investments which mature within one year shall be valued at their maturity value.

(C) In the event of the issuance of any Future Parity Bonds that are Covered Bonds, the Parity Bond Ordinance authorizing the issuance of such Future Parity Bonds shall provide for approximately equal monthly payments into the Reserve Fund from the money in the Sewer Fund, in such amounts and at such times so that by no later than five years from the date of issuance of such Future Parity Bonds or by the final maturity established for such series of Future

Parity Bonds, whichever occurs first, there will be credited to the Reserve Fund an amount equal to the Reserve Fund Requirement. Notwithstanding the foregoing provisions of this subparagraph (C), the proceedings authorizing the issuance of Future Parity Bonds that are Covered Bonds, to the extent permitted under the Code, may provide for payments into the Reserve Fund from the proceeds of such Future Parity Bonds or from any other money lawfully available therefor, or may provide for the City to obtain Qualified Insurance or a Qualified Letter of Credit for amounts required by subparagraph (E) of this section or parallel provisions in other Parity Bond Ordinances to be paid out of the Reserve Fund. The face amount of any such Qualified Insurance or Qualified Letter of Credit may be credited against the amounts required to be maintained in the Reserve Fund by this section or parallel provisions in other Parity Bond Ordinances to the extent that such payments and credits to be made are insured by an insurance company or guaranteed by a letter of credit from a financial institution.

On receipt of a notice of cancellation of any Qualified Letter of Credit or Qualified Insurance or upon notice that the entity providing the Qualified Letter of Credit or Qualified Insurance no longer meets the requirements specified herein, the City shall substitute a Qualified Letter of Credit or Qualified Insurance in the amount required to make up the deficiency created in the Reserve Fund or in the alternative shall create a special account in the Sewer Fund and deposit therein, on or before the 25th day of each of the 36 succeeding calendar months (commencing with the 25th day of the calendar month next following the date of the notice) one thirty-sixth of the amount sufficient, together with other money and investments on

deposit in the Reserve Fund, to equal the Reserve Fund Requirement in effect as of the date the cancellation or disqualification of the entity becomes effective. Those amounts shall be deposited in the special account from money in the Sewer Fund after making provision for payment of Costs of Maintenance and Operation and for required payments into the Bond Fund. Amounts on deposit in that special account shall not be available to pay debt service on Covered Bonds or for any other purpose of the City, and shall be transferred to the Reserve Fund on the effective date of any cancellation of a Qualified Letter of Credit or Qualified Insurance to make up all or part of the deficiency caused thereby. Amounts in that special account or in the Reserve Fund may be transferred to the Sewer Fund and used for any purpose if and when a qualifying Qualified Letter of Credit or Qualified Insurance is obtained.

(D) If at any time the money and value of Permitted Investments in the Reserve Fund shall exceed the amount of money and value of Permitted Investments then required to be maintained therein, such excess may be transferred to the Sewer Fund.

(E) In the event that there shall be a deficiency in the Interest Account, Principal Account, or Term Bond Retirement Account in the Bond Fund with respect to Covered Bonds, the City shall promptly make up such deficiency from the Reserve Fund by the withdrawal of cash therefrom for that purpose and by the sale or redemption of obligations held in the Reserve Fund, if necessary, in such amounts as will provide cash in the Reserve Fund sufficient to make up any such deficiency, and if a deficiency still exists immediately prior to a Payment Date

and after the withdrawal of cash, the City shall then draw from any Qualified Letter of Credit, Qualified Insurance, or other equivalent credit facility in sufficient amount to make up the deficiency. Such draw shall be made at such times and under such circumstances as the agreement for such Qualified Letter of Credit or Qualified Insurance shall provide. The City covenants and agrees that any deficiency created in the Reserve Fund by reason of any withdrawal therefrom for payment into the Interest Account, Principal Account, or Term Bond Retirement Account shall be made up from money in the Sewer Fund first available after providing for the required payments into such Interest, Principal, and Term Bond Retirement Accounts and after providing for payments under a reimbursement agreement entered into by the City under this ordinance. Any such deficiency shall be made up within 12 months of such deficiency.

(F) When a series of Covered Bonds is refunded in whole or in part, money may be withdrawn from the Reserve Fund to pay or provide for the payment of refunded Covered Bonds; provided that immediately after such withdrawal there shall remain in or be credited to the Reserve Fund money and Permitted Investments in an amount equal to the Reserve Fund Requirement or so much thereof as is then required to be maintained.

(b) In making the payments and credits to the Principal Account, Interest Account, Term Bond Retirement Account, and Reserve Fund required by this Section 10 and parallel provisions in other Parity Bond Ordinances, to the extent that such payments are made from bond proceeds, from money in any Capitalized

Interest account, or from other money that may legally be available, such payments are not required to be made from the Sewer Fund.

(c) Money in the Bond Fund shall be transmitted to the Bond Registrar in amounts sufficient to meet the maturing installments of principal of, premium, if any, and interest on all Parity Bonds when due. All money remaining in the Bond Fund after provision for the payment in full of the principal of, premium, if any, and interest on all Parity Bonds shall be returned to the Sewer Fund.

Subject to the foregoing sentence, the Bond Fund shall be drawn upon solely for the purpose of paying the principal of, premium, if any, and interest on Parity Bonds. Money set aside from time to time with the Bond Registrar for such payment shall be held in trust for the owners of Parity Bonds in respect of which the same shall have been so set aside. Until so set aside, and except as otherwise provided herein, all money in the Bond Fund shall be held in trust for the benefit of the owners of all Parity Bonds at the time outstanding equally and ratably.

(d) Money in the Bond Fund may, at the option of the City, be invested and reinvested as permitted by law in Permitted Investments maturing, or which are redeemable at the option of the owner, prior to the date needed or prior to the maturity date of the final installment of principal of the Parity Bonds payable out of the Bond Fund, but only to the extent that the same are acquired, valued, and disposed of at Fair Market Value. At the City's option, earnings on investments in the Bond Fund may be retained in the Bond Fund or transferred to the Sewer Fund, except that earnings on investments in the Reserve Fund shall first be applied to remedy any deficiency in such fund.

(e) Money in each of the subaccounts and funds established in this Section 10 may be used, if necessary, to pay Rebate Amounts to the extent that such Rebate Amounts are directly attributable to earnings on such subaccount.

Section 11. Rate Stabilization Fund.

A special fund of the City designated the "Rate Stabilization Fund" has been established by the City in the Sewer Fund. In accordance with the priorities set forth in this ordinance, the City may from time to time deposit Net Revenues into the Rate Stabilization Fund and may from time to time withdraw amounts therefrom to enhance rate stability or for other lawful purposes of the City related to the System.

Section 12. Security for Parity Bonds.

All Parity Bonds are special limited obligations of the City payable from and secured solely by a charge and lien as set forth in this paragraph. There are hereby pledged as security for the payment of the principal of, premium, if any, and interest on all Parity Bonds in accordance with the provisions of this ordinance, subject to the provisions of this ordinance restricting or permitting the application thereof, (a) the proceeds of the sale of Parity Bonds to the extent held in funds established or continued by this ordinance, (b) Net Revenues and ULID Assessments, and (c) the money and assets credited to the Sewer Fund and the Bond Fund and the income therefrom. The pledge of Net Revenues, money, and assets credited to the Sewer Fund and Bond Fund and ULID Assessments constitutes a lien and charge on the Net Revenues, the funds, and ULID Assessments superior to all other charges of any kind or nature.

All Parity Bonds hereafter outstanding shall be equally and ratably payable and secured hereunder without priority by reason of date of adoption of the ordinance providing for their issuance or by reason of their number or date of sale, issuance, execution or delivery, or by the liens, pledges, charges, trusts, assignments, and covenants made herein, except as otherwise expressly provided or permitted in this ordinance and except as to insurance which may be obtained by the City to insure the repayment of one or more series or maturities within a series.

Parity Bonds shall not in any manner or to any extent constitute general obligations of the City or of the State, or any political subdivision of the State, or a charge upon any general fund or upon any money or other property of the City or of the State, or of any political subdivision of the State, not specifically pledged thereto by this ordinance.

Section 13. Adequacy of Revenue of System to Make Required Payments.

The Council declares, in fixing the amounts to be paid into the Bond Fund as provided herein, that it has exercised due regard for Costs of Maintenance and Operation and has not obligated the City to set aside and pay into the Bond Fund a greater amount of the Gross Revenues than in its judgment will be available over and above such Costs of Maintenance and Operation and the amount of Gross Revenues previously pledged.

Section 14. Defeasance.

The Bond shall not be subject to defeasance.

Section 15. Covenants.

The City covenants and agrees with the owners of the Bond, from time to time for as long as the Bond is outstanding, as follows:

(a) Rate Covenant – General. The City shall establish, maintain, and collect rates or charges in connection with the ownership and operation of the System that shall be fair and nondiscriminatory and adequate to provide Gross Revenues sufficient for the payment of the principal of and interest on all Parity Bonds for which payment has not otherwise been provided and all amounts that the City is obligated to set aside in the Bond Fund, for the proper operation and maintenance of the System, and for the payment of all amounts that the City may now or hereafter become obligated to pay from Gross Revenues.

(b) Rate Covenant – Coverage. The City shall establish, maintain, and collect rates or charges in connection with the ownership and operation of the System sufficient to provide Net Revenues in any calendar year hereafter in an amount equal to at least 1.25 times the Adjusted Annual Debt Service.

Solely for purposes of calculating the coverage requirement set forth above, there shall be added to Gross Revenues in any Fiscal Year any amount withdrawn from the Rate Stabilization Fund in such Fiscal Year and deposited in the Sewer Fund, and there shall be subtracted from Gross Revenues in any Fiscal Year any amount withdrawn from the Sewer Fund in such Fiscal Year and deposited in the Rate Stabilization Fund. Credits to or from the Rate Stabilization Fund that occur within 90 days after the end of a Fiscal Year may be treated as occurring within such Fiscal Year.

The calculation of the coverage requirement set forth above, and in Section 17, and the City's compliance therewith, may be made solely with reference to this ordinance without regard to future changes in generally accepted accounting principles. If the City has changed one or more of the accounting principles used in the preparation of its financial statements, because of a change in generally accepted accounting principles or otherwise, then an event of default relating to this coverage requirement shall not be considered an event of default if the coverage requirement ratio would have been complied with had the City continued to use those accounting principles employed at the date of the most recent audited financial statements prior to the date of this ordinance.

(c) Maintenance and Operation Standards. The City will at all times keep and maintain the System in good repair, working order, and condition, and will at all times operate the System and the business in connection therewith in an efficient manner and at a reasonable cost.

(d) Disposal of Properties. The City shall not sell, mortgage, lease, or otherwise dispose of the properties constituting the System except as provided by law and subject to such additional restrictions as are provided in this section and as may be provided in a reimbursement agreement with respect to Qualified Insurance or a Qualified Letter of Credit, as follows:

(1) The City will not sell, mortgage, lease, or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition, provision is made for the payment, redemption, or other retirement of all Parity Bonds then outstanding.

(2) Except as provided in paragraph (3) below, the City will not sell, mortgage, lease, or otherwise dispose of any part of the System in excess of 5 percent of the book value of the net utility plant of the System unless provision is made for the payment, redemption, or other retirement of a principal amount of Parity Bonds equal to the greater of the following amounts:

(A) An amount that will be in the same proportion to the net Bond Obligation of Parity Bonds then outstanding (defined as the total Bond Obligation of such Parity Bonds outstanding less the amount of cash and investments in the Principal Account and Term Bond Retirement Account in the Bond Fund) that the revenues attributable to the part of the System sold or disposed of for the 12 preceding months bears to the total revenues for such period; or

(B) An amount that will be in the same proportion to the net Bond Obligation of Parity Bonds then outstanding that the book value of the part of the System sold or disposed of bears to the book value of the entire System immediately prior to such sale or disposition.

(3) The City may sell, lease, mortgage, or otherwise dispose of any part of the System which shall 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.

(4) The proceeds of the sale, lease, or disposal of any part of the System shall be deposited in the Sewer Fund.

(5) If the sale, lease, mortgage, or other disposal of any part of the System is valued in excess of 10 percent of the book value of the physical assets of the System, an opinion of an Engineer, based on financial statements of the System for the most recent Fiscal Year available, shall be delivered in connection with such disposition demonstrating that such sale, mortgage, lease, or other disposal would not prevent the City from meeting the requirements of Section 15(b).

(e) No Free Service. Except as permitted by law for the support of the poor and infirm and otherwise permitted by law in an amount per year not exceeding 1/10 of 1 percent of annual Costs of Maintenance and Operation, the City will not furnish sanitary and storm sewage collection and disposal service to any customer whatsoever free of charge.

(f) Books and Accounts – Operating Statement. The City shall keep and maintain proper books and accounts with respect to the operations, income, and expenditures of the System that are in accordance with proper and legal accounting procedures. On or before 120 days after each Fiscal Year of the City's operation of the System, it will prepare or cause to be prepared an operating statement of the System for such preceding Fiscal Year. Each such statement shall contain a statement in detail of the Gross Revenues, Costs of Maintenance and Operation, and expenses for capital purposes of the System for such Fiscal Year, shall contain a statement as of the end of such year showing the status of all the funds and accounts created by the various ordinances pertaining to the operation of the System and authorizing the issuance of outstanding bonds payable from the revenue of the System, and shall contain a statement of the

number of sanitary and storm sewage collection and disposal customers per class of customer at the end of such year. Copies of such statement shall be placed on file in the office of the Department of Finance and shall be open to inspection at any reasonable time by the Registered Owner of the Bond or of any other outstanding bonds of the City payable out of the Gross Revenues. Upon the request of any owner of Parity Bonds, the City shall provide a copy of such statement to such owner. All expenses incurred in the maintenance of such books and accounts and the preparation of such statement may be regarded and paid as an expense of operation of the System.

(g) Insurance. The City will keep the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents, or casualties, at least to the extent that insurance is usually carried by municipal corporations operating like properties; provided, however, that the City may, if deemed necessary and advisable by the Council, institute or continue a self-insurance program with respect to any or all of the aforementioned risks. In the event of any loss or damage, the City will promptly deposit the insurance proceeds into any construction fund hereafter created for the System, and use such funds to repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy or self-insurance funding for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the City, the proceeds of such insurance or self-insurance funding shall be transferred to the Reserve Fund to the extent that such transfer shall be necessary to make up any deficiency in the Reserve Fund and the

balance, if any, shall, at the option of the City, be used for repairs, renewals, replacements, or additions to or extension of the System or be used in the retirement of Parity Bonds prior to maturity, either by purchase at prices not to exceed the next applicable redemption price or by call for redemption.

(h) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to the Bond for at least three years after the Bond matures or is redeemed (whichever is earlier); however, if the Bond is redeemed and refunded, the City will retain its records of accounting and monitoring at least three years after the earlier of the maturity or redemption of the obligations that refunded the Bond.

Section 16. Parity Derivative Products.

For purposes of this Section 16, the following words shall have the following definitions:

(a) "Payment" means any payment (designated as such by an ordinance or resolution) required to be made by or on behalf of the City under a Payment Agreement and which is determined according to a formula set forth in the Payment Agreement.

(b) "Parity Payment Agreement" means a Payment Agreement under which the City's payment obligations are expressly stated to be secured by a pledge of and lien on Net Revenues on an equal and ratable basis, with the Net Revenues required to be paid into the Bond Fund to pay and secure the payment of the principal of and interest on Parity Bonds.

(c) "Payment Agreement" means a written agreement, for the purpose of managing or reducing the City's exposure to fluctuations or levels of interest rates, currencies, or commodities or for other interest rate, investment, asset, or liability management purposes, entered into on either a current or forward basis by the City and a Qualified Counterparty, as authorized by any applicable laws of the State and City policy. Such agreement may or may not be characterized by a structure of reciprocity of payment.

(d) "Payment Date" means any date specified in the Payment Agreement on which a City Payment or Receipt is due and payable under the Payment Agreement.

