

RESOLUTION NO. 23-16

A RESOLUTION OF THE CITY OF OREGON CITY, OREGON AUTHORIZING FULL FAITH AND CREDIT BORROWING FOR WATER SYSTEM IMPROVEMENTS.

WHEREAS, the City of Oregon City, Oregon (the “City”) desires to enter into a full faith and credit borrowing to finance water system improvements;

WHEREAS, Section 47 of the Oregon City Charter prohibits the City’s voluntary floating indebtedness from exceeding \$25,000 without a vote of the people, and Section 58 of the Oregon City Charter prohibits the City from issuing general obligation bonds or revenue bonds without a vote of the people;

WHEREAS, the City submitted Measure 3-576 to the electors of the City, which asked the electors to authorize the City to borrow up to \$38 million for water system improvements;

WHEREAS, the electors of the City approved Measure 3-576 by majority vote on November 2, 2021;

WHEREAS, the City is authorized by Oregon Revised Statutes (“ORS”) Section 271.390 to enter into a financing agreement to finance real or personal property which the City Commission determines is needed so long as the estimated weighted average life of the financing agreement does not exceed the estimated dollar weighted average life of the property that is financed;

WHEREAS, the City is authorized by the City Charter and Measure 3-576 to enter into borrowings to finance water system improvements as described in the measure (collectively, the “Projects”), and to secure the borrowings with the City’s full faith and credit, with the expectation that such borrowings will be repaid using revenues of the City’s water system; and

WHEREAS, it is desirable to enter into a borrowing under the United States Environmental Protection Agency’s (the “EPA’s”) Water Infrastructure Finance and Innovation Act (“WIFIA”) program in an amount not to exceed \$38,000,000, as outlined in Measure 3-576, to finance the Projects;

NOW, THEREFORE, the City of Oregon City resolves as follows:

Section 1. Determination of Need. The City Commission hereby determines that the Projects are needed.

Section 2. Borrowing Authorized. The City Commission hereby authorizes the City to enter into a full faith and credit-backed financing agreement in the form of a loan agreement with the EPA in an amount up to \$38,000,000 pursuant to the City Charter, Measure 3-576, ORS Section 271.390 and the relevant provisions of ORS Chapter 287A (the “Loan Agreement”). Proceeds of the Loan Agreement may be used to pay for Projects and costs related to the Loan Agreement.

Section 3. Delegation. The City Manager or the Finance Director of the City or a person designated by either of those individuals to act under this Resolution (each of whom is referred to herein as a “City Official”) is hereby authorized, on behalf of the City and without further action by the City Commission, to:

- (1) Enter into the Loan Agreement with the EPA in substantially the form attached to this resolution as Exhibit A, but with such changes as the City Official approves.
- (2) Determine the final principal amount, the interest rate and other terms of the Loan Agreement.
- (3) Issue a bond to the EPA to evidence amounts due under the Loan Agreement.
- (4) Execute and deliver any certificates or documents related to the Loan Agreement and bond and take any other actions which the City Official determines are desirable to carry out this resolution or which are required by the WIFIA program.

Section 4. Security. Pursuant to ORS 287A.315, the City Official may pledge the City’s full faith and credit and taxing power within the limitations of Sections 11 and 11b of Article XI of the Oregon Constitution, and any and all of the City’s lawfully available funds, to pay the amounts due under the Loan Agreement. The City is not authorized to levy additional taxes to pay the amounts due under the Loan Agreement. The City may further secure the Loan Agreement with a promise to make payments from the revenues of the City’s water system.


Section 5. Effective Date. This resolution is effective immediately upon adoption.

Dated this 21st day of June, 2023.