(e) "Receipt" means any payment (designated as such by an ordinance or resolution) to be made to, or for the benefit of, the City under a Payment Agreement by the Payor.

(f) "Payor" means a Qualified Counterparty to a Payment Agreement that is obligated to make one or more payments thereunder.

(g) "Qualified Counterparty" means a party (other than the City or a party related to the City) who is the other party to a Payment Agreement that has or whose obligations are unconditionally guaranteed by a party that has at least an investment grade rating from a rating agency (who, if the City's Parity Bonds are rated by Moody's, must have a rating of at least "A") and who is otherwise qualified to act as the other party to a Payment Agreement under any applicable laws of the State.

A Payment made under a Payment Agreement may be on a parity with the Bond if the Payment Agreement satisfies the requirements for Future Parity Bonds described in Section 17, taking into consideration regularly scheduled Payments and Receipts (if any) under a Payment Agreement. The following shall be conditions precedent to the use of any Payment Agreement on a parity with the Bond:

(1) The City shall obtain an opinion of Bond Counsel on the due authorization and execution of such Payment Agreement, the validity and enforceability thereof, and opining that the action proposed to be taken is authorized or permitted by this ordinance or the applicable provisions of any supplemental ordinance and will not adversely affect the excludability for federal income tax purposes of the interest on any outstanding Parity Bonds.

(2) Prior to entering into a Payment Agreement, the City shall adopt an ordinance which shall:

(A) set forth the manner in which the Payments and Receipts are to be calculated and a schedule of Payment Dates;

(B) establish general provisions for the rights of parties to Payment Agreements; and

(C) set forth such other matters as the City deems necessary or desirable in connection with the management of Payment Agreements as are not clearly inconsistent with the provisions of this ordinance.

The Payment Agreement may oblige the City to pay, on one or more scheduled and specified Payment Dates, the Payments in exchange for the Payor's

obligation to pay or to cause to be paid to the City, on scheduled and specified Payment Dates, the Receipts. The City may also enter into Payment Agreements that are not reciprocated by the other party to the agreement.

If the City enters into a Parity Payment Agreement, Payments shall be made from the Interest Account in the Bond Fund and Annual Debt Service shall include any regularly scheduled City Payments adjusted by any regularly scheduled Receipts during a Fiscal Year. Receipts shall be paid directly into the Bond Fund. Obligations to make unscheduled payments, such as termination payments, may not be entered into on a parity with the Parity Bonds.

Nothing in this section shall preclude the City from entering into Payment Agreements with a claim on Net Revenues junior to that of the Bond. Furthermore, nothing in this section shall preclude the City from entering into obligations on a parity with the Bond in connection with the use of Payment Agreements or similar instruments if the City obtains an opinion of Bond Counsel that the obligations of the City thereunder are consistent with this ordinance.

Section 17. Future Parity Bonds.

(a) The City reserves the right to issue Future Parity Bonds from time to time as may be required for any lawful purpose of the City relating to the System, including, but not limited to, acquiring, constructing, and installing additions and improvements to and extensions of, acquiring necessary equipment for, or making necessary renewals, replacements, or repairs and capital improvements to the System and refunding any outstanding indebtedness.

(b) The City covenants that Future Parity Bonds shall be issued only upon compliance with the following conditions:

(1) At the times of the issuance of such Future Parity Bonds there is no deficiency in the Bond Fund or in any of the funds and accounts therein.

(2) With respect to Covered Bonds, the ordinances authorizing the issuance of the Future Parity Bonds shall require that there shall be paid into the Reserve Fund in the Bond Fund (A) from the proceeds of such Future Parity Bonds an amount such that the amount on deposit in the Reserve Fund, allowing for any amount covenanted in an ordinance authorizing the issuance of outstanding Parity Bonds to be paid into such Fund over five years, is equal to the Reserve Fund Requirement, or (B) from the Sewer Fund in approximately equal monthly payments, such amounts and at such times so that by no later than five years from the date of issuance of such Future Parity Bonds or by the final maturity established for such series of Future Parity Bonds, whichever occurs first, there will be credited to the Reserve Fund an amount equal to the Reserve Fund Requirement. Upon the issuance of any series of Future Parity Bonds, the City shall recalculate the Reserve Fund Requirement, which recalculated Reserve Fund Requirement shall become effective as of such date of recalculation.

(3) If such Future Parity Bonds are being issued to pay costs incurred or to be incurred for purposes other than refunding purposes as described in subsection 17(c), there shall be on file with the City Clerk either:

(A) A certificate of the Finance Director of the City stating that Net Revenues in any 12 consecutive months out of the most recent 24 months preceding the delivery of the bonds then proposed to be issued, as determined from the financial statements of the System, were not less than 1.25 times Maximum Adjusted Annual Debt Service on all outstanding Parity Bonds and the bonds then proposed to be issued. In issuing such certificate, the Finance Director shall reflect in the certificate the Net Revenues he or she estimates would have been collected in such 12-month period if the Council at any time on or prior to the date of delivery of the bonds proposed to be issued had adopted any adjustment in the rates, fees, and charges collected by the City for the services to the System if such new rates, fees, and charges had been in effect for the entire 12-month period, or

(B) A certificate of an Engineer or a Certified Public Accountant showing that the "Adjusted Net Revenues" (as determined herein) for each calendar year during the life of the bonds proposed to be issued will equal not less than 1.25 times Maximum Adjusted Annual Debt Service on all outstanding Parity Bonds and the bonds then proposed to be issued.

The "Adjusted Net Revenues" shall be the Net Revenues for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Future Parity Bonds ("Base Period") as adjusted by such Engineer or Certified Public Accountant to take into consideration changes in Net Revenues estimated to occur under the following conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, shall be outstanding:

(1) the additional Net Revenues that would have been received if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of the Base Period and effective within 12 months had been in force during the full Base Period;

(2) the additional Net Revenues that would have been received if any facility of the System that became fully operational after the beginning of the Base Period had been so operating for the entire Base Period;

(3) the additional Net Revenues estimated by such Engineer or Certified Public Accountant to be received as a result of any additions and improvements to and extensions of any facilities of the System which are (a) under construction at the time of such certificate or (b) will be constructed or acquired from the proceeds of the Future Parity Bonds to be issued;

(4) the additional Net Revenues that would have been received if any customers added to the System during the Base Period or subsequent thereto were customers for the entire Base Period, and

(5) ninety percent of the additional Net Revenues estimated by such Engineer or Certified Public Accountant to be derived from the new customers that will be added to the System in the first 12 months after the completion of the construction of the improvements to be made thereto or from acquisitions out of the proceeds of the sale of such Future Parity Bonds.

Such Certified Public Accountant or Engineer may rely upon, and the Certified Public Accountant or Engineer's certificate shall have attached thereto,

financial statements of the System, certified by the Finance Director, showing income and expenses for the period upon which the same is based.

(c) Refunding Bonds. In the event that any Future Parity Bonds provided for in this section are issued for refunding purposes and the issuance of such refunding Future Parity Bonds results in a present value monetary saving to the City and such refunding Future Parity Bonds will not require an increase of greater than $5,000 in debt service payments to be paid in any fiscal or calendar year thereafter than would have been required to be paid in the same fiscal or calendar year for Annual Debt Service on the Parity Bonds being refunded, then paragraph (3) of subsection 17(b) need not be complied with to permit such refunding Future Parity Bonds to be issued, although the provisions of paragraphs (1) and (2) of subsection 17(b) must still be complied with.

(d) Junior Lien Bonds. Nothing herein shall prevent the City from issuing bonds, notes, warrants or other obligations payable from and secured by a lien and charge junior to the lien and charge securing the payment of Parity Bonds.

Section 18. Reimbursement Obligations.

In the event that the City elects to meet the requirements of with respect to the Reserve Fund as to any issue of Parity Bonds through the use of a Qualified Letter of Credit, Qualified Insurance, or other equivalent credit enhancement, the City may contract with the entity providing such Qualified Letter of Credit, Qualified Insurance, or other equivalent credit enhancement that the City's reimbursement obligation, if any, to such entity ranks on a parity of lien with the Parity Bonds.

In the event that the City elects additionally to secure any issue of Variable Interest Rate Bonds through the use of a letter of credit, insurance, or other equivalent credit enhancement, the City may contract with the entity providing such letter of credit, insurance, or other equivalent credit enhancement that the City's reimbursement obligation, if any, to such entity ranks on a parity of lien with the Parity Bonds; provided, that the payments due under such reimbursement agreement are such that if such reimbursement obligation were a series of Future Parity Bonds, such Future Parity Bonds could be issued in compliance with the provisions of Section 17.

Section 19. Sale of Bond.

(a) The Council has determined that it would be in the best interest of the City to delegate to the Designated Representatives for a limited time the authority to approve the final terms of the Bond and the WIFIA Loan Agreement and the WIFIA Interest Rate, Final Maturity Date, and redemption or prepayment terms of the Bond, subject to the following parameters, and such authority is hereby delegated:

(1) the principal amount of the Bond does not exceed $21,000,000, including any interest that is capitalized in accordance with the terms of the WIFIA Loan Agreement,

(2) the Final Maturity Date for the Bond is no later than December 1, 2057,

(3) the Bond is delivered to the WIFIA Lender at a price of par,

(4) the WIFIA Interest Rate does not exceed 3.00 percent, and

(5) the Bond conforms to all other terms of this ordinance.

Subject to the terms and conditions set forth in this Section 19, the form of WIFIA Loan Agreement, including the form of the Bond attached thereto, is hereby approved, and each Designated Representative is hereby authorized to negotiate and approve the final terms of the WIFIA Loan Agreement in coordination with Bond Counsel and the City Attorney's Office, and to execute and implement the WIFIA Loan Agreement and deliver the Bond, and such approval shall be conclusively evidenced by the execution thereof. The signature of one Designated Representative shall be sufficient to bind the City.

Following the execution of the WIFIA Loan Agreement, a Designated Representative shall provide a report to the City Council describing the final terms of the Bond approved pursuant to the authority delegated in this section. The authority granted to the Designated Representatives by this Section 19 shall expire on December 31, 2020. If the WIFIA Loan Agreement has not been executed by December 31, 2020, the authorization for the issuance of the Bond shall be rescinded and the Bond shall not be issued nor its sale approved unless such Bond shall have been reauthorized by ordinance of the City Council. The ordinance re-authorizing the issuance and sale of such Bond may be in the form of a new ordinance repealing this ordinance in whole or in part, or may be in the form of an amendatory ordinance establishing terms and conditions for the authority delegated under this section.

(b) Delivery of Bond; Documentation. Upon the passage and approval of this ordinance, the proper officials of the City, including the City Manager, Finance

Director, Treasurer, and City Clerk, are authorized and directed to undertake all action necessary for the prompt approval, execution and delivery of the Bond and the WIFIA Loan Agreement to the WIFIA Lender and further to execute all closing certificates and documents required to effect the closing and delivery of the Bond and the WIFIA Loan Agreement and to provide for payment of costs of issuance of the Bond.

(c) Borrower's Authorized Representative. The City's Environmental Services Director, or his or her designee, shall serve as the Borrower's Authorized Representative for purposes of the WIFIA Loan Agreement.

Section 20. Supplemental Ordinances.

(a) The Council from time to time and at any time may pass an ordinance or ordinances supplemental hereto, which ordinance or ordinances thereafter shall become a part of this ordinance, for any one or more or all of the following purposes:

(1) To add to the covenants and agreements of the City contained in this ordinance other covenants and agreements thereafter to be observed which shall not adversely affect the interests of the owners of any Parity Bonds or to surrender any right or power reserved to or conferred upon the City.

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this ordinance or any ordinance authorizing Parity Bonds in regard to matters or questions arising under such ordinances as the Council may deem

necessary or desirable and not inconsistent with such ordinances and which shall not adversely affect the interest of the owners of the Parity Bonds.

Any such supplemental ordinance of the City may be passed without the consent of the owners of any Parity Bonds at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section, if the City obtains an opinion of Bond Counsel to the effect that such supplemental ordinance is solely for one or more of the purposes stated above and will not adversely affect the interests of the owners of Parity Bonds.

(b) With the consent of the owners of not less than 51 percent in aggregate Bond Obligations of the Parity Bonds at the time outstanding, the City may pass an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

(1) Extend the fixed maturity of any Parity Bonds, or reduce the rate of interest thereon, or extend the times of payment of interest thereon from their due dates, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the owner of each bond so affected; or

(2) Reduce the aforesaid percentage of bondowners required to approve any such supplemental ordinance, without the consent of the owners of all of the Parity Bonds then outstanding.

It shall not be necessary for the consent of bondowners under this subsection (b) to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) Upon the passage of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this ordinance and of the Registered Owner of the Bond shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all the terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this ordinance for any and all purposes.

Section 21. Lost or Destroyed Bond.

In case the Bond shall be lost, stolen or destroyed, the Bond Registrar may authenticate and deliver a new Bond of the same amount, date, tenor, and effect to the owner thereof upon the owner paying the expenses and charges of the City in connection therewith and upon filing with the Bond Registrar evidence satisfactory to the Bond Registrar that such Bond was actually lost, stolen or destroyed and of ownership thereof, and upon furnishing the City with indemnity satisfactory to both.

Section 22. Severability.

If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants,

agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond. All acts taken pursuant to the authority granted in this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 23. Effective Date.

That, based upon the facts and conclusions as specified herein, an emergency exists, making this ordinance effective upon passage by an affirmative vote of at least six members of the City Council.

Passed SEP 15 2020

Mayor

Attest:

City Clerk

Approved as to form and legality:

Pacifica Law Group LLP
Bond Counsel to the City of Tacoma

By

EXHIBIT "A"

Form of WIFIA Loan Agreement

(attached)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

WIFIA LOAN AGREEMENT

For Up to $[20,000,000]

With

CITY OF TACOMA, WASHINGTON

For the

CENTRAL TREATMENT PLANT ELECTRICAL DISTRIBUTION SYSTEM REPLACEMENT PROJECT (CTP-ERP)
(WIFIA – N19117WA)

Dated as of [_____], 2020

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WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this "**Agreement")**, dated as of [___], 2020, is by and between the City of Tacoma, Washington, a municipal corporation of the State of Washington created under the laws of the State of Washington (the "**State**"), with an address at 747 Market Street, Tacoma, Washington 98402 (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 and by Section 4201 of America's Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time, the "**Act**" or "**WIFIA**"), which is codified as 33 U.S.C. §§ 3901-3914;

WHEREAS, the Act authorizes the WIFIA 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;

WHEREAS, the Borrower has requested that the WIFIA Lender make the WIFIA Loan (as defined herein) in a principal amount not to exceed $[20,000,000] (excluding interest that is capitalized in accordance with the terms hereof) 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 February 10, 2020 (the "**Application**");

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

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;

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:

ARTICLE I
Definitions and Interpretation

Section 1. Definitions.

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

"**2015 Bonds**" means the City of Tacoma, Washington, Sewer Revenue and Refunding Bonds, 2015 issued pursuant to Ordinance No. 28287.

"**2016 Bonds**" means (a) the City of Tacoma, Washington, Sewer Revenue Refunding Bonds, 2016A, issued pursuant to Ordinance No. 28355 and (b) the City of Tacoma, Washington, Sewer Revenue Refunding Bonds, 2016B, issued pursuant to Ordinance No. 28355.

"**2018 Bonds**" means the City of Tacoma, Washington, Sewer Revenue Bonds, 2018, issued pursuant to Ordinance No. 28534.

"**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 Credit Facility, or a repurchase agreement, '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.

"**Act**" means the Act as defined in the recitals hereto.

"**Additional Principal Project Contracts**" means (a) any contract, agreement, letter of intent, or instrument listed in Part B of **Schedule 12(n)** (*Principal Project Contracts*) and (b) any other 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 the case of this clause (b), (i) pursuant to which the Borrower has payment obligations in excess of [$20,000,000] in the aggregate or (ii) the termination of which could reasonably be expected to have a Material Adverse Effect, but excluding, in the case of this clause (b), any (A) insurance policies or documents pertaining to the Borrower's self-insurance program (as applicable), (B) Governmental Approvals

and (C) agreements, documents and instruments (1) providing for, governing or evidencing any Permitted Debt and any related Permitted Lien securing such Permitted Debt or (2) entered into to consummate any Permitted Investment.

"**Additional Subordinated Obligations**" means any Subordinated Obligations permitted under Section 15(a) (*Negative Covenants – Indebtedness*) and under the Parity Bond Ordinances, which Subordinated Obligations are issued or incurred after the Effective Date.

"**Adjusted Net Revenues**" has the meaning provided in the WIFIA Bond Ordinance.

"**Administrator**" has the meaning provided in the preamble hereto.

"**Agreement**" has the meaning provided in the preamble hereto.

"**Annual Debt Service**" has the meaning provided in the WIFIA Bond Ordinance.

"**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(c) (*Disbursement Conditions*).

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

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

"**Application**" has the meaning provided in the recitals hereto.

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

"**Bankruptcy Related Event**" means, with respect to the Borrower, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 8 (*Payment of Principal and Interest*) and such failure is not cured within thirty (30) days following notification by the WIFIA 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; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Revenue may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Revenue may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Revenue in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the Secured Lenders, funds on deposit in any of the System Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under the Other Financing Documents for application to the prepayment or repayment of any principal amount of the Obligations other than in accordance with the provisions of the WIFIA Loan Documents and the Other Financing Documents.

"**Base Case Proforma Financial Statement**" means a proforma financial statement prepared by the Borrower forecasting the capital costs of the System (including the Project) and the rates, revenues, operating expenses and major maintenance requirements of the System for the current Borrower Fiscal Year and each of the immediately succeeding six (6) Borrower Fiscal Years and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Lender as of the Effective Date, which financial statement shall be provided to the WIFIA Lender as a fully functional Microsoft Excel – based financial statement (or, if Microsoft Excel is no longer utilized by the Borrower, an alternate fully functional electronic format acceptable to the WIFIA Lender) or such other format requested by the WIFIA Lender. Then existing rate models will be provided to the WIFIA Lender by the Borrower upon request.

"**Bond Fund**" has the meaning provided in the WIFIA Bond Ordinance.

"**Bond Registrar**" has the meaning provided in the WIFIA Bond Ordinance. As of the Effective Date, the Bond Registrar is the Treasurer.

"**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 after giving thirty (30) days' prior written notice to the WIFIA Lender in accordance with Section 15(f) (*Negative Covenants – Fiscal Year*).

"**Borrower's Authorized Representative**" means any Person who shall be designated as such pursuant to Section 21 (*Borrower's Authorized Representative*).

"**Borrower's Wastewater and Surface Water Utility**" has the meaning provided in Section 12(t) (*Representations and Warranties of Borrower – Financial Statements*).

"**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 and Tacoma, Washington.

"**Capitalized Interest Period**" means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period, subject to earlier termination as set forth in Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*).

"**Certified Public Accountant**" has the meaning provided in the WIFIA Bond Ordinance.

"**City Clerk**" has the meaning provided in the WIFIA Bond Ordinance.

"**Closing Certificate**" has the meaning provided in Section 11(a)(viii) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

"**Code**" means the Internal Revenue Code of 1986, or any successor tax code, as amended from time to time, and the applicable regulations proposed or promulgated thereunder.

"**Congress**" means the Congress of the United States of America.

"**Construction Period**" means the period from the Effective Date through the Substantial Completion Date.

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

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

"**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.

"**Costs of Maintenance and Operation**" has the meaning provided in the WIFIA Bond Ordinance.

"**Council**" has the meaning provided in the WIFIA Bond Ordinance.

"**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 currently 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, policy of bond insurance, surety bond, guarantee or similar instrument, or any agreement relating to the reimbursement of any payment thereunder (or any combination of the foregoing), which is obtained by the Borrower and is issued by a financial institution, insurance provider or other Person, in each case, that has an Acceptable Credit Rating, and which provides security or liquidity in respect of any Permitted Debt.

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

"**DAC**" means Digital Assurance Certification, LLC, and its successors and assigns.

"**Debt Service Payment Commencement Date**" means the earliest to occur of (a) June 1, 2026; (b) if the Capitalized Interest Period ends pursuant to Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*) due to the occurrence of an Event of Default, the first Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

"**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 (a) the Borrower abandons work or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to the Project or (b) the Borrower fails to achieve Substantial Completion of the Project by June 16, 2023.

"**Dollars**" and "**$**" means the lawful currency of the United States of America.

"**Effective Date**" means the date of this Agreement.

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

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

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

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

(d) capitalized interest (with respect to Obligations other than the WIFIA Loan) 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.

"**Eligible Project Costs Documentation**" has the meaning provided in Section 1 of **Exhibit D** (*Requisition Procedures*).

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

"**Engineer**" has the meaning provided in the WIFIA Bond Ordinance.

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

"**EPA**" means the United States Environmental Protection Agency.

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

"**Event of Loss**" means any event or series of events that causes any portion of the System 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 indebtedness of the Borrower with respect to the System (including the Outstanding Parity Bonds and Subordinated Obligations) that has been issued or incurred prior to the Effective Date and that is Outstanding as of the Effective Date, as listed and described in **Schedule III** (*Existing Indebtedness*).

"**Existing Principal Project Contract**" means each contract of the Borrower set forth in Part A of **Schedule 12(n)** (*Principal Project Contracts*).

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

"**Final Disbursement Date**" means the earliest of (a) the date on which the WIFIA Loan has been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current

Anticipated WIFIA Loan Disbursement Schedule; (c) the date on which the Borrower has certified to the WIFIA Lender that it will not request any further disbursements under the WIFIA Loan; (d) the date on which the WIFIA Lender terminates its obligations relating to disbursements of any undisbursed amounts of the WIFIA Loan in accordance with Section 17 (*Events of Default and Remedies*); and (e) the date that is one (1) year after the Substantial Completion Date.

"**Final Maturity Date**" means the earlier of (a) [December 1, 2054] (or such earlier date as is set forth in an updated **Exhibit F** (*WIFIA Debt Service*) pursuant to Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*); and (b) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

"**Finance Director**" has the meaning provided in the WIFIA Bond Ordinance.

"**Financial Statements**" has the meaning provided in Section 12(t) (*Representations and Warranties of Borrower – Financial Statements*).

"**Future Parity Bonds**" has the meaning provided in the WIFIA Bond Ordinance.

"**GAAP**" means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for governmental entities), in effect from time to time in the United States of America, as made applicable to the Borrower and its enterprise systems by the Washington State Auditor's Office in accordance with State law.

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

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

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

"**Gross Revenues**" has the meaning provided in the WIFIA Bond Ordinance.

"**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 (and not for any speculative purpose).

"**Indemnitee**" has the meaning provided in Section 32 (*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 Account**" has the meaning provided in the WIFIA Bond Ordinance.

"**Interest Payment Date**" means each June 1 and December 1, commencing on the Debt Service Payment Commencement Date.

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

"**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.

"**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 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

"**Loss Proceeds**" means any proceeds of builders' risk or casualty insurance (other than any proceeds from any policy of business interruption insurance insuring against loss of revenues upon the occurrence of certain casualties or events covered by such policy of insurance), self-insurance funding 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 Gross Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower with respect to the System, (c) the legality, validity or enforceability of any material provision of any Other Financing 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 Other Financing Document or WIFIA Loan Document, (e) the validity, enforceability or priority of the Liens provided under the WIFIA Bond Ordinance or the Other Financing Documents on the Pledged Revenue in favor of the Secured Parties or (f) the WIFIA Lender's rights or remedies available under any WIFIA Loan Document.

"**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 April 29, 2020 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 Revenues**" has the meaning provided in the WIFIA Bond Ordinance.

"**Non-Debarment Certificate**" means a certificate, signed by the Borrower's Authorized Representative, as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R.

1532.995), substantially in the form attached hereto as **Exhibit C** (*Form of Non-Debarment Certificate*).

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

"**Obligations**" means debt of the Borrower that is secured by a pledge and lien on all or a portion of the Pledged Revenue, including the Parity Bonds and Subordinated Obligations.

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

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

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

"**Other Financing Documents**" means (a) each ordinance, contract or other definitive document pursuant to which any Existing Indebtedness is issued (including the Outstanding Parity Bond Ordinances), (b) with respect to any indebtedness issued by the Borrower with respect to the System after the Effective Date (including Future Parity Bonds), the ordinance, contract or other definitive document pursuant to which any such indebtedness is issued by the Borrower after the Effective Date, (c) each Hedging Agreement and each Credit Facility, in each case with respect to the System, (d) each Supplemental Ordinance, and (e) each Security Document.

"**Outstanding**" means, with respect to Obligations, Obligations that have not been cancelled or legally defeased or discharged within the meaning of the Other Financing Documents or the WIFIA Loan Documents.

"**Outstanding Parity Bond Ordinances**" has the meaning provided in the WIFIA Bond Ordinance.

"**Outstanding Parity Bonds**" means, as of the date of the WIFIA Bond Ordinance, the 2015 Bonds, the 2016 Bonds and the 2018 Bonds.

"**Outstanding WIFIA Loan Balance**" means the sum of (i) the aggregate principal amount of the WIFIA Loan drawn by the Borrower plus (ii) capitalized interest added to the principal balance of the WIFIA Loan minus (iii) the aggregate principal amount of the WIFIA

Loan repaid by the Borrower, as determined in accordance with Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

"**Parity Bond Ordinances**" has the meaning provided in the WIFIA Bond Ordinance.

"**Parity Bonds**" means the Outstanding Parity Bonds, the WIFIA Bond and any Future Parity Bonds.

"**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 17(a)(i) (*Events of Default and Remedies – Payment Default*).

"**Payment Period**" means the six (6) month period beginning on December 1, 2025 and ending on May 31, 2026, and each succeeding six (6) month period thereafter; provided, that, that if the Debt Service Payment Commencement Date begins earlier than June 1, 2026, the first Payment Period shall be the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

"**Permitted Debt**" means:

(a) Existing Indebtedness;

(b) the WIFIA Loan;

(c) Future Parity Bonds that satisfy the applicable requirements of Section 15(a) (*Negative Covenants – Indebtedness*) and the WIFIA Bond Ordinance;

(d) Additional Subordinated Obligations that satisfy the applicable requirements of Section 15(a) (*Negative Covenants – Indebtedness*) and the WIFIA Bond Ordinance; 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 14(k)(iii) (*Affirmative Covenants – Variable Interest Rate Bonds*).

"**Permitted Investments**" has the meaning provided in the WIFIA Bond Ordinance.

"**Permitted Liens**" means:

(a) Liens imposed pursuant to the WIFIA Loan Documents;

(b) Liens imposed pursuant to the Other Financing Documents;

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

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

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

(f) 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;

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

(h) 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.

"**Pledged Revenue**" means, as provided in the WIFIA Bond Ordinance, and subject to the provisions of the WIFIA Bond Ordinance restricting or permitting the application thereof, (a) the proceeds of the sale of Parity Bonds, to the extent held in funds established or continued by the WIFIA Bond Ordinance, (b) Net Revenues and ULID Assessments and (c) the money and assets credited to the Sewer Fund and the Bond Fund and the income therefrom.

"**Principal Account**" has the meaning provided in the WIFIA Bond Ordinance.

"**Principal Payment Date**" means each December 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.

"**Project**" means the repair and rehabilitation of the entire 15 kilovolt (kV) Medium Voltage (MV) electrical distribution system at the Borrower's Central Treatment Plant, located at 2201 Portland Avenue, Tacoma, WA 98421, including (a) the construction of over 3,000 lineal feet of concrete encased reinforced duct bank, (b) the installation of over twenty (20) miles of electrical cables, (c) the construction of a 3,400 square foot building for protecting and operating the new electrical equipment, and (d) the installation of a new 15-kV switchgear comprised of forty-one (41) circuit breakers. Some of the existing reinforced concrete duct banks will be reused, but all the MV feeder cables will be replaced. The Project also includes the modification of the local electric utility's transmission overhead lines and support poles.

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

"**Projected Substantial Completion Date**" means June 16, 2022, as such date may be adjusted in accordance with Section 16(d) (*Reporting Requirements – Construction Reporting*).

"**Public Benefits Report**" has the meaning provided in Section 16(e) (*Reporting Requirements – Public Benefits Report*).

"**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 14(k) (*Affirmative Covenants – Variable Interest Rate Bonds*).

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

"**Rate Covenant**" means the rate covenant provided for in Sections 15(a) and (b) of the WIFIA Bond Ordinance.

"**Rate Stabilization Fund**" has the meaning provided in the WIFIA Bond Ordinance.

"**RCW**" means the Revised Code of Washington.

"**Reimbursement Agreements**" 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.

"**Reimbursement Obligations**" means, with respect to a Credit Facility, amounts payable by the Borrower to the Credit Facility Provider pursuant to the applicable Reimbursement Agreement.

"**Related Documents**" means the Other Financing Documents, the WIFIA Loan Documents, the Hedging Agreements (if any), the Reimbursement Agreements (if any) and the Principal Project Contracts.

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

"**Reserve Accounts**" means the Reserve Fund, any other reserve fund created for the payment of debt service on Parity Bonds (if any), and any reserve fund created for the payment of debt service on Subordinated Obligations.

"**Reserve Fund**" has the meaning provided in the WIFIA Bond Ordinance.

"**Reserve Requirement**" means the applicable Reserve Fund Requirement (as defined in the WIFIA Bond Ordinance) or any subordinated debt service reserve requirement set forth in the instrument authorizing any Subordinated Obligations, as applicable. The "Reserve Requirement" with respect to the WIFIA Bond is zero ($0.00).

"**Sanctioned Country**" means, at any time, a country or territory which is itself the subject or target of any Sanctions.

"**Sanctioned Person**" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

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

"**Secured Lender**" means, when used with respect to the WIFIA Bond, the WIFIA Lender (and any subsequent registered holder of the WIFIA Bond) and, when used with respect to any other Secured Obligations issued by the Borrower from time to time, the owner of such Secured Obligations.

"**Secured Obligations**" means the obligations of the Borrower under this Agreement and the WIFIA Bond, the other Parity Bonds, the Subordinated Obligations, the Hedging Obligations (if any), the Hedging Termination Obligations (if any), the Reimbursement Obligations (if any), and any other obligation secured by the Pledged Revenue.

"**Secured Parties**" means the WIFIA Lender, any other Secured Lenders, the Hedging Banks, and any Credit Facility Provider.

"**Security Document**" means each agreement or document entered into, delivered or filed establishing a mortgage or security interest in revenues, receivables, funds, assets, accounts, realty or other property, equipment, contracts, or similar collateral that is intended as security for payment of obligations issued under the WIFIA Bond Ordinance or the Other Financing Documents with respect to the Parity Bonds (in each case other than the documents otherwise referenced in the definition of Other Financing Documents).

"**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 Fee**" means the Servicing Set-Up Fee and any Construction Period Servicing Fee or Operating Period Servicing Fee.

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

"**Sewer Fund**" has the meaning provided in the WIFIA Bond Ordinance.

"**State**" has the meaning provided in the preamble hereto.

"**Subordinated Obligations**" means any Obligation that is secured by a lien and charge on all or part of the Pledged Revenue that is subordinate to the lien and charge with respect to the Parity Bonds and is fully subordinated to the WIFIA Bond and all other Parity Bonds in priority of payment (as to both principal and interest (by acceleration or otherwise)), voting and priority of Lien on the Pledged Revenue, including with respect to payment from revenues and reserves and payment upon default of any such subordinated Obligations.

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

"**Substantial Completion Date**" means the date on which the Borrower certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender, that Substantial Completion has occurred.

"**Supplemental Ordinance**" means a supplement to or modification of the provisions of any Parity Bond Ordinance entered into by the Borrower in accordance with the terms of the applicable Parity Bond Ordinance, amending the terms of such Parity Bond Ordinance.

"**System**" has the meaning provided in the WIFIA Bond Ordinance.