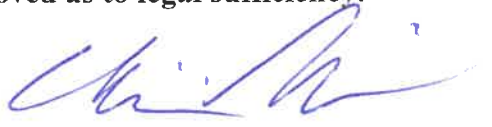
Mayor

Attest:



City Recorder

Approved as to legal sufficiency:



City Attorney

EXHIBIT A

FORM OF WIFIA LOAN AGREEMENT WITH EPA

Norton Rose Fulbright/EPA
Draft of June 9, 2023
WIFIA CUSIP Number: [____]

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA LOAN AGREEMENT

For Up to \$16,311,537

With

CITY OF OREGON CITY

For the

**OREGON CITY WATER REHABILITATION, RESILIENCY
AND IMPROVEMENT PROJECTS
(WIFIA ID – N21143OR)**

Dated as of [____], 2023

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WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between the Borrower (as defined herein) and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America (“**EPA**”), 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 (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended, and as may be further amended from time to time, the “**Act**”), 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 the Maximum Principal Amount (as defined herein) to be used to pay a portion of the Eligible Project Costs (as defined herein) pursuant to the Application (as defined herein);

WHEREAS, pursuant to the WIFIA Term Sheet (as defined herein), 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 for a portion of the costs of the Project through the issuance of the WIFIA Bond (as defined herein), upon the terms and conditions set forth herein;

WHEREAS, the Borrower 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. Capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement, except as otherwise expressly provided herein. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

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

“**Additional Construction Contract**” means, with respect to the Project, each Construction Contract entered into after the Effective Date.

“**Additional Project Obligations**” means any Obligations of the Borrower issued or incurred after the Effective Date to fund any portion of Total Project Costs and that is permitted under Section 15(a) (*Indebtedness*).

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

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

“**Application**” means the Borrower’s application for WIFIA financial assistance received by the WIFIA Lender on the Application Receipt Date.

“**Application Receipt Date**” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“**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 (*Repayments*) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each

case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; (c)(i) any Person shall commence a process pursuant to which all or a substantial part of the Water Fund or the System may be sold or otherwise disposed of in a public or private sale or disposition, (ii) any Person shall commence a process pursuant to which all or a substantial part of the Borrower's assets may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon, or (iii) any Person shall commence a process pursuant to which all or a substantial part of the Borrower's assets may be sold or otherwise disposed of pursuant to a sale or disposition of such assets in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the Holders of the Obligations, funds on deposit in the Water Fund upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any Obligation Document for application to the prepayment or repayment of any principal amount of any Obligation other than in accordance with the provisions of the applicable Obligation Document.

“Base Case Financial Model” means the financial model or plan, prepared by the Borrower and delivered to the WIFIA Lender as part of the Application, forecasting the capital costs of the System (including the Project) and the estimated debt service coverage, rates, revenues, operating expenses and major maintenance requirements of the System (as may be applicable) for the Forecast Period and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Lender as of the Effective Date, which model or plan shall have been provided to the WIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format agreed with the WIFIA Lender.

“Borrower” has the meaning ascribed to such term in **Part A of Schedule I** (*Loan Specific Terms*).

“Borrower Fiscal Year” means (a) as of the Effective Date, the Initial Borrower Fiscal 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 **Part E of Schedule V** (*Reporting Requirements*).

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

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Federal 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, the Trustee Location or the Project Location.

“Capitalized Interest Period” has, if applicable, the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in

Schedule I, means capitalized interest shall not be applicable with respect to the WIFIA Loan hereunder.

“**Closing Certificate**” has the meaning provided in Section 11(a) (*Conditions Precedent to Effectiveness*).

“**Construction Contract**” means, with respect to the Project, any prime contract entered into by the Borrower that involves any construction activity (such as demolition, site preparation, civil works construction, installation, remediation, refurbishment, rehabilitation, or removal and replacement services) for the Project. For the avoidance of doubt, “**Construction Contract**” shall include each Existing Construction Contract and, upon the effectiveness thereof, each Additional Construction Contract.

“**Construction Monitoring Report**” means a report on the status of the Project, substantially in the form of **Exhibit F** (*Form of Construction Monitoring Report*), unless otherwise agreed to be in a different form by the WIFIA Lender.

“**Construction Period**” means the period from the Effective Date through (and including) the end of the Federal Fiscal Year during which the Substantial Completion Date occurs.

“**Construction Period Servicing Fee**” has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached hereto as **Part B of Schedule II** (*Project Details*), and (b) any updates thereto included in the Construction Monitoring Report most recently submitted to the WIFIA Lender in accordance with **Part C of Schedule V** (*Reporting Requirements*).

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

“**Debt Service Payment Commencement Date**” means the earlier to occur of (a) the first Payment Date immediately following the later of (i) the first Disbursement or (ii) if there is a Capitalized Interest Period, the end of the Capitalized Interest Period, in each case as set forth in the WIFIA Loan Amortization Schedule; or (b) 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**” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

“**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 the Development Default

Date, unless such failure to achieve Substantial Completion shall occur by reason of an Uncontrollable Force that is not due to the fault or gross negligence of the Borrower (and which the Borrower could not reasonably have avoided or mitigated), in which case the Development Default Date shall be extended by the number of days equal to the duration of such Uncontrollable Force.

“**Development Default Date**” has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

“**Disbursement**” means a disbursement of WIFIA Loan proceeds, subject to and in accordance with this Agreement.

“**Dollars**” and “**\$**” means the lawful currency of the U.S.

“**Effective Date**” means the date of this Agreement, as specified in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“**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 33 U.S.C. §3905(8)), construction contingencies, and acquisition of equipment; or
- (d) capitalized interest (with respect to System Related 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**” means all supporting documentation with respect to the Eligible Project Costs, including copies of invoices and records evidencing incurred or previously paid Eligible Project Costs, which documentation should contain sufficient detail satisfactory to the WIFIA Lender (e.g. if the Borrower intends to utilize WIFIA Loan proceeds to make construction progress payments for Eligible Project Costs, the documentation should demonstrate that such progress payments are commensurate with the cost of the work that has been completed).

“**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.

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

“**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 Construction Contract**” means each Construction Contract of the Borrower in effect as of the Effective Date as set forth in **Part C of Schedule II** (*Project Details*).

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

“**Federal Fiscal Year**” means the fiscal year of the Federal 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.

“**Federal Government**” means the U.S. and its departments and agencies.

“**FEIN**” means a Federal Employer Identification Number.

“**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 WIFIA Loan Disbursement Schedule; (c) the date as of 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**” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

“**Financial Statements**” has the meaning provided in Section 12(q) (*Financial Statements*).

“**Flow of Funds**” has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

“**Forecast Period**” means, as of any date, the time period from and including the then-current Borrower Fiscal Year until the later ending date of either (a) the five (5) immediately

succeeding Borrower Fiscal Years or (b) the end of the Borrower Fiscal Year in which the Borrower’s then-currently effective capital improvement plan for the System concludes.

“Full Faith and Credit Obligation Documents” means any resolution, ordinance, indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee, financing agreement or any other agreement, instrument or document pursuant to which any Full Faith and Credit Obligation is incurred by the Borrower, including this Agreement.

“Full Faith and Credit Obligations” means obligations of the Borrower secured by a pledge of the Borrower’s full faith and credit and taxing power subject to the limitations of Article XI, Sections 11 and 11b of the Oregon Constitution.

“Full Faith and Credit Pledge” has the meaning provided in Section 7(a) (*Security; Dedicated Source of Repayment from Revenues – WIFIA Bond; Full Faith and Credit Pledge*).

“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 U.S.

“General Obligation Documents” means any resolution, ordinance, indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee, financing agreement or any other agreement, instrument or document pursuant to which any General Obligation is incurred by the Borrower.

“General Obligations” means obligations of the Borrower secured by a pledge of the Borrower’s full faith and credit and taxing power which are not subject to the limitations of Article XI, Sections 11 and 11b of the Oregon Constitution.

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

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, registrations, 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 U.S. 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.

“Holder” means (a) when used with respect to the WIFIA Bond, the WIFIA Lender (and any subsequent registered holder of the WIFIA Bond), and (b) when used with respect to any other Obligation, the registered owner or beneficiary of such Obligation.

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

“Initial Borrower Fiscal Year” has the meaning ascribed to such term in **Part A of Schedule I** (*Loan Specific Terms*).

“Initial Construction Period Servicing Fee” has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

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

“Interest Only Period” has, if applicable, the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means no interest only period shall be applicable with respect to the WIFIA Loan hereunder.

“Interest Payment Date” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

“Interim Financing” means interim bond anticipation notes, commercial paper or other short-term temporary financing, in each case with a maturity not later than five (5) years following the issuance or incurrence thereof, the proceeds of which are applied to pay Eligible Project Costs.