"**System Accounts**" means the Bond Fund, the Sewer Fund, the Rate Stabilization Fund, the Reserve Fund, the Project Fund (as defined in the WIFIA Bond Ordinance), and any accounts and subaccounts under the foregoing funds and accounts.

"**Technical and Rate Consultant**" means a single individual or firm, or a combination of one or more individuals or firms, not related to the Borrower and considered independent with respect to the Borrower (i.e. not an employee of the Borrower or any affiliate of the Borrower) authorized to do business in and qualified to practice in the areas required to provide the services required of the Technical and Rate Consultant, that together have expertise in the technical requirements for operation and maintenance of systems similar in size and scope to the System and delivering the services provided by the System, and establishing rates and charges for governmental water or wastewater systems similar in size and scope to the System, selected by the Borrower and reasonably acceptable to the WIFIA Lender.

"**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 either the Borrower, the Bond Registrar, 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 financing (including costs of issuance); (b) amounts, if any, required by the Other Financing Documents or the WIFIA Loan Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan, any Parity Bonds (other than the WIFIA Bond), 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 Construction Period in respect of any indebtedness of the Borrower or any Credit Facility maintained by 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.

"**Treasurer**" has the meaning provided in the WIFIA Bond Ordinance.

"**ULID Assessments**" has the meaning provided in the WIFIA Bond 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, pandemic, 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 Proforma Financial Statement**" means the Base Case Proforma Financial Statement, updated in accordance with Section 16(a) (*Reporting Requirements – Updated Proforma Financial Statement*).

"**Variable Interest Rate**" has the meaning provided in the WIFIA Bond Ordinance.

"**Variable Interest Rate Bonds**" has the meaning provided in the WIFIA Bond Ordinance.

"**WIFIA**" has the meaning provided in the recitals hereto.

"**WIFIA Bond**" means the bond delivered by the Borrower in substantially the form of **Exhibit A** (*Form of WIFIA Bond*).

"**WIFIA Bond Ordinance**" means Ordinance No. [___], adopted by the City Council of the City of Tacoma, Washington on [___], approving and authorizing the Borrower's execution of this Agreement, authorizing the issuance of the WIFIA Bond to the WIFIA Lender, providing certain terms of the WIFIA Bond, and delegating the authority to approve the final terms of the WIFIA Bond and this Agreement to the duly appointed and acting Finance Director and Treasurer of the Borrower or their successors or designee. The WIFIA Bond Ordinance, as of the Effective Date, is attached hereto as **Exhibit L** (*WIFIA Bond Ordinance*) for reference.

"**WIFIA Debt Service**" means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, 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, (a) as set forth on **Exhibit F** (*WIFIA Debt Service*) and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*).

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

"**WIFIA 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 22 (*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 $[20,000,000] (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by the Borrower.

"**WIFIA Loan Documents**" means this Agreement, the WIFIA Bond and the WIFIA Bond Ordinance.

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 any gender shall mean and include all genders.

(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 actual knowledge of the Borrower's officers, directors, or executive staff executing such certificate or making such representation, after reasonable and diligent inquiry. As to knowledge of matters outside of the Borrower's organization, any such representations by the Borrower may be based on reasonable reliance on representations provided to the Borrower, where appropriate, and shall not imply independent investigation of such matters. 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, ordinance, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

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

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

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

ARTICLE II
THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed $[20,000,000] (excluding any interest that is capitalized in accordance with the terms hereof). WIFIA Loan proceeds available to be drawn shall be disbursed from time to time pursuant

to a Requisition in accordance with Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to 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. If the Borrower intends to utilize the WIFIA Loan proceeds to make progress payments for Project construction work performed under the Principal Project Contracts, the Borrower shall demonstrate to the satisfaction of the WIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. 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 and the conditions set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*); provided, that no disbursements of WIFIA Loan proceeds shall be made after the Final Disbursement Date.

(b) The Borrower shall deliver copies of each Requisition to the WIFIA Lender and the Servicer (if any) on or before the first (1st) Business Day of each month for which a disbursement is requested. If the WIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express WIFIA 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.

(c) 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. Subject to this Section 4, any scheduled disbursement (as reflected in the Anticipated WIFIA Loan Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall automatically roll forward to be available in the next succeeding Federal Fiscal Year up to the last anticipated date of disbursement set forth in the Anticipated WIFIA Loan Disbursement Schedule, having the effect of automatically updating the Anticipated WIFIA Loan Disbursement Schedule without need for the WIFIA Lender's approval. The Borrower may also 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.

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 shall be [___] percent ([___]%) per annum (the "**WIFIA Interest Rate**"). 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 three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate, (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and (b) in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement and/or such Event of Default has been waived by the WIFIA Lender and (ii) the Outstanding WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. For the avoidance of doubt, interest on the WIFIA Loan (and the corresponding WIFIA Bond) shall accrue and be payable only on (x) those amounts for which a Requisition has been submitted and funds (or such portion of funds as have been approved by the WIFIA Lender) have been made available to the Borrower for use on the Project in accordance with Section 4 (*Disbursement Conditions*) and (y) capitalized interest added to the principal balance of the WIFIA Loan in accordance with Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*).

Section 7. Security and Priority; Flow of Funds.

(a) As security for the WIFIA Loan, and concurrently with the issuance and delivery of this Agreement, the Borrower shall pledge, assign and grant to the WIFIA Lender for its benefit, as security for the payment of the principal of, premium, if any, and interest on the WIFIA Loan in accordance with the provisions of this Agreement, a Lien on the Pledged Revenue in accordance with the provisions of the WIFIA Bond Ordinance and subject to the provisions of the WIFIA Bond Ordinance restricting or permitting the application thereof, and shall deliver to the WIFIA Lender, as the registered owner, the WIFIA Bond. The WIFIA Bond shall be secured by the Lien on the Pledged Revenue on a parity with all other Parity Bonds and superior to all other charges of any kind or nature (including all Subordinated Obligations). The WIFIA Bond shall be a "Parity Bond" under and as defined in the Parity Bond Ordinances, entitled to all of the benefits of a "Parity Bond" under the Parity Bond Ordinances.

(b) Except (i) for Permitted Liens described in clauses (a) through (c) of the definition thereof, or (ii) to the extent otherwise provided in Section 7(a), the Pledged Revenue will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, of equal rank with or senior to the pledge of the Borrower created under the WIFIA Bond Ordinance, and 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 Gross Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 7, the WIFIA Loan Documents and the Other Financing Documents and shall not apply any portion of the Gross

Revenues in contravention of this Agreement, the other WIFIA Loan Documents, or the Other Financing Documents.

(d) All Gross Revenues (other than ULID Assessments and earnings on money and investments in any construction fund, the Rate Stabilization Fund, the Bond Fund and any rebate fund) shall be deposited into the Sewer Fund. All ULID Assessments shall be deposited into the Bond Fund. Amounts deposited in the Sewer Fund shall be applied in the order of priority described, and in accordance with the requirements specified in, Sections 9 and 10 of the WIFIA Bond Ordinance.

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service.

(i) On each Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay WIFIA Debt Service by making (A) from the Interest Account, semi-annual payments of interest, on each Interest Payment Date, (B) from the Principal Account, annual payments of principal, on each Principal Payment Date, and (C) payments of any other amounts on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is made by reason of optional prepayment); provided, that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Payments of WIFIA Debt Service shall be made in the amounts and on the Payment Dates as set forth in **Exhibit F** (*WIFIA Debt Service*), as the same may be revised pursuant to Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*), and shall be calculated by the WIFIA Lender in such manner that each annual payment of principal shall be approximately equal in amount, in order for the Outstanding WIFIA Loan Balance to be reduced to $0 on the Final Maturity Date.

(ii) 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 (or on any earlier date on which the WIFIA Loan and corresponding WIFIA Bond are subject to optional prepayment in whole prior to maturity thereof).

(b) Capitalized Interest Period. No payment of the principal of or interest on the WIFIA Loan is required to be made during the Capitalized Interest Period. Interest on amounts capitalized pursuant to this Section 8(b) shall commence on the date such interest is added to the principal balance of the WIFIA Loan (and corresponding WIFIA Bond) during the Capitalized Interest Period. On each June 1 and December 1 occurring during the Capitalized Interest Period, interest accrued on the WIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding WIFIA Loan Balance. Within thirty (30) days after the end of the Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower stating the Outstanding WIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other WIFIA

Loan Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the Borrower by the WIFIA Lender that an Event of Default has occurred, in which case the provisions of this Section 8(b) shall no longer apply and payments of principal and interest shall be currently due and payable in accordance with the terms hereof and interest shall no longer be capitalized. For purposes of this subsection, an Event of Default under Section 17(a)(v) (*Events of Default and Remedies – Cross Default with Other Financing Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of principal of, interest on or redemption price of Parity Bonds (other than the WIFIA Bond) or Subordinated Obligations when due, regardless of whether the holders of the applicable Obligations, or any legal order, has waived, permitted deferral of, or forgiven any such payment.

(c) WIFIA Bond. 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 $[20,000,000] (excluding capitalized interest), bearing interest at the WIFIA Interest Rate and having principal and interest payable on the same dates set forth herein. Any payment in respect of the WIFIA Bond shall be treated as a payment in respect of the WIFIA Loan and any prepayment of principal in respect of the WIFIA Loan shall be treated as a redemption in respect of the WIFIA Bond.

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

(e) Adjustments to Loan Amortization Schedule. (i) The Outstanding WIFIA Loan Balance will be (A) increased on each occasion on which the WIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (B) increased on each occasion on which interest on the WIFIA Loan is capitalized pursuant to the provisions of Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*), by the amount of interest so capitalized; and (C) decreased upon each payment or prepayment of the Outstanding WIFIA 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 (including only such adjustments as are permitted under the immediately preceding sentence) in any such notice shall be deemed conclusive absent manifest error.

(ii) The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** (*WIFIA Debt Service*) from time to time, in accordance with the principles set forth below in this Section 8(e), 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. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the Loan Amortization Schedule as a result of changes in the Outstanding WIFIA Loan Balance shall be applied to reduce future payments due on the WIFIA Bond in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(c) (*Prepayment – General Prepayment Instructions*). Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided, however, 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. 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 9. 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, however, that such prepayments shall be in principal amounts of $500,000 or any integral multiple of $1.00 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA 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, which shall be a Payment Date unless otherwise agreed by the WIFIA Lender. Each prepayment of the WIFIA Loan pursuant to this Section 9(a) shall be made on such Payment Date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA 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 9(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default (including an Event of Default) under this Agreement.

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

(c) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of an optional prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or the Bond Registrar 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 Loan, the WIFIA Lender may make a notation on **Exhibit F** (*WIFIA Debt Service*) indicating the amount of principal of and interest on the WIFIA Loan then being prepaid. 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, however, 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 such partial prepayments of principal shall be applied to reduce future payments due on the WIFIA Loan in inverse order of maturity. If such funds have not been so paid on the prepayment date, such principal amount of the WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 10. Fees and Expenses.

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

(i) a servicing set-up fee equal to $10,400 (the "**Servicing Set-Up Fee**"), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan);

(ii) an annual construction period servicing fee equal to $10,400 (the "**Construction Period Servicing Fee**"), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period (including the Federal Fiscal Year during which the Substantial Completion Date occurs); provided, that the initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan), in a pro-rated amount equal to $[860]; and

(iii) an annual operating period servicing fee equal to $7,810 (the "**Operating Period Servicing Fee**"), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Maturity Date or such earlier date as the WIFIA Loan, including all accrued but unpaid interest thereon and all other amounts payable hereunder, has been irrevocably paid in full in accordance with this Agreement; provided, that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date (or such earlier date as the WIFIA Loan, including all accrued but unpaid interest thereon and all other amounts payable hereunder, has been irrevocably paid in full in accordance with this Agreement) occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Maturity Date or, if applicable, such earlier date as the WIFIA Loan, including all accrued but unpaid interest thereon and all other amounts payable hereunder, has been irrevocably paid in full in accordance with this Agreement.

(b) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) and each Operating Period Servicing Fee shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the

calendar year during which such fee is due. The WIFIA Lender shall notify the Borrower of the amount of each such fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(c) Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA 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, or the protection or preservation of any right or claim under, the Pledged Revenue or any provision of this Agreement or any of the other WIFIA Loan Documents or the rights of the WIFIA Lender thereunder; (ii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default.

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

ARTICLE III
CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

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

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

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

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

(iv) The Borrower shall have (A) delivered to the WIFIA Lender a copy of its Charter, as in effect on the Effective Date, along with a certification in the Closing Certificate that such Charter is in full force and effect, (B) certified in the Closing Certificate the other statutes, ordinances, regulations, code provisions and bylaws that comprise the Borrower's Organizational Documents, and (C) delivered to the WIFIA Lender all further instruments and documents other than the WIFIA Bond Ordinance (including any resolutions, ordinances, and supplements) as are necessary for the Borrower to execute and deliver, and to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents.

(v) (A) Bond counsel or other 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** (*Opinions Required from Bond Counsel*)) and (B) counsel to the City of Tacoma, Washington shall have rendered to the WIFIA Lender a certificate regarding absence of litigation, in form and substance satisfactory to the WIFIA Lender.

(vi) The Borrower shall have delivered to the WIFIA Lender the Non-Debarment Certificate.

(vii) The Borrower shall have delivered to the WIFIA Lender the Non-Lobbying Certificate.

(viii) The Borrower shall have delivered to the WIFIA Lender a certificate, signed by the Borrower's Authorized Representative, substantially in the form attached hereto as **Exhibit H** (*Form of Closing Certificate*) (the "**Closing Certificate**") (A) designating the Borrower's Authorized Representative, (B) confirming such person's position and incumbency, and (C) certifying as to the satisfaction of the following conditions precedent:

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

(2) the Borrower has obtained all Governmental Approvals necessary (x) as of the Effective Date in connection with the Project and (y) to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and all such Governmental Approvals are final, non-

appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

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

(4) the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project, and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such compliance;

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

(6) the Borrower has (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);

(7) the Borrower has obtained a CUSIP number for the WIFIA Loan for purposes of monitoring through EMMA;

(8) 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;

(9) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since February 10, 2020 (disregarding, for purposes of this clause (9), the impacts of the COVID-19 pandemic); and

(10) the Borrower has satisfied, or caused to be satisfied, the conditions relating to the execution and delivery of the WIFIA Bond as a Future Parity Bond (as defined in the Outstanding Parity Bond Ordinances),

as set forth in the Outstanding Parity Bond Ordinances for the Outstanding Parity Bonds outstanding as of the Effective Date.

(ix) [Reserved.]

(x) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction, no more than sixty (60) 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 to any Parity Bonds then Outstanding (other than the WIFIA Bond) the proceeds of which will be used for the Project, along with a certification in the Closing Certificate that no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(xi) The Borrower shall have delivered to the WIFIA Lender a Base Case Proforma Financial Statement in form and substance acceptable to the WIFIA Lender, along with a certification in the Closing Certificate that such Base Case Proforma Financial Statement (A) demonstrates that projected Net Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrates compliance with the Rate Covenant for the current Borrower Fiscal Year and each of the immediately succeeding six (6) Borrower Fiscal Years, (C) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender, and (D) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project.

(xii) The Borrower shall have delivered to the WIFIA Lender (A) (1) certificates of insurance or (2) if the Borrower is self-insured, a certificate of the Borrower's risk management department pertaining to the Borrower's self-insurance program, in each case along with a certification in the Closing Certificate that such insurance certificate is true and correct and demonstrates compliance with the requirements of Section 14(f) (*Affirmative Covenants – Insurance*) and (B) at the WIFIA Lender's request, copies of such insurance policies and/or, if applicable, documents pertaining to the Borrower's self-insurance program.

(xiii) No later than thirty (30) days prior to the Effective Date, the Borrower shall have delivered to the WIFIA Lender the Public Benefits Report.

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

(xv) The Borrower shall have paid in full 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.

(xvi) 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.

(b) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender shall have no obligation to make any disbursement of WIFIA 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 in its sole discretion:

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

(ii) The Borrower shall have provided an Updated Proforma Financial Statement in compliance with the requirements of Section 16(a) (*Reporting Requirements – Updated Proforma Financial Statement*).