“Investment Grade Rating” means a rating of ‘BBB-’, ‘Baa3’, ‘bbb-’, or ‘BBB (low)’, or higher, from a Nationally Recognized Rating Agency.

“Legal Entity” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“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.

“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) or proceeds of eminent domain proceedings resulting from any Event of Loss.

“Material Adverse Effect” means a material adverse effect on (a) the Taxes, the System, the Project or the Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, (c) the legality, validity or enforceability of any material provision of any WIFIA Loan Document, (d) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document, (e) the validity or enforceability of the Full Faith and Credit Pledge or (f) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document.

“**Maximum Principal Amount**” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

“**Nationally Recognized Rating Agency**” means any nationally recognized statistical rating organization registered with, and 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**” has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

“**Obligation Documents**” means the Full Faith and Credit Obligation Documents, General Obligation Documents and System Related Obligation Documents, but excluding the WIFIA Loan Documents.

“**Obligations**” means Full Faith and Credit Obligations, General Obligations and System Related Obligations.

“**Operating Period Servicing Fee**” has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

“**Oregon Constitution**” means the Constitution of the State of Oregon.

“**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, or other organizational documents (including any amendments, modifications or supplements thereto) of or adopted by the Borrower by which the Borrower, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

“**Outstanding**” means (a), with respect to Obligations other than the WIFIA Loan, Obligations that have not been cancelled or legally defeased or discharged within the meaning of the related Obligation Documents, and (b) with respect to the WIFIA Loan, the (i) entire amount available to be drawn under this Agreement (including amounts drawn and amounts that remain available to be drawn), *less* (ii) any amount that has been irrevocably determined will not be drawn under this Agreement, *less* (iii) the aggregate principal amount of the WIFIA Loan Balance that has been repaid or prepaid.

“**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) (*Payment Default*).

“**Permitted Investments**” means any investment permitted under applicable State law and the Borrower’s investment policies.

“**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, including in each case such Person’s successors and permitted assigns.

“**Principal Payment Date**” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

“**Project**” has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

“**Project Budget**” means the budget for the Project attached to this Agreement as **Part A of Schedule II** (*Project Details*) 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.

“**Project Location**” has the meaning ascribed to such term in **Part B of Schedule I** (*Loan Specific Terms*).

“**Projected Substantial Completion Date**” has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

“**Public Benefits Report**” means the report, in the form attached hereto as **Exhibit C** (*Form of Public Benefits Report*).

“**Related Documents**” means the WIFIA Loan Documents and the Obligation Documents.

“**Requisition**” means the request for Disbursement in the form attached hereto as **Exhibit D** (*Form of Requisition*).

“**Revenues**” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“**SAM**” means the federal System for Award Management (www.SAM.gov) (or any successor system or registry).

“**Sanctions Laws**” means collectively, any applicable anti-drug trafficking, anti-terrorism, anti-money laundering, anti-bribery, or anti-corruption laws or regulations, as applicable, including those contained in the Bank Secrecy Act of 1970 (as amended) and the U.S. Patriot Act.

“**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 ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

“**State**” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“**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 and notice to the WIFIA Lender in accordance with **Part E of Schedule V** (*Reporting Requirements*), that Substantial Completion has occurred.

“**System**” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“**System Related Obligation Documents**” means any Full Faith and Credit Documents, any General Obligation Documents, and any other resolution, ordinance, indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee, financing agreement or any other agreement, instrument or document pursuant to which any System Related Obligation is incurred by the Borrower, including this Agreement.

“**System Related Obligations**” means the WIFIA Loan, Full Faith and Credit Obligations, General Obligations and any other obligations of the Borrower, all or a portion of the proceeds of which are used for payment of 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 System.

“**Taxes**” means the taxes levied by the Borrower pursuant to the Full Faith and Credit Pledge.

“**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 Related Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan or any other obligation, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) in respect of any indebtedness of the Borrower (other than the WIFIA Loan), in each case in connection with the acquisition, design, construction and equipping of the Project; and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“**Trustee**” has, if applicable, the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in Schedule I, means a trustee shall not be applicable with respect to the WIFIA Loan hereunder.

“**Trustee Location**” has, if applicable, the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means a trustee location shall not be applicable with respect to the WIFIA Loan hereunder.

“**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.

“**Unique Entity Identifier**” means, with respect to any Person, the unique entity identifier issued by the Government through SAM.gov for such Person.

“**Updated Financial Model/Plan**” means (a) an updated Base Case Financial Model or (b) a financial plan in a format agreed with the WIFIA Lender, in each case reflecting the then-current and projected conditions for the Forecast Period, in accordance with **Part A of Schedule V** (*Reporting Requirements*).

“**U.S.**” means the United States of America.

“**Water Fund**” has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

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

“**WIFIA Bond**” has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means a bond as evidence of the Borrower’s Obligation shall not be applicable with respect to the WIFIA Loan hereunder.

“**WIFIA Bond Resolution**” has the meaning ascribed to such term in **Part E of Schedule I** (*WIFIA Loan Specific Terms*).

“**WIFIA CUSIP Number**” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“**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 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 the WIFIA Loan Amortization Schedule and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of WIFIA Debt Service*).

“**WIFIA Debt Service Account**” has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means a separate debt service account designated for the WIFIA Lender shall not be applicable with respect to the WIFIA Loan hereunder.

“**WIFIA Debt Service Reserve Account**” has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means a separate debt service reserve account designated for the WIFIA Lender shall not be applicable with respect to the WIFIA Loan hereunder.

“**WIFIA Debt Service Reserve Requirement**” has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means a separate debt service reserve requirement shall not be applicable with respect to the WIFIA Loan hereunder.

“**WIFIA Interest Rate**” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Term*).

“**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 the Maximum Principal Amount, to be used in respect of Eligible Project Costs.

“**WIFIA Loan Amortization Schedule**” means the loan amortization schedule reflected in **Schedule VI** (*WIFIA Loan Amortization Schedule*), as amended from time to time in accordance with Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*).

“**WIFIA Loan Balance**” means (a) the aggregate principal amount of the WIFIA Loan disbursed by the WIFIA Lender to the Borrower hereunder, *plus* (b) if applicable, capitalized interest added to the principal balance of the WIFIA Loan pursuant to Section 8(a)(iii) (*Payments of WIFIA Debt Service*), *minus* (c) the aggregate principal amount of the WIFIA Loan repaid or

prepaid by the Borrower, as reflected from time to time in the WIFIA Loan Amortization Schedule in accordance with Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*).

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

“**WIFIA Loan Documents**” means this Agreement, the WIFIA Bond and the WIFIA Bond Resolution.

“**WIFIA Term Sheet**” has the meaning ascribed to such term in **Part E of Schedule I** (*WIFIA Loan Specific Terms*).

Section 2. Interpretation. The rules of interpretation set forth below in this Section 2 shall apply to this Agreement, except as otherwise expressly provided herein.

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

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

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

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

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

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

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

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

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

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

(k) References to “disbursements of WIFIA 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 a prepayment of the WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the WIFIA Bond.

(m) Whenever this Agreement sets forth a time period for a number of days by when a deliverable must be provided or an action must be taken, such time period shall be computed on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months.

ARTICLE II THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed the Maximum Principal Amount.

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, including, for the avoidance of doubt, Eligible Project Costs that were initially funded with Interim Financing proceeds. Each Disbursement of the WIFIA Loan shall be made pursuant to the procedures of **Schedule IV** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent to Disbursements*); provided, that no Disbursements shall be made after the Final Disbursement Date.

(b) Subject to this Section 4, any scheduled Disbursement (as reflected in the WIFIA Loan Disbursement Schedule) that remains undrawn as of its scheduled date shall automatically be available for the next scheduled Disbursement date, up to the Final Disbursement Date, with the effect of automatically updating the WIFIA Loan Disbursement Schedule (and the WIFIA Loan Amortization Schedule) without need for the WIFIA Lender’s approval. The Borrower may also amend the 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 WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be deemed granted if the WIFIA Lender has not objected within thirty (30) days from receipt of the revised schedule, and which approval shall have the effect of updating the WIFIA Loan Amortization Schedule to reflect the updated WIFIA Loan Disbursement Schedule. Notwithstanding the foregoing, the date of the first Disbursement shall not be earlier than the initial date of Disbursement set out in the WIFIA Loan Amortization Schedule as of the Effective Date.