(iii) The Borrower shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*) (including satisfactory Eligible Project Costs Documentation relating to such Requisition), and the WIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition. The Borrower's Authorized Representative shall also certify as of the date of such Requisition that:

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

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

(C) at the time of, and immediately after giving effect to, any disbursement of WIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder shall have occurred and be continuing and (B) no event of default or default that, with the giving of notice or the passage of time or both, would constitute an event of default, in each case, under any other Related Document, shall have occurred and be continuing. No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred (disregarding, for purposes of this sentence, the impacts of the COVID-19 pandemic) since the most recent disbursement or, with respect to the initial disbursement hereunder, since the Effective Date;

(D) the Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender; and

(E) the representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct as of each date on which any disbursement of the WIFIA 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).

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

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

(vi) The Borrower shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (*Fees and Expenses*) and (B) all invoices received from the WIFIA Lender as of the date of disbursement of the WIFIA Loan and delivered by the WIFIA Lender to the Borrower, 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.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

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

(a) Organization; Power and Authority. The Borrower is a municipal corporation of the State duly organized and validly existing under its Organizational Documents and 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 then in existence, 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.

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

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

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

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

(f) Litigation. There is no action suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the 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 affecting the System (including the Project), the Borrower or the assets, properties or operations of the System, 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 collect Gross Revenues in amounts sufficient to meet the financial projections contained in the Base Case Proforma Financial Statement (or any Updated Proforma Financial Statement, to the extent any Updated Proforma Financial Statement has been approved by the WIFIA Lender).

(g) Security Interests. (i) The WIFIA Bond Ordinance and RCW 39.46.150 establish, and (ii) the Borrower has taken all necessary action to pledge, assign, and grant, in each case in favor of the WIFIA Lender, legal, valid, binding and enforceable Liens on the Pledged Revenue purported to be created, pledged, assigned, and granted pursuant to and in accordance with the WIFIA Bond Ordinance, 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 Pledged Revenue except for the Permitted Liens arising by operation of law, and are not *pari passu* with any obligations other than the Parity Bonds (other than the WIFIA Bond). The Borrower is not in breach of any covenants set forth in Section 14(b) (*Affirmative Covenants – Securing Liens*) or in the Parity Bond Ordinances with respect to the matters described in Section 14(b) (*Affirmative Covenants – Securing Liens*). As of the Effective Date and as of each other date this representation and warranty is made, (i) no filing, recordation or other action is necessary to establish a legal, valid, binding, and enforceable Lien on the Pledged Revenue in favor of the WIFIA Lender to the extent contemplated by the WIFIA Bond Ordinance, and (ii) no taxes or filing fees are due and payable in connection with the execution, delivery or recordation of the WIFIA Bond Ordinance or any instruments, certificates or financing statements in connection with the foregoing. Neither

the attachment, validity, enforceability or priority of the security interest in the Pledged Revenue granted pursuant to the WIFIA Bond Ordinance is governed by Article 9 of the UCC.

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

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

(j) Compliance with Laws.

(i) The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) In an effort to ensure such compliance, the Borrower has included in all contracts to which it is a party with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j) (including without limitation with respect to the Davis-Bacon Act requirements).

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

(iv) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party, is (A) a Sanctioned Person or (B) in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (1) any applicable Anti-Money Laundering Laws; (2) any applicable Sanctions; (3) any applicable Anti-Corruption Laws; or (4) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal. There are no pending or, to the knowledge of the Borrower, threatened

claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or any Principal Project Party, with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws. No use of proceeds of the WIFIA Loan or any other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(k) Credit Ratings. The WIFIA Loan and any Parity Bonds then Outstanding (other than the WIFIA Bond) the proceeds of which will be used for the Project have received a public Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, 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 Related Document (excluding Principal Project Contracts), has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date or as of any subsequent date on which this representation is made (or deemed made), as applicable, 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. 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.

(n) Principal Project Contracts. Attached as **Schedule 12(n)** (*Principal Project Contracts*) is a list of the Existing Principal Project Contracts and all Additional Principal Project Contracts that are expected to be entered into. With respect to each Principal Project Contract executed as of any date on which this representation and warranty is made, (x) it is in full force and effect, (y) all conditions precedent to the obligations of the respective parties under each such Principal Project Contract have been satisfied and (z) the Borrower has delivered to the WIFIA Lender a fully executed, complete and correct copy of each such Principal Project Contract, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract then in effect. The Borrower is not in breach of any material term in or in default under any of such Principal Project Contracts then in effect, and to the knowledge of the Borrower no party to any of such agreements or contracts 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, when taken as a whole, is true and correct in all material respects (other than for projections and other forward-looking statements contained in the Base Case Proforma Financial Statement and any Updated Proforma Financial Statement which have been made in good faith and based on reasonable assumptions) and does not contain any untrue statement of a

material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished.

(p) Environmental Matters. Except as set forth in **Schedule 12(p)** (*Environmental Matters*), the System-related activities of the Borrower and, to the Borrower's knowledge, each Principal Project Party, are in compliance with all laws applicable to the System (including the Project) relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the System (including the Project) (collectively, the "**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Except as set forth in **Schedule 12(p)** (*Environmental Matters*), the Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower with any such Environmental Law or Governmental Approval applicable to the System. 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 regarding the Borrower's (with respect to the System) or the Project's compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Project and relate to Environmental Laws.

(q) Sufficient Rights. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the 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 sufficient 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.

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

(s) No Liens. Except for Permitted Liens described in clauses (a) through (c) of the definition thereof, 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 Pledged Revenue or the Gross Revenues. Except for Permitted Liens described in

clauses (d) through (h) of the definition thereof, 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 System, the Project, or the properties or assets in relation to the Project.

(t) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the WIFIA Lender pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower's Environmental Services Department, Wastewater and Surface Water Management (the "**Borrower's Wastewater and Surface Water Utility**"), as of the respective dates of the balance sheets included therein and the results of operations of the Borrower's Wastewater and Surface Water Utility for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower with respect to the System of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

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

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

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

(x) Sovereign Immunity. The Borrower either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder, or, to the extent that the Borrower has such immunity, the Borrower has waived such immunity pursuant to Section 14(o) (*Affirmative Covenants – Immunity*).

(y) Patriot Act. [The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act][The Borrower has established an anti-money laundering compliance program as required by the Patriot Act and is in compliance with the Patriot Act in all material respects].

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

Section 13. Representations and Warranties of WIFIA 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 WIFIA Loan Documents to which it is a party.

(b) Due Execution; Enforceability. The WIFIA Loan 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 WIFIA Loan 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.

ARTICLE V
COVENANTS

Section 14. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and the Obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds, unless the WIFIA Lender waives compliance in writing:

(a) Rate Covenant. (i) The Borrower shall comply with the Rate Covenant.

(ii) If the forecast furnished by the Borrower in the most recent Updated Proforma Financial Statement delivered by the Borrower pursuant to Section 16(a) (*Reporting Requirements – Updated Proforma Financial Statement*) demonstrates that projected Net 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 Technical and Rate 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 Revenues so as to satisfy the Rate Covenant, (B) cause the Technical and Rate Consultant to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (C) either, within thirty (30) days, (1)

implement the Technical and Rate 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 Revenues so as to satisfy the Rate Covenant.

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

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, the Governmental Approvals in connection with the Project, and the highest standards of the Borrower's industry.

(ii) The Borrower shall take all reasonably required steps to ensure and verify compliance by each Principal Project Party 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 Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the System (including, but not limited to, the Project) (A) in a reasonable and prudent manner and (B) substantially in accordance with the Updated Proforma Financial Statement most recently approved by the WIFIA Lender (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the System (including the Project) 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 of the System.

(f) Insurance.

(i) The Borrower shall at all times procure and maintain or cause to be maintained insurance on the System in accordance with Section 15(g) of the WIFIA Bond Ordinance and on the construction of the Project, with responsible insurers, or as part of a reasonable system of self-insurance that is adequately funded, in such amounts and against such risks (including damage to or destruction of the System) as are customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties. The Borrower shall cause each Principal Project Party to obtain and maintain builders risk and casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

(ii) The Borrower shall (by self-insuring or maintaining with responsible insurers or by a combination thereof) provide for workers' compensation insurance for the Borrower's workers that perform services with respect to the System and insurance against public liability and property damage to the System (including the Project) to the extent reasonably necessary to protect the Borrower and the WIFIA Lender and consistent with industry standards for utilities of similar size and character.

(iii) 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. All such policies shall be available at all reasonable times for inspection by the WIFIA Lender, its agents and representatives.

(iv) The Borrower shall comply with the insurance requirements of the WIFIA Loan Documents and the Other Financing Documents and shall deliver to the WIFIA Lender within thirty (30) days after receipt thereof any certifications or opinions provided to the Borrower pursuant to the WIFIA Loan Documents or Other Financing Documents with respect to the Borrower's program of insurance or self-insurance.

(g) Maintain Legal Structure. The Borrower shall maintain its existence as a municipal corporation of the State organized and existing under its Organizational Documents and the laws of the State.

(h) System Accounts; Permitted Investments.

(i) The Borrower shall maintain the Sewer Fund and the Bond Fund in accordance with the terms of the WIFIA Bond Ordinance. So long as any of the Parity Bonds are outstanding, the Borrower will pay or cause to be paid into the Sewer Fund all Gross Revenues exclusive of ULID Assessments and earnings on money and investments in any construction fund, the Rate Stabilization Fund, the Bond Fund and any rebate fund and the Borrower shall hold amounts on deposit in the Sewer Fund (and the income therefrom) in trust for the benefit of the holders of the Obligations, subject to the application of Gross Revenues to Costs of Maintenance and Operation of the System. The Borrower shall set aside and pay into the Bond Fund all ULID Assessments and out of the Sewer Fund certain fixed amounts sufficient (together with other available funds on hand and paid into the Bond Fund) to pay the principal of, premium, if any, and interest on the WIFIA Bond in accordance with its terms and the terms of this Agreement and all other Parity Bonds outstanding pursuant to the WIFIA Bond Ordinance and all other Parity Bond Ordinances when due. Money set aside from time to time for the payment of the principal of, premium, if any, and interest on Parity Bonds shall be held in trust for the owners of Parity Bonds in respect of which the same shall have been so set aside. Until so set aside, and except as otherwise provided in the WIFIA Bond Ordinance, all money in the Bond Fund shall be held in trust for the benefit of the owners of all Parity Bonds at the time outstanding equally and ratably.

(ii) The Borrower shall maintain in each Reserve Account an amount equal to the applicable Reserve Requirement in accordance with the provisions of the applicable WIFIA Loan Documents and Other Financing Documents.

(iii) 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.

(i) Compliance with Laws.

(i) The Borrower shall, and shall require its contractors and subcontractors at all tiers with respect to the Project, to comply with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) The Borrower shall include in all contracts to which it is a party with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(i) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any

applicable laws, rules, regulations and requirements set forth in this Section 14(i) (including without limitation with respect to the Davis-Bacon Act requirements).

(iii) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party, is (A) a Sanctioned Person or (B) in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (1) any applicable Anti-Money Laundering Laws; (2) any applicable Sanctions; (3) any applicable Anti-Corruption Laws; or (4) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal. There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or any Principal Project Party, with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws. No use of proceeds of the WIFIA Loan or any other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(j) Material Obligations. The Borrower shall pay its material obligations in respect of the System (including the Project) promptly and in accordance with their terms and pay and discharge promptly all taxes, payments in lieu of taxes, assessments and governmental charges or levies imposed upon it or upon the Gross 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 such properties or any part thereof or on the Gross Revenues or the Pledged Revenue; provided, however, 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.

(k) Variable Interest Rate Bonds.

(i) As a condition to the issuance of any Future Parity Bonds (other than the WIFIA Bond) 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 Bonds net of available cash held by the Borrower in System Accounts to exceed fifteen percent (15%) of the principal amount of all Outstanding Parity Bonds (other than the WIFIA Bond), the Borrower shall enter into a Qualified Hedge with respect to such Parity Bonds with 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 Parity Bonds projected to be Outstanding, and shall maintain such Qualified Hedge in place until (and such Qualified Hedge shall not have a stated maturity or termination date earlier than) the earliest to occur of (i) the date on which such Parity Bonds no longer bear interest at a Variable Interest Rate, (ii) the date on which the aggregate principal amount of all Outstanding Variable Interest Rate Bonds net of available cash held by the Borrower in System Accounts no longer exceeds fifteen percent (15%) of the aggregate principal amount of all Outstanding Parity Bonds (other than the WIFIA Bond), (iii) the date such

Parity Bonds have been repaid in full in cash and (iv) 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 Parity Bonds.

(ii) Each Qualified Hedge required under this Section 14(k) 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 shall be from the sources and in the priority specified in the WIFIA Bond Ordinance and the Other Financing Documents. The Borrower shall ensure that, as of the date following the termination date of any Qualified Hedge required under this Section 14(k) that for any reason terminates before the earliest to occur of (i) the maturity date of the Variable Interest Rate Bonds subject to such Qualified Hedge, (ii) the date on which the aggregate principal amount of all Outstanding Variable Interest Rate Bonds net of available cash held by the Borrower in System Accounts no longer exceeds fifteen percent (15%) of the aggregate principal amount of all Outstanding Parity Bonds (other than the WIFIA Bond) and (iii) the Final Maturity Date, then (A) a new Qualified Hedge is in full force and effect commencing no later than the termination date of the Qualified Hedge that is terminating or (B) the Variable Interest Rate Bonds have been converted to a fixed rate, in each case in accordance with this Agreement, the WIFIA Bond Ordinance and the Other Financing 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 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 14(k), 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) of 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 14(k); 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).

(l) SAM Registration. The Borrower shall (i) obtain and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) 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 until the Final Disbursement Date, provide to the WIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration.

(m) DUNS Number. The Borrower shall (i) obtain and maintain 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 immediately available funds.

(n) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the System (including the Project) or any part thereof, the Borrower shall (i) 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) apply all Net Loss Proceeds in respect of such Event of Loss to repair, reconstruct, and/or replace the portion of the System in respect of which the applicable Loss Proceeds were received. The Borrower shall begin such repair, reconstruction or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such repair, reconstruction or replacement as expeditiously as possible, and shall pay out of such Loss Proceeds all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and the System shall be free and clear of all claims and Liens. If such Net Loss Proceeds exceed the costs of such repair, reconstruction or replacement, then the excess Net Loss Proceeds shall be deposited in the Reserve Fund to the extent that such transfer shall be necessary to make up any deficiency in the Reserve Fund and the balance, if any, shall, at the option of the Borrower, be used for repairs, renewals, replacements, or additions to or extension of the System or be used in the retirement of Parity Bonds prior to maturity in accordance with the WIFIA Loan Documents and the applicable Other Financing Documents, either by purchase at prices not to exceed the next applicable redemption price or by call for redemption. If such Net Loss Proceeds are insufficient to enable the Borrower to restore or replace the damaged portions of the System, the Borrower shall provide additional funds for that purpose.

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

(p) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (i) Gross Revenues and all System-

related operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (ii) Project-related costs, WIFIA Loan requisitions submitted, WIFIA Loan proceeds received, payments made by the Borrower with regard to the Project, 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). With respect to the System, 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. The Borrower shall account for the System Accounts separately and distinctly from other restricted and non-restricted funds of the Borrower.

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

(q) Access; Records.

(i) So long as the WIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the WIFIA Loan shall have been paid in full, 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, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 14(q) 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 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 14(q) at any time when an Event of Default shall have occurred and be continuing. After the WIFIA Loan, including all accrued but unpaid interest thereon and all other amounts payable hereunder, has been irrevocably paid in full in accordance with this Agreement, the WIFIA Lender's right to examine the books and records relating to the System shall be limited to examining books and records covering time periods during which the WIFIA Loan was Outstanding.

(ii) 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 (A) all

rights and duties under this Agreement and under the WIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Project, the WIFIA 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.

Section 15. Negative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds, unless the WIFIA Lender waives compliance in writing:

(a) Indebtedness.

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

(ii) The Borrower may not create, incur or suffer to exist (A) any Obligations the payments of which are senior or prior in right to the payment by the Borrower of the Parity Bonds, (B) any Obligations of the Project that are secured by a Lien on any assets or property of the Borrower other than the Pledged Revenue or (C) any Obligations that grant the holders acceleration rights after the occurrence of an event of default or otherwise.

(iii) The Borrower shall not issue Future Parity Bonds unless each of the applicable conditions set forth in Sections 17(b) and (c) of the WIFIA Bond Ordinance has been satisfied.

(iv) The Borrower may not create, incur or suffer to exist (A) Payments (as defined in the WIFIA Bond Ordinance) made under a Payment Agreement (as defined in the WIFIA Bond Ordinance) that rank on a parity of lien with the Parity Bonds unless each of the applicable conditions set forth in Section 16 of the WIFIA Bond Ordinance has been satisfied or (B) reimbursement obligations, to any entity providing a letter of credit, insurance or other equivalent credit enhancement to the Borrower with respect to the Reserve Fund or Variable Interest Rate Bonds, that rank on a parity of lien with the Parity Bonds unless each of the applicable conditions set forth in Section 18 of the WIFIA Bond Ordinance has been satisfied.

(v) Subject to this Section 15(a), nothing herein shall prevent the Borrower from issuing Additional Subordinated Obligations.

(vi) Within thirty (30) calendar days after the incurrence of Permitted Debt described in clauses (c), (d) and (e) 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 proposed indebtedness and (B) confirming that such proposed indebtedness (1) satisfies each of the applicable requirements of the WIFIA Bond Ordinance and (2) satisfies the requirements of this Section 15(a) and the applicable requirements under the definitions of "Permitted Debt" and "Future Parity Bonds," "Additional Subordinated Obligations," or "Qualified Hedges," as applicable.

(vii) To the extent any Permitted Debt consists of Tender Option Obligations, the Borrower must maintain a Credit Facility that will pay any amounts payable by the Borrower in respect of such Tender Option Obligations.

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i) extinguish the Rate Covenant; (ii) extinguish or impair the Liens on the Pledged Revenue or any dedicated source of repayment of the WIFIA Loan or any other Obligations (the proceeds of which are applied to fund Total Project Costs), in each case granted pursuant to the Parity Bond Ordinances and any other Other Financing Documents, (iii) amend, modify, replace or supplement any Related Document (other than the WIFIA Loan Documents) (including through the execution of a Supplemental Ordinance) or permit a waiver of any provision thereof in a manner that could reasonably be expected to result in a Material Adverse Effect, (iv) amend, modify, replace or supplement any WIFIA Loan Document (other than this Agreement) (including through the execution of a Supplemental Ordinance) or (v) terminate, assign or replace any Related Document (other than the replacement of any Principal Project Contract permitted under Section 17(a)(xi) (*Events of Default and Remedies – Default Under Principal Project Contracts*) in a manner that could reasonably be expected to have a Material Adverse Effect. The Borrower shall not propose or support any change in law (including any change to RCW 39.46.150 or other similar statute) that could extinguish or impair the Liens on the Pledged Revenue or any dedicated source of repayment of the WIFIA Loan or any other Obligations (the proceeds of which are applied to fund Total Project Costs), in each case granted pursuant to the Parity Bond Ordinances and any other Other Financing Documents.

(c) No Prohibited Liens. Except for Permitted Liens described in clauses (a) through (c) of the definition thereof, the Borrower shall not create, incur, assume or permit to exist any Lien on the Pledged Revenue, the Gross Revenues or the Borrower's respective rights therein. Except for Permitted Liens described in clauses (d) through (h) of the definition thereof, the Borrower shall not create, incur, assume or permit to exist any Lien on the System, the Project or the Borrower's respective rights therein.

(d) Restricted Payments and Transfers. The Borrower shall not permit Gross Revenues or other assets of the System, or any funds in any accounts held under the Parity Bond Ordinances or any other Other Financing Document or in any other fund or account held by or on behalf of the Borrower with respect to the System, to be paid or transferred or otherwise applied for purposes other than the ownership, operation or maintenance of the System.

(e) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the System, a substantial portion of the assets included in the System, or its rights and obligations under any Principal Project Contract, in each case unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect, (ii) is made by the Borrower in the ordinary course of business, and (iii) satisfies the requirements of the WIFIA Bond Ordinance and the Other Financing Documents.

(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) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge itself or its ownership interests in the System into another Person unless (i) such reorganization, merger or consolidation is with or into another entity established by State law and such reorganization, merger or consolidation is mandated by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the Gross Revenues or other elements of the Pledged Revenue or (B) the availability of the Gross Revenues for the payment and security of the obligations of the Borrower under this Agreement; and (ii) the Borrower provides to the WIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the WIFIA Lender. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

(h) No Defeasance. Notwithstanding anything to the contrary in any WIFIA Loan Document, Other Financing 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.

(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, or any other hedging transaction without the prior written consent of the WIFIA Lender.

Section 16. Reporting Requirements.

(a) Updated Proforma Financial Statement. The Borrower shall provide to the WIFIA Lender not later than thirty (30) days after the date of each delivery of the Borrower's annual financial statements in accordance with Section 16(b) (*Reporting Requirements – Annual Financial Statements*), an Updated Proforma Financial Statement demonstrating to the satisfaction of the WIFIA Lender that the Borrower (i) has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the System and (ii) is, and is projected to remain, in compliance with the Rate Covenant for the current Borrower Fiscal Year and a minimum of each of the immediately succeeding six (6) Borrower Fiscal Years. The Updated

Proforma Financial Statement must include the Borrower's capital improvement plan, projected rates and charges, projected Net Revenues, projected debt outstanding and Annual Debt Service, and projected operation and maintenance costs of the System. The delivery of any Updated Proforma Financial Statement by the Borrower to the WIFIA Lender shall constitute a representation and warranty by the Borrower, as of the date of such delivery, that such Updated Proforma Financial Statement, including the assumptions and supporting documentation, as of its date, is accurate and reasonable to the best of the Borrower's knowledge and belief and reflects the Borrower's reasonable expectations, using assumptions that the Borrower believes to be reasonable, of the System's expected operations.

(b) Annual Financial Statements. The Borrower shall deliver 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's Wastewater and Surface Water Utility as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower's Wastewater and Surface Water Utility for such Borrower Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and (C) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein); provided that the failure of the Borrower to deliver to the WIFIA Lender the annual audited financial statements required under this Section 16(b) during the period that is one hundred eighty (180) days after the end of the applicable Borrower Fiscal Year shall not constitute a Default or an Event of Default, so long as the Borrower provides such annual audited financial statements within ninety (90) days after the end of such one hundred eighty (180) day period; provided further, that the delivery of the annual audited financial statements required under this Section 16(b) can be accomplished through an email to the WIFIA Lender from the Borrower or DAC that includes a link to the posting of the relevant documents on EMMA.

(c) Final Design Specifications. The Borrower shall deliver to the WIFIA Lender, no later than thirty (30) days prior to any notice to proceed for the Project, a copy of the final specifications relating to the development and construction of the Project.

(d) Construction Reporting. The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA 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. During the period through Substantial Completion of the Project, the Borrower shall furnish to the WIFIA Lender, on a quarterly basis, a report on the status of the Project, substantially in the form of **Exhibit J** (*Form of Quarterly Report*). The report shall be executed by the Borrower's

Authorized Representative and, for any quarter, shall be delivered to the WIFIA Lender within thirty (30) days of the following quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date later than the Projected Substantial Completion Date, the Borrower shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the System (if any), and that the new date could not reasonably be expected to result in a Material Adverse Effect. The Projected Substantial Completion Date shall automatically be adjusted to the date specified by the Borrower in such report unless such report does not demonstrate the matters specified in this Section 16(d) to the reasonable satisfaction of the WIFIA Lender.

(e) Public Benefits Report. The Borrower shall deliver to the WIFIA Lender a report, in the form of **Exhibit K** (*Form of Public Benefits Report*) (the "**Public Benefits Report**"), (i) no later than thirty (30) days prior to the Effective Date, (ii) within ninety (90) days following the Substantial Completion Date and (iii) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The Borrower agrees that information described under this Section 16(e) may be made publicly available by the WIFIA Lender at its discretion.

(f) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the WIFIA Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than five percent (5%), which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the System. The Borrower's notice shall demonstrate that the proposed increase or decrease 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.

(g) Operations and Maintenance. 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 16(g). On or prior to the Substantial Completion Date, the Borrower shall deliver to the WIFIA Lender an operations and maintenance manual with respect to the Project, in form and substance reasonably acceptable to the WIFIA Lender.

(h) Notices.

(i) The Borrower shall, within thirty (30) calendar 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) Defaults; Events of Default: any Default or Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower with award amounts in excess of $20,000,000, either individually or in the aggregate;

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

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

(F) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of (1) any proposed amendments to the provisions or definitions of the WIFIA Bond Ordinance referenced in Section 1 (*Definitions*) or elsewhere in this Agreement (including through amendments, supplements or other modifications to any ordinances of the Borrower referred to in such definitions (e.g., Ordinance No. 21632, Ordinance No. 21681 and Ordinance No. 21638)) at least thirty (30) calendar days prior to the effective date thereof and (2) copies of (x) any fully executed amendments to the WIFIA Bond Ordinance or to the WIFIA Bond and (y) any fully executed material amendments of any Related Document (other than the WIFIA Loan Documents), in each case within ten (10) calendar days following execution thereof; provided, that such notice can be accomplished through an email to the WIFIA Lender from the Borrower or DAC that includes a link to the posting of the relevant documents on EMMA;

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

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

(I) Ratings Changes: any change in the rating assigned to the WIFIA Loan, any Parity Bonds (other than the WIFIA Bond) or any Subordinated Obligations, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies; provided, that such notice can be accomplished through an email to the WIFIA Lender from the Borrower or DAC that includes a link to the posting of the relevant information or documents on EMMA;

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

(K) Additional Principal Project Contracts: copies of any executed Additional Principal Project Contracts (together with any related contracts, side letters or other understandings);

(L) Issuance of Obligations: copies of any final issuing instrument (together with any continuing disclosure documents, ordinances, official statement, certifications or cash flow projections in connection therewith), prepared in connection with the incurrence of any Permitted Debt (including any Future Parity Bonds); provided that such notice can be accomplished through an email to the WIFIA Lender from the Borrower or DAC that includes a link to the posting of the relevant documents on EMMA;

(M) Postings on EMMA: the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement or continuing disclosure certificate with respect to any Parity Bonds relating to annual financial information and operating data and the reporting of significant events; provided that such notice can be accomplished through an email to the WIFIA Lender from the Borrower or DAC that includes a link to the posting of the relevant document on EMMA;

(N) Insurance: copies of any written notice received by the Borrower of intended cancellation of, or reduction of coverage provided by, any policy of insurance required to be maintained herein;

(O) Bond Registrar: the replacement of the Treasurer as Bond Registrar or as paying agent; and

(P) Other Adverse Events: the occurrence of any other event or condition, including without limitation any notice of breach from a contract counterparty or any holder of any Obligations, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project.

(ii) Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (A) (*Substantial Completion*), (F) (*Amendments*) or (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. The Borrower shall also provide the WIFIA Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters described in clause (i) above.

(i) Operating Statement. The Borrower shall deliver to the WIFIA Lender a copy of the operating statement of the System prepared by the Borrower pursuant to Section 15(f) of the WIFIA Bond Ordinance each year promptly upon the filing of such operating statement with the office of the Borrower's Department of Finance; provided, that such delivery can be accomplished through an email to the WIFIA Lender from the Borrower or DAC that includes a link to the posting of the operating statement on EMMA.

(j) 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 or regarding the Project or the Gross Revenues as the WIFIA Lender may from time to time reasonably request.

ARTICLE VI
EVENTS OF DEFAULT

Section 17. Events of Default and Remedies.

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

(i) Payment Default. The Borrower shall fail to pay when due any part of the principal amount of or interest on the WIFIA Loan (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 8 (*Payment of Principal and Interest*)), and such failure continues for a period of five (5) days, 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, any Development Default or any failure to comply with the Rate Covenant), 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, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 17(a)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower

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

(iii) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA 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 Event of Default shall be deemed to have occurred under this Section 17(a)(iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(h) (*Representations and Warranties of Borrower – No Debarment*), Section 12(j) (*Representations and Warranties of Borrower – Compliance with Laws*), or Section 12(y) (*Representations and Warranties of Borrower – Patriot Act*), (C) in the reasonable determination of the WIFIA 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 and (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days after the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation.

(iv) Acceleration of Parity Bonds or Subordinated Obligations. Any acceleration shall occur of the maturity of any Parity Bonds (other than the WIFIA Bond) or Subordinated Obligations, or any such Parity Bond or Subordinated Obligation shall not be paid in full upon the final maturity thereof.

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

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

(vii) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the Borrower.

(viii) Invalidity of WIFIA Loan Documents or Other Financing 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, or 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; (B) any Other Financing Document ceases (other than as expressly permitted thereunder) to be effective or to grant a valid and binding security interest on any material portion of the Pledged Revenue 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; or (C) any event occurs that results in the material impairment in the perfection or priority of the WIFIA Lender's security interest in the Pledged Revenue or in the value of such Pledged Revenue.

(ix) Failure to Satisfy Rate Covenant. The Borrower fails to satisfy the Rate Covenant for two (2) consecutive Borrower Fiscal Years.

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

(xi) Default Under Principal Project Contracts. The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract or any Principal Project Contract shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this Section 17(a)(xi) if, in the case of any termination of a Principal Project Contract, the Borrower replaces such Principal Project Contract with a replacement agreement (A) entered into with another counterparty that (1) is of similar or greater creditworthiness (including credit support), technical capability and relevant experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the WIFIA Lender), (2) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, and (3) is not, at the time of such replacement, in violation of any applicable laws; (B) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the WIFIA Lender) and (C) effective no later than ninety (90) days after the date of termination of the Principal Project Contract being replaced.

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

(and may use such amounts to pay), Annual Debt Service for all Parity Bonds (including WIFIA Debt Service), and costs and expenses of the Borrower, in each case, during such cessation of operations.

(b) Upon the occurrence of any Bankruptcy Related Event, 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) Upon the occurrence of any Event of Default, the WIFIA Lender, by written notice to the Borrower, may exercise any or all of the following remedies:

(i) 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;

(ii) the WIFIA Lender may cease permitting interest on the WIFIA Loan to be capitalized;

(iii) the WIFIA Lender may apply the Default Rate provisions of Section 6 (*Interest Rate*);

(iv) 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; and/or

(v) 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 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 to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents.

(d) No action taken pursuant to this Section 17 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.

ARTICLE VII
MISCELLANEOUS

Section 18. 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 19. 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 20. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the WIFIA 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 32 (*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 21. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the WIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 22. WIFIA Lender's Authorized Representative. The WIFIA Lender hereby appoints the Director of the WIFIA Program, whose notice details are set forth below in Section 31 (*Notices*), to serve as the WIFIA Lender's Authorized Representative under this Agreement until such time as a successor or successors shall have been appointed. Thereafter, the successor in office shall serve as the WIFIA Lender's Authorized Representative. The WIFIA Lender shall provide notice to the Borrower within a reasonable time period following the succession.

Section 23. 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 24. 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 25. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

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

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

Section 28. 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 29. 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 30. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

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

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

If to Borrower: City of Tacoma, Washington
747 Market Street
Tacoma, Washington 98402
Attention: Treasurer
Email: [___]

With a copy to:

City of Tacoma, Washington
747 Market Street
Tacoma, Washington 98402
Attention: Senior Utilities Economist
Email: [___]

Unless otherwise instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email (including, to the extent permitted herein, any email automatically generated by DAC) 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 a 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. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 32. Indemnification. 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 has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the WIFIA 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 32 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 33. Sale of WIFIA 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 33. 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 24 (*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, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 33 shall not (x) obligate the WIFIA Lender to sell nor (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 34. Effectiveness. This Agreement shall be effective on the Effective Date.