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 Borrower shall pay interest on the WIFIA Loan Balance at the WIFIA Interest Rate; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the 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 of the overdue amount of principal of the WIFIA Loan and accrued interest thereon 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 or waived by the WIFIA Lender and (ii) the WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. Interest shall (x) accrue on the WIFIA Loan commencing on the date of the first disbursement of the WIFIA Loan, (y) be payable commencing on the Debt Service Payment Commencement Date and (z) be computed on the WIFIA Loan Balance on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months.

Section 7. Security; Sources of Repayment.

(a) WIFIA Bond; Full Faith and Credit Pledge. As security for the WIFIA Loan, and concurrently with the issuance and delivery of this Agreement, the Borrower shall deliver to the WIFIA Lender, as the registered owner, the WIFIA Bond. The Borrower shall pay principal and interest on the WIFIA Loan and the WIFIA Bond and all other amounts due hereunder from all lawfully available funds of the Borrower, and pursuant to Oregon Revised Statutes Section 287A.315, the Borrower hereby pledges its full faith and credit and taxing power within the limitations of Section 11 and 11b of Article XI of the Oregon Constitution to pay such amounts. The foregoing pledge is referred to herein as the “**Full Faith and Credit Pledge.**” The obligation of the City to make payments under the WIFIA Loan and the WIFIA Bond is not subject to appropriation. The Borrower hereby agrees that its obligation to pay such amounts is absolute and unconditional, and shall not be subject to the following: (i) any setoff, counterclaim, recoupment, defense or other right which the Borrower may have against the WIFIA Lender, any contractor or anyone else for any reason whatsoever; (ii) any insolvency, bankruptcy, reorganization or similar proceeding by the Borrower; (iii) abatement through damage, destruction or non-availability of the projects financed with the proceeds of the WIFIA Loan; and (iv) any other event or circumstances whatsoever, whether or not similar to any of the foregoing.

(b) Sources of Repayment. The WIFIA Loan shall be payable from all legally available funds of the Borrower, including without limitation, Revenues and Taxes. Without limiting the foregoing, the Borrower expects to use Revenues as the source of repayment for the WIFIA Bond and all of the other obligations of the Borrower under this Agreement. However, the Borrower has not granted a lien on Revenues to secure the WIFIA Bond or other obligations of the Borrower under this Agreement.

(c) Deposit of Payment Sources. All Revenues shall be deposited into the Water Fund when and as received.

(d) Levy of Taxes. For the purpose of providing funds required to pay the principal and the interest on the WIFIA Bond promptly when and as the same falls due, the Borrower covenants and agrees to levy, and shall take the action within its control to cause the county assessor to impose and collect, a tax sufficient to pay such amounts when due and for past due amounts (within the limitations of Article XI, Sections 11 and 11b of the Oregon Constitution), in each case to the extent not paid from other lawfully available sources. The Borrower covenants and agrees with the owner of the WIFIA Bond that so long as the WIFIA Bond remains Outstanding the Borrower will take no action or fail to take any action that in any way would adversely affect the ability of the Borrower to levy, or the ability of the county assessor to impose and collect, the Taxes. The Borrower and its officers will comply with all present and future applicable laws in order to assure that the Taxes may lawfully be levied, and lawfully imposed and collected by the county assessor, to the extent required hereunder.

Section 8. Repayments.

(a) Payment of WIFIA Debt Service.

(i) No WIFIA Debt Service shall be due or payable prior to the Debt

Service Payment Commencement Date. The Borrower shall pay (A) WIFIA Debt Service in the amounts and manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule, as the same may be revised pursuant to Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*) and (B) payments of any other amounts on each other date on which payment thereof is required to be made hereunder; provided, that, in either case if any such date is not a Business Day, payment shall be made on the next Business Day following such date. WIFIA Loan proceeds borrowed and repaid may not be reborrowed.

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

(iii) [Reserved].

(iv) If an Interest Only Period is applicable as set forth in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), during the Interest Only Period, the WIFIA Debt Service payable by the Borrower shall consist of one hundred percent (100%) of the amount of interest then due and payable on the WIFIA Loan Balance, and no payment of principal on the WIFIA Loan will be due and payable during the Interest Only Period.

(v) The WIFIA Loan is not subject to defeasance.

(b) Manner of Payment. Payments under this Agreement (and the WIFIA Bond, which payments shall not be duplicative) shall be made in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions provided by the WIFIA Lender prior to the relevant payment, as may be modified in writing from time to time by the WIFIA Lender; provided, that the failure to provide updated payment instructions shall not affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

(c) Adjustments to WIFIA Loan Amortization Schedule. The WIFIA Lender may, from time to time, modify the WIFIA Loan Amortization Schedule included in **Schedule VI** (*WIFIA Loan Amortization Schedule*) to reflect (A) any change to the WIFIA Loan Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower hereunder in accordance with this Agreement, (C) any mathematical corrections as the WIFIA Lender may determine are necessary, and (D) with the consent of the Borrower (not to be unreasonably withheld), 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 WIFIA Loan Amortization Schedule as a result of a decrease in the WIFIA Loan Balance shall be applied to reduce future payments due on the WIFIA Loan in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(b) (*General Prepayment Instructions*). If the WIFIA Loan Amortization Schedule is modified pursuant to this Section 8(c), the WIFIA Lender shall provide the Borrower with a copy of such revised WIFIA Loan Amortization Schedule, 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. The WIFIA Lender may also, from time to time or when so requested by the Borrower, advise the Borrower by written notice of the amount of the WIFIA Loan Balance as of the date of such notice. Absent manifest error, the WIFIA Lender's determination of the WIFIA Loan Balance and all matters as set forth on the WIFIA Loan Amortization Schedule shall be deemed conclusive evidence thereof absent manifest error; provided, that neither the failure to make any such determination, modification, or recordation nor any error in such determination, modification, or recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

Section 9. Prepayment.

(a) Optional Prepayments. The Borrower may prepay the WIFIA Loan, without penalty or premium, (i) in full on any date or (ii) in part on any Payment Date (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, that such prepayment shall be in principal amounts of \$500,000 or any integral multiple of \$1.00 in excess thereof), in each case from time to time but not more than once annually in accordance with 33 U.S.C. § 3908(c)(4)(A). The Borrower may make such prepayment 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 and all fees and expenses then due and payable to the WIFIA Lender. Each prepayment of the WIFIA Loan pursuant to this Section 9(a) shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice, signed by the Borrower's Authorized Representative and delivered to the WIFIA Lender, for full prepayments, not less than thirty (30) days prior, and for partial prepayments, not less than sixty (60) days prior to the requested date of 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 under this Agreement.

(b) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of the entire WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or its authorized representative, by mail in accordance with Section 31 (*Notices*) or as otherwise agreed between the parties hereto. If, upon sixty (60) days' prior notice to the WIFIA Lender, the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender shall prepare a new WIFIA Loan Amortization Schedule. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on an updated WIFIA Loan Amortization Schedule shall be conclusive evidence thereof; provided, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. If, pursuant to the prepayment notice, the Borrower opts to apply the prepayment *pro rata*, such partial prepayment of principal shall be applied to reduce the WIFIA Loan Balance such that the remaining scheduled principal and interest payments for the WIFIA Loan set out in the WIFIA Loan Amortization Schedule are reduced substantially *pro rata*. If, pursuant to the prepayment notice, the Borrower

opts to apply the prepayment in inverse order of maturity, such partial prepayment of principal shall be applied to reduce the WIFIA Loan Balance such that the remaining scheduled interest payments for the WIFIA Loan set out in the WIFIA Loan Amortization Schedule are reduced. 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) the Servicing Set-Up Fee, which shall be due and payable within thirty (30) days after receipt by the Borrower of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the date of the first Disbursement of the WIFIA Loan);

(ii) 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 period beginning from the Effective Date through (and including) the end of 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 by the Borrower of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the date of the first Disbursement of the WIFIA Loan); and