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

Section 36. Integration. This Agreement 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.

CITY OF TACOMA, WASHINGTON,
by its authorized representative

By: _____
Name:
Title:

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

By: _____
Name: Andrew R. Wheeler
Title: Administrator

SCHEDULE I

PROJECT BUDGET

SOURCES OF FUNDS	**AMOUNT ($ USD)**	**PERCENTAGE (%)**
[ ]		
Total Sources of Funds		
USES OF FUNDS	**AMOUNT ($ USD)**	**PERCENTAGE (%)**
[ ]		
Total Uses of Funds		
Total Eligible Project Costs		
Total Project Costs		

SCHEDULE II

CONSTRUCTION SCHEDULE

[*To be provided by Borrower*]

SCHEDULE III

EXISTING INDEBTEDNESS

A. Outstanding Parity Bonds

		[1]
1.	[___] Bonds, issued pursuant to Ordinance No. [___], dated [___], maturing on [___]	
2.		
3.		
4.		

B. Subordinated Obligations

		[2]
1.	Washington State Water Pollution Control Revolving Fund Loan Agreement, dated as of [___], between Borrower and [___], Loan Number [____], maturing on [___]	
2.		
3.		
4.		

[1] As of Effective Date
[2] As of Effective Date

SCHEDULE IV

WIFIA PAYMENT INSTRUCTIONS

Acceptable Methods for WIFIA Payments to EPA

Option 1 PAY.GOV

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

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

Option 2 FEDWIRE

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

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

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

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

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

1. Send checks to:

USPS Mailing Address
Laura Collier
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 2733R
Washington, DC 20460

Courier Address (e.g., FEDEX, UPS)
Courier Address
Laura Collier
Ronald Reagan Building
1300 Pennsylvania Ave., N.W.
Rm # 81164
Washington, DC 20004

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

- Reference number from the Fee Notice letter.

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

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

Attachment 1 – FedWire Payment Form and Instructions

EPA					U.S. Environmental Protection Agency FUNDS TRANSFER DEPOSIT
PC		**INSTRUCTIONS**: Explicit completion and routing instructions are located on the reverse of this form. It is requested that prudent care be taken to ensure that all information is provided in the requested format. Failure to provide the information in the requested format may cause a delay in the notification of the funds transfer to EPA.			
TO 021030004	**TYPE** 10				
FROM		**CL**	**REF**	**AMOUNT** $	
SENDER					
RECEIVER TREAS NYC/(68010099)EPA					
THIRD PARTY INFORMATION					

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

TO (ABA)	021030004
TYPE	10
RECEIVER	TREAS NYC/(68010099)EPA
THIRD PARTY INFORMATION	To ensure proper credit please include the following information on your payment: • Company/remitter's name (borrower name as it appears on EPA document) • Complete address, including city, state, zip code • Remitter's point of contact person and phone number • EPA WIFIA Loan # (NOT the remitter's number) • Payment Type/Reason for payment from the Fee Notice letter • Reference number from the Fee Notice letter
Shaded Areas	Those items that are shaded on the Form are to be entered by the bank on the funds transfer message. (Depending on the Federal Reserve District, some items may not be required.)
Important: Failure to initiate the FedWire electronic wire transaction properly with the above fields included, will result in untimely or non-receipt of funds at EPA.	

For questions about payments to EPA please contact EPA's Office of the Controller:

Phone: 202-564-7593. Voicemails can be left when calling outside business hours

Email: OCFO-OC-ACAD-WIFIA@epa.gov

For questions about the WIFIA program:

Email: wifia@epa.gov

SCHEDULE 12(n)

PRINCIPAL PROJECT CONTRACTS

A. Existing Principal Project Contracts

Contract	Date	Parties	Description

B. Additional Principal Project Contracts

Contract	Expected Effective Date (if known)	Parties	Description

SCHEDULE 12(p)

ENVIRONMENTAL MATTERS

[*To be provided by Borrower*]

EXHIBIT A

FORM OF WIFIA BOND

UNITED STATES OF AMERICA

NO. 1	**Not to Exceed $_____**

TRANSFER RESTRICTED

THIS WIFIA BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR JURISDICTION. THIS WIFIA BOND IS SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AS PROVIDED IN THE WIFIA LOAN AGREEMENT DESCRIBED BELOW AND MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT AS PROVIDED IN THE WIFIA LOAN AGREEMENT.

State of Washington

CITY OF TACOMA, WASHINGTON
SEWER REVENUE BOND, SERIES 2020

Central Treatment Plant Electrical Distribution System Replacement Project (WIFIA – N19117WA)

Maximum Principal Amount: $[20,000,000] (excluding capitalized interest)

Maximum Capitalized Interest Amount: $ _____

Interest Rate: ____% per annum, subject to the Default Rate

Registered Owner: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

CUSIP No.: _____

Delivery (Effective) Date: _____

Maturity Date: the earlier of (a) [_____] (or such earlier date as is set forth in an updated **Exhibit F** to the WIFIA Loan Agreement (as defined below) pursuant to Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*) of the WIFIA Loan Agreement; and (b) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

The **CITY OF TACOMA, WASHINGTON**, a municipal corporation of the State of Washington under the laws 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 (the "**Disbursements**") made by the WIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the WIFIA Loan Agreement (as defined below) in an amount not to exceed the Maximum Capitalized Interest 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, however, 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.

The interest rate on this WIFIA Bond shall be [_____] percent ([____]%) per annum. Interest will accrue and be computed on the Outstanding Principal Sum (as well as on any past due interest) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the Outstanding Principal Sum at the Default Rate (as defined in the WIFIA Loan Agreement to be an interest rate equal to the sum of (a) the WIFIA Interest Rate set forth above plus (b) 500 basis points) in accordance with Section 6 (*Interest Rate*) of the WIFIA Loan Agreement.

Payments hereon are to be made in accordance with Section 8(d) (*Payment of Principal and Interest – Manner of Payment*) and Section 31 (*Notices*) 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 has been executed under and pursuant to Ordinance No. ___ adopted by the City Council on _____, 2020 (the "**WIFIA Bond Ordinance**") and 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 Bond Ordinance and 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 Bond Ordinance and the WIFIA Loan Agreement, as applicable.

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, however, such prepayments shall be in principal amounts of at least $500,000 or any integral multiple of $1 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Lender all or part of the principal amount of the WIFIA Bond in accordance with the WIFIA Loan Agreement.

As security for the payment of the principal of, premium, if any, and interest on all Parity Bonds, including this WIFIA Bond, the Borrower has pledged in accordance with the provisions of the WIFIA Bond Ordinance, subject to the provisions of the WIFIA Bond Ordinance restricting or permitting the application thereof, (a) the proceeds of the sale of Parity Bonds to the extent held in funds established or continued by the WIFIA Bond Ordinance, (b) Net Revenues and ULID Assessments and (c) the money and assets credited to the Sewer Fund and the Bond Fund and the income therefrom. Such pledge of Net Revenues, money and assets credited to the Sewer Fund and the Bond Fund and ULID Assessments constitutes a lien and charge on Net Revenues, said Funds and ULID Assessments superior to all other charges of any kind or nature.

The Borrower hereby irrevocably covenants and agrees with the Registered Owner of this WIFIA Bond that it will keep and perform all the covenants of this WIFIA Bond, of the WIFIA Loan Agreement and of the WIFIA Bond Ordinance to be by it kept and performed. Reference is hereby made to the WIFIA Loan Agreement and the WIFIA Bond Ordinance for a complete statement of such covenants.

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.

THIS WIFIA BOND IS A SPECIAL AND LIMITED OBLIGATION OF THE BORROWER PAYABLE ONLY FROM THE SOURCES IDENTIFIED HEREIN, IN THE WIFIA LOAN AGREEMENT AND IN THE WIFIA BOND ORDINANCE AND IS NOT A GENERAL OBLIGATION OF THE BORROWER, PIERCE COUNTY, THE STATE OR ANY OTHER POLITICAL SUBDIVISION THEREOF. THIS WIFIA BOND DOES NOT CONSTITUTE A CHARGE UPON ANY GENERAL FUND OR UPON ANY MONEY OR OTHER PROPERTY OF THE BORROWER, PIERCE COUNTY, THE STATE OR ANY OTHER POLITICAL SUBDIVISION THEREOF NOT SPECIFICALLY PLEDGED THERETO BY THE WIFIA BOND ORDINANCE.

This WIFIA Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the WIFIA Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington and the charter and ordinances of the Borrower to exist and to

have happened, been done and performed precedent to and in the issuance of this WIFIA Bond do exist and have happened, been done and performed and that the issuance of this WIFIA Bond does not violate any constitutional, statutory or other limitation upon the amount of bonded indebtedness that the Borrower may incur.

IN WITNESS WHEREOF, the City of Tacoma, Washington, has caused this WIFIA Bond to be signed with the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk, and the seal of the Borrower to be impressed or a facsimile thereof to be imprinted hereon, as of this ___ day of _____, 2020.

CITY OF TACOMA, WASHINGTON,
by its authorized representative

(SEAL)

By _____

Name:_____
Title:_____

ATTEST:

_____
Secretary

CERTIFICATE OF AUTHENTICATION

This WIFIA Bond is the "Bond" described in the within-mentioned WIFIA Bond Ordinance and is the Sewer Revenue Bond, Series 2020 of the City of Tacoma, Washington, dated [____], 2020.

CITY OF TACOMA, as Bond Registrar

By: _____
Title: Treasurer

CERTIFICATE OF REGISTRATION

This WIFIA Bond is registered in the name of the Registered Owner on the books of the Borrower, in the office of the Treasurer of the Borrower, as Bond Registrar and Paying Agent, as to both principal and interest, as noted in the registration blank below. All payments of principal of and interest on this WIFIA Bond shall be made by the Borrower as provided in the WIFIA Bond Ordinance and the WIFIA Loan Agreement.

Date of Registration	Name and Address of Registered Owner

(FORM OF ASSIGNMENT)

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

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

the within note and all rights thereunder.

Dated: _____

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

EXHIBIT B

ANTICIPATED WIFIA LOAN DISBURSEMENT SCHEDULE

Federal Fiscal Year	Amount
	$

EXHIBIT C

FORM OF NON-DEBARMENT CERTIFICATE

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

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

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

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

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

Capitalized terms not defined herein shall have the meanings set forth in the WIFIA Loan Agreement, dated as of [_____], 2020, by and between the United States Environmental Protection Agency, acting by and through the Administrator of the United States Environmental Protection Agency, and the Borrower.

Dated: [_____], 2020

CITY OF TACOMA, WASHINGTON,
by its authorized representative

By: _____
Name:
Title:

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 and the Servicer (if any), in accordance with Section 31 (*Notices*) 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. If the Borrower anticipates that it will draw down all or a portion of the proceeds of the WIFIA Loan to reimburse the Borrower for Eligible Project Costs paid by or on behalf of the Borrower prior to such disbursement of WIFIA Loan proceeds, whether paid from funds of the Borrower or proceeds of Obligations issued by the Borrower, including for the purpose of paying or redeeming such Obligations, the Borrower shall deliver appropriate documentation, including invoices and records, evidencing such incurred or paid Eligible Project Costs (the "**Eligible Project Costs Documentation**"). The Eligible Project Costs Documentation must provide sufficient detail to enable the WIFIA Lender to verify that such costs are Eligible Project Costs paid by the Borrower, in connection with the reimbursement of such Eligible Project Costs or for the purpose of paying or redeeming, in whole or part, the portion of any such short-term interim financing in respect of which the proceeds were used to pay such documented Eligible Project Costs. The WIFIA Lender shall review the Eligible Project Costs Documentation for compliance with WIFIA disbursement requirements, and any amounts approved by the WIFIA Lender as Eligible Project Costs will be disbursed at such time as the Borrower submits a Requisition in respect of such approved amounts.

The WIFIA Lender agrees to promptly send to the Borrower in accordance with Section 31 (*Notices*) 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 (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding

Business Day. If a Requisition is approved by the WIFIA 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 a Borrower's Authorized Representative; (c) submitted after prior disbursement of all proceeds of the WIFIA Loan; (d) submitted without adequate Eligible Project Costs Documentation, including (i) copies of invoices and records evidencing the Eligible Project Costs, (ii) a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied (or a certification that no change has occurred since the date of the latest quarterly report provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*)), and (iii) a copy of the most recent update to the Borrower's risk register, if requested by the WIFIA Lender.

The WIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified above (other than Section 2(c)) must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA 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) a Default or an Event of Default 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 law, in connection with the transactions contemplated hereby; (ii) prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by the Borrower with applicable law pertaining to the Project or with the terms and conditions of the WIFIA Loan Agreement; (iii) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Loan Agreement; (iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement; or (v) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement; provided, that in such case of Section 4(b)(v), the WIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

United States Environmental Protection Agency[3]
1200 Pennsylvania Avenue NW
WJC-W 6201A
Washington, D.C. 20460
Attention: WIFIA Director

Re: City of Tacoma, Washington Central Treatment Plant Electrical Distribution System Replacement Project (CTP-ERP) (WIFIA - N19117WA)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [_____], 2020 (the "**WIFIA Loan Agreement**"), by and between the CITY OF TACOMA, WASHINGTON (the "**Borrower**") and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the United States Environmental Protection Agency (the "**WIFIA Lender**"), the Borrower hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

In connection with this Requisition the undersigned, as the Borrower's Authorized Representative, hereby represents and certifies as of the date hereof the following:

1.	**Project name**	Central Treatment Plant Electrical Distribution System Replacement Project (CTP-ERP)
2.	**Borrower name**	City of Tacoma, Washington
3.	**WIFIA reference number**	WIFIA - N19117WA

[3] If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.

4.	**Requisition number**	[___]
5.	**Requested disbursement amount**	$[___]
6.	**Requested disbursement date (the "Disbursement Date")**	[___]
7.	**Total amounts previously disbursed under the WIFIA Loan Agreement**	$[___]
8.	**Wire instructions**	[___]

9. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Loan proceeds. No portion of the amounts requisitioned will be applied to pay for Eligible Project Costs that have been previously paid, or are expected to be paid, with proceeds of debt of the Borrower that is not the WIFIA Loan.

10. The aggregate amount of all disbursements of the WIFIA Loan (including the amount requested under this Requisition but excluding any interest that is capitalized in accordance with the WIFIA Loan Agreement) does not exceed (a) the amount of the WIFIA Loan, (b) the amount of Eligible Project Costs paid or incurred by the Borrower, and (c) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule.

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

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

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

14. Each of the insurance policies obtained (if any) or self-insurance maintained by the Borrower in satisfaction of Section 14(f) (*Affirmative Covenants – Insurance*) 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.

15. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), (i) no Default or Event of Default and (ii) no event of default under any other Related Document and no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen (disregarding, for purposes of this sentence, the impacts of the COVID-19 pandemic) since [the Effective Date][4][the most recent disbursement][5].

16. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender.

17. 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).

18. Each Other Financing Document and Principal Project Contract that has been delivered by the Borrower to the WIFIA Lender pursuant to Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) is complete, fully executed and in full force and effect.

19. The current estimated percentage of physical completion of the Project is [___]%. The Borrower is in compliance with Section 16(d) (*Reporting Requirements – Construction Report*) and no change has occurred since the date of the most recently delivered quarterly construction progress report that could reasonably be expected to cause a Material Adverse Effect.[6]

---

[4] To be included for the initial disbursement.

[5] To be included for any disbursement after the initial disbursement.

[6] The most recent quarterly progress report should set out a summary of the progress of construction of the Project, as well as a general description of the work done for which the funds being requisitioned are being applied and a summary of any material changes/risks. If not, PM should request additional information (including a risk register, if applicable), pursuant to Section 11(b)(vii) (*Conditions Precedent – Conditions Precedent to Disbursement*),

20. All documentation evidencing the Eligible Project Costs to be reimbursed to the Borrower by the above-requested disbursement has been delivered by the Borrower to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement, including the details set forth [in the attachment hereto, which is in form satisfactory to the WIFIA Lender][below:

								WIFIA USE ONLY	
Vendor or Contractor Name[7]	**Invoice Number[8]**	**Invoice Date**	**Payment Date**	**Invoice Amount**	**WIFIA Requested Amount[9]**	**Activity Type[10]**	**Description of Activity[11]**	**Approved Amount**	**Notes**

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.

Date: _____

CITY OF TACOMA, WASHINGTON,
By its authorized representative

By: _____
Name: _____
Title:_____

[7] If seeking reimbursement for internal costs, enter "Internally financed activities."
[8] Vendor's number indicated on the invoice sent to the Borrower.
[9] If the amount requested for reimbursement by the WIFIA Lender is less than the total amount of the invoice, include an explanation for the difference.
[10] Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the "Description of Activity" column.
[11] Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

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, for the reasons set forth in Annex A attached hereto,][12] by the WIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [_____], 2020, by and between the City of Tacoma, Washington (the "**Borrower**") and the United States Environmental Protection Agency, acting by and through the Administrator of the United States Environmental Protection Agency (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:

[12]If there is any partial or full denial of approval, the WIFIA Lender should provide a separate attachment setting forth the reasons for such partial or full denial of approval.

EXHIBIT E

FORM OF NON-LOBBYING CERTIFICATE

The undersigned, on behalf of the CITY OF TACOMA, WASHINGTON (the "**Borrower**"), hereby certifies, to the best of his or her knowledge and belief, that:

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

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

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

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

Capitalized terms not defined herein shall have the meanings set forth in the WIFIA Loan Agreement (the "**WIFIA Loan Agreement**"), dated as of [_____], 2020, by and between the United States Environmental Protection Agency, acting by and through the Administrator of the United States Environmental Protection Agency, and the Borrower.

Dated:[_____], 2020

CITY OF TACOMA, WASHINGTON,
by its authorized representative

By: _____
Name:
Title:

EXHIBIT F

WIFIA DEBT SERVICE

[To be provided on the closing date.]

EXHIBIT G

OPINIONS REQUIRED FROM BOND COUNSEL

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

(a) The Borrower is a duly organized and existing first class city under the Organizational Documents, and has the full legal right, power and authority to pass the WIFIA Bond Ordinance and issue the WIFIA Bond;

(b) The Borrower has the full legal right, power and authority to (i) acquire, construct, operate, maintain, improve and finance the System, (ii) execute and deliver the WIFIA Loan Agreement; and (iii) perform its obligations under and carry out the transactions to be carried out by the Borrower pursuant to the WIFIA Loan Documents.

(c) The WIFIA Bond Ordinance is a legal, valid and binding obligation of the Borrower, has been duly authorized, executed and delivered and is enforceable in accordance with its terms, except to the extent that enforcement may be limited by laws relating to bankruptcy, insolvency, moratorium, reorganization or other similar laws of general application affecting the rights of creditors, by the application of equitable principles and the exercise of judicial discretion.

(d) Each of the WIFIA Loan Agreement and the WIFIA Bond has been duly authorized, executed and delivered by the Borrower, and each of the WIFIA Loan Documents is in full force and effect and constitutes a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions;

(e) By official action of the Borrower, the Borrower has duly authorized and approved by all necessary organizational or regulatory action (i) the execution and delivery of the WIFIA Bond and the execution of the WIFIA Loan Agreement, and (ii) the performance by the Borrower of its obligations contained in the WIFIA Loan Documents;

(f) The WIFIA Bond Ordinance is in full force and effect, is valid and binding upon the Borrower and is enforceable in accordance with its terms. The WIFIA Loan Documents have been duly executed and delivered and constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms. The WIFIA Bond is a validly issued limited obligation of the Borrower entitled to the benefits expressly provided and security expressly pledged by the WIFIA Loan Documents. The WIFIA Bond is not a general obligation of the Borrower;

(g) 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, the WIFIA Loan Documents other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;

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

(i) The Borrower has pledged and bound itself to pay into the Sewer Fund all of the Gross Revenues derived by the Borrower from the operation of the System. The Borrower has further pledged and bound itself to set aside from the money in the Sewer Fund and to pay into the Bond Fund and the funds and accounts therein all ULID Assessments and certain fixed amounts sufficient to pay the principal, premium, if any, and interest on the WIFIA Bond and all other Parity Bonds as the same become due. As security for the payment of the principal of, premium, if any, and interest on all Parity Bonds the Borrower has pledged (i) the proceeds of the sale of Parity Bonds to the extent held in funds established or continued by the WIFIA Bond Ordinance, (ii) Net Revenues and ULID Assessments, if any, and (iii) the money and assets credited to the Sewer Fund and the Bond Fund and the income therefrom. The pledge of the Pledged Revenue constitutes a lien and charge on the Pledged Revenue superior to all other charges of any kind or nature. The Borrower has reserved the right to issue Future Parity Bonds and other parity obligations on the terms and conditions set forth in the WIFIA Bond Ordinance and the WIFIA Loan Agreement;

(j) the WIFIA Bond (i) is a validly issued limited obligation of the Borrower secured by the Pledged Revenue of the System and the security expressly pledged in the WIFIA Bond Ordinance, (ii) is a "Parity Bond" under and as defined in the Parity Bond Ordinances, entitled to all of the benefits of a "Parity Bond" under the Parity Bond Ordinances (including the WIFIA Bond Ordinance), (iii) is enforceable under the laws of the State without any further action by the Borrower or any other Person, and (iv) ranks *pari passu* in right of payment and right of security with all outstanding Parity Bonds and senior in right of payment and right of security to all Subordinated Obligations;

(k) The WIFIA Bond Ordinance creates a valid and binding pledge of and lien upon the Pledged Revenue of the System and the security expressly pledged in the WIFIA Bond Ordinance 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;

(l) All actions by the Borrower that are required for the application of Gross Revenues as required under the WIFIA Bond Ordinance and under the WIFIA Loan Agreement have been duly and lawfully taken;

(m) The Borrower has complied with the requirements of State law to lawfully pledge the Pledged Revenue of the System and the security expressly pledged in the WIFIA Bond Ordinance and to use the Gross Revenues as required by the terms of the WIFIA Bond Ordinance and the WIFIA Loan Agreement;

(n) The Borrower is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Loan Agreement, the WIFIA Bond, or the Parity Bond Ordinances (including the WIFIA Bond Ordinance);

(o) The execution and delivery by the Borrower of the WIFIA Loan Documents, and, to bond counsel's knowledge, the performance by the Borrower of its agreements and obligations in the WIFIA Loan Documents, do not conflict with or constitute a violation or material breach of or default under any of the following in effect as of the Effective Date: (i) the Borrower's charter, the Tacoma Municipal Code or any other Organizational Document; (ii) any constitutional provision, law, administrative regulation or rule; or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to us to which the Borrower is a party, or to the best of bond counsel's knowledge, after inquiry, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject; and

(p) The Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code.

EXHIBIT H

FORM OF CLOSING CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [_____], 2020 (the "WIFIA Loan Agreement"), by and among the City of Tacoma, Washington (the "Borrower") and the United States Environmental Protection Agency, acting by and through the Administrator of the United States Environmental Protection Agency (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.

In connection with Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of 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 11(a)(viii) of the WIFIA Loan Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed as a Borrower's Authorized Representative in accordance with Section 21 (*Borrower's Authorized Representative*) of the WIFIA Loan Agreement;

(b) pursuant to Section 11(a)(ii) of the WIFIA Loan Agreement, the Borrower has delivered to the WIFIA Lender copies of each Other Financing Document, together with any amendments, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled;

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

(d) pursuant to Section 11(a)(iv) of the WIFIA Loan Agreement, the Borrower has delivered to the WIFIA Lender a copy of the Borrower's Charter, as in effect on the Effective Date, which Charter is in full force and effect. In addition to the Borrower's Charter, the following other statutes, ordinances, regulations, code provisions and bylaws comprise the Borrower's Organizational Documents: [_____]. Other than the WIFIA Bond Ordinance, there are no additional instruments or documents necessary for the Borrower to execute and deliver, or to perform its obligations under, the WIFIA Loan Documents to which the Borrower is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents;

(e) pursuant to Section 11(a)(viii)(1) of the WIFIA Loan Agreement, the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Proforma Financial Statement and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

(f) pursuant to Section 11(a)(viii)(2) of the WIFIA Loan Agreement, the Borrower has obtained all Governmental Approvals necessary (i) as of the Effective Date in connection with the Project and (ii) to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(g) pursuant to Section 11(a)(viii)(3) of the WIFIA Loan Agreement, (i) the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms of the WIFIA Loan Agreement), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms of the WIFIA Loan Agreement), does not exceed eighty percent (80%) of Total Project Costs;

(h) pursuant to Section 11(a)(viii)(4) of the WIFIA Loan Agreement, the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project, and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such compliance;

(i) pursuant to Section 11(a)(viii)(5) of the WIFIA Loan Agreement, the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

(j) pursuant to Section 11(a)(viii)(6) of the WIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is [278012342], (ii) the Borrower's Data Universal Numbering System number is [073135535], and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), which confirmation is attached hereto as Annex B;

(k) pursuant to Section 11(a)(viii)(7) of the WIFIA Loan Agreement, the CUSIP number for the WIFIA Loan is [___];

(l) pursuant to Section 11(a)(viii)(8) of the WIFIA Loan Agreement, 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;

(m) pursuant to Section 11(a)(viii)(9) of the WIFIA Loan Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since February 10, 2020 (disregarding, for purposes of this clause (m), the impacts of the COVID-19 pandemic);

(n) pursuant to Section 11(a)(viii)(10) of the WIFIA Loan Agreement, the Borrower has satisfied, or caused to be satisfied, the conditions relating to the execution and delivery of the WIFIA Bond as a Future Parity Bond (as defined in the Outstanding Parity Bond Ordinances), as set forth in the Outstanding Parity Bond Ordinances for the Outstanding Parity Bonds outstanding as of the Effective Date;

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

(p) pursuant to Section 11(a)(xi) of the WIFIA Loan Agreement, the Borrower has delivered to the WIFIA Lender the Base Case Proforma Financial Statement, which (i) demonstrates that projected Net Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for the current Borrower Fiscal Year and each of the immediately succeeding six (6) Borrower Fiscal Years, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender, (iv) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over its useful life and (v) otherwise meets the requirements of such Section 11(a)(xi); [and]

(q) pursuant to Section 11(a)(xii) of the WIFIA Loan Agreement, attached hereto as Annex C is a certificate of the Borrower's risk management department pertaining to the Borrower's self-insurance program, and such insurance certificate is true and correct and demonstrates compliance with the requirements of Section 14(f) (*Affirmative Covenants – Insurance*) of the WIFIA Loan Agreement[; and][.]

(r) [*any other attachments and provisions to be determined*].

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

CITY OF TACOMA, WASHINGTON,
by its authorized representative

By: _____
Name:
Title:

ANNEX A TO EXHIBIT H

INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of the City of Tacoma, Washington, a municipal corporation 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 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 of the United States Environmental Protection Agency):

Name	Title	Signature
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this [_____] day of [___], 2020.

CITY OF TACOMA, WASHINGTON,
by its authorized representative

By: _____
Name:
Title:

EXHIBIT I

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[*Letterhead of Borrower*]

[*Date*]

WIFIA Program Office
[Insert Proper Address]
Attention: Administrator

Project: City of Tacoma, Washington Central Treatment Plant Electrical Distribution System Replacement Project (CTP-ERP) (WIFIA - N19117WA)

Dear Director:

This Notice is provided pursuant to Section 16(h)(i)(A) (*Affirmative Covenants – Notices – Substantial Completion*) of that certain WIFIA Loan Agreement (the "**WIFIA Loan Agreement**"), dated as of [___], 2020, by and between the City of Tacoma, 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 [i*nsert date Substantial Completion requirements were satisfied*], the Project satisfied each of the requirements for Substantial Completion set forth in the [*Insert reference to the concession agreement, 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.

CITY OF TACOMA, WASHINGTON,
by its authorized representative

By: _____
Name:
Title:

EXHIBIT J

FORM OF QUARTERLY REPORT

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

Re: City of Tacoma, Washington Central Treatment Plant Electrical Distribution System Replacement Project (CTP-ERP) (WIFIA – N19117WA)

This Quarterly Report for the period of [___] is provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) of the WIFIA Loan Agreement, dated as of [___], 2020 (the "**WIFIA Loan Agreement**"), by and between the City of Tacoma, Washington ("**the Borrower**") and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the "**WIFIA Lender**"). Unless otherwise defined herein, all capitalized terms in this Quarterly Report have the meanings assigned to those terms in the WIFIA Loan Agreement.

(i) Amount Expended

Principal Project Contract (PPC)	Original Contract Amount	Change Orders to Date	Total Estimated Costs	Estimated Costs to Complete	Costs Earned or Paid Through Previous Reporting period	Current Reporting Period Costs Earned or Paid	Total Costs Earned or Paid to date	% Costs Earned or Paid to Date
TOTAL								

(ii) Construction Progress, Governmental Approvals, Updated Schedule

Assessment of overall construction progress:

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

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

Principal Project Contract (PPC)	NTP Effective Date	Original Time for Completion (days)	Original Contract Completion (date)	Time Added to Date (days)	Current Contract Completion (date)	Days Elapsed	% Contract Duration

(iii) Substantial Completion Date

Current projection for the Substantial Completion Date: _____

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

(iv) Material Problems (if any)

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

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

(vi) Other matters related to the Project

Date: _____

CITY OF TACOMA, WASHINGTON,
by its authorized representative

By: _____

Name: _____
Title:_____

EXHIBIT K

FORM OF PUBLIC BENEFITS REPORT

Pursuant to [Section 11(a)(xiii))] [and] [Section 16(e)] of the WIFIA Loan Agreement, dated as of [___], 2020 (the "**WIFIA Loan Agreement**"), by and between the City of Tacoma, Washington (the "**Borrower**"), and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency, the Borrower is providing this Public Benefits Report in connection with the Central Treatment Plant Electrical Distribution System Replacement Project (CTP-ERP) (WIFIA – N19117WA). Unless otherwise defined herein, all capitalized terms in this Public Benefits Report have the meanings assigned to those terms in the WIFIA Loan Agreement.

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

The estimated interest savings from use of the WIFIA Loan compared to a comparable market rate financing is $[__] million on a gross savings basis and $[___] million on a present value basis.

(ii) With respect to the report delivered [prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) days following the fifth anniversary of the Substantial Completion Date], the number of jobs projected to be created by the Project during the period between the Effective Date and the Substantial Completion Date:

The Borrower projects [__] jobs to be created by the Project during the period between [[(1)] the Effective Date and the Substantial Completion Date][13] [and] [[(2)] the Substantial Completion Date and the fifth anniversary of the Substantial Completion Date][14].

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

[___].

(iv) The amount by which the Project will [assist the Borrower (measured by percent annually) in reducing levels of Nitrogen, Phosphorus, biochemical oxygen demand (BOD) and total suspended solids (TSS)][increase the volume of potable water produced (measured in MGD annually)][increase the volume of water recycled,

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

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

recharged or redirected (measured in MGD annually)][increase Class [A][B] biosolids (measured in tons annually)][15]:

[____].

[15] Include one of the bracketed items as applicable.

EXHIBIT L

WIFIA BOND ORDINANCE

[See attached.]

CERTIFICATE

I, the undersigned, City Clerk of the City of Tacoma, Washington, DO HEREBY CERTIFY:

1. That the attached is a true and correct copy of Ordinance No. 28690 (the "Ordinance") of the City, duly passed at a regular meeting of the City Council (the "Council") of the City held on September 15, 2020.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, including, but not limited to, Washington State Governor Inslee's Emergency Proclamation No. 20-28 issued on March 24, 2020, as amended and supplemented, temporarily suspending portions of the Open Public Meetings Act (chapter 42.30 RCW), due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of said Ordinance; that all other requirements and proceedings incident to the proper passage of said Ordinance have been fully fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of September, 2020.

Doris Sorum
City Clerk