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

(b) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) and each Operating Period Servicing Fee shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year during which such fee is due. The WIFIA 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 by the Borrower 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 monitoring, protection or preservation of any right or claim under, the Full Faith and Credit Pledge, the WIFIA Bond 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, re-execution, waiver, or consent with respect to this Agreement or any other WIFIA Loan 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 and the WIFIA Bond, 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 (A) any Related Document authorizing the Borrower to enter this Agreement and issue the corresponding WIFIA Bond and (B) any Related Document with respect to which all or a portion of the proceeds are or will be applied to fund all or any portion of Total Project Costs, in each case 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 the Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled.

(iii) The Borrower shall have delivered to the WIFIA Lender fully executed copies of each Existing Construction Contract, together with any amendments, waivers or modifications thereto.

(iv) 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 H-1** (*Opinions Required from Counsel to Borrower*) and

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

(v) 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 B** (*Form of Closing Certificate*) (the "**Closing Certificate**"), designating the Borrower's Authorized Representative, confirming such person's position and incumbency, and certifying as to the satisfaction of the certain conditions precedent (and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such satisfaction), including the following:

(A) as of the Effective Date, (1) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs; (2) the aggregate amount of Eligible Project Costs previously incurred prior to the Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs; and (3) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;

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

(C) the Borrower has (1) obtained a FEIN (as evidenced by the delivery of a copy of the Borrower's W-9), (2) obtained a Unique Entity Identifier, and (3) registered with SAM and obtained confirmation of active SAM registration status;

(D) the Borrower has obtained the WIFIA CUSIP Number;

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

(F) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the date of the Application.

(vi) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction, prior to the Effective Date, of the assignment by at least one (1) Nationally Recognized Rating Agency of a public Investment Grade Rating on the WIFIA Loan, along with a certification in the Closing Certificate that no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(vii) The Borrower shall have delivered to the WIFIA Lender the Public Benefits Report.

(viii) The Borrower shall have paid in full all invoices delivered by the WIFIA Lender to the Borrower as of the Effective Date for any applicable Servicing Fees and 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.

(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 the WIFIA Loan 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 delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), **Schedule IV** (*Requisition Procedures*) and **Exhibit D** (*Form of Requisition*), including satisfactory Eligible Project Costs Documentation relating to such Requisition. The Borrower's Authorized Representative shall also certify in such Requisition that:

(A) at the time of, and immediately after giving effect to, any Disbursement of WIFIA Loan proceeds then currently requested, (1) no Default or Event of Default and no event of default under any other Related Document has occurred and is continuing and (2) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document, has occurred and is continuing;

(B) no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, has occurred since the Effective Date;

(C) the aggregate amount of all Disbursements (including the requested Disbursement amount) does not exceed (1) the maximum principal amount of the WIFIA Loan or (2) the amount of Eligible Project Costs paid or incurred by the Borrower;

(D) the Eligible Project Costs for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of (1) WIFIA Loan proceeds or (2) any other source of funding for the Project as identified in the Project Budget;

(E) (1) the Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products); and (2) 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;

(F) the representations and warranties of the Borrower set forth in this Agreement and in each other WIFIA Loan Document are 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 were true and correct as of such earlier date); and

(G) the Borrower represents that it has delivered all required deliverables under and in compliance with the requirements of **Schedule V** (*Reporting Requirements*), except as has been otherwise agreed by the WIFIA Lender;

(H) the amount being requested for Disbursement is with respect to Eligible Project Costs for which all or a portion of the Eligible Project Costs Documentation was previously submitted to and approved by the WIFIA Lender in accordance with **Schedule IV** (*Requisition Procedures*) and **Schedule V** (*Reporting Requirements*) of the WIFIA Loan Agreement, and/or the Borrower has set out in the Requisition (or attached separately to the Requisition) a summary of any Eligible Project Costs that have not otherwise been previously submitted to the WIFIA Lender for approval, together with supporting Eligible Project Costs Documentation; and

(I) none of the Holder(s) of Obligations under an Obligation Document has exercised remedies permitted thereunder for an event of default that occurred (and was not cured or waived by the expiration of any applicable grace period), in respect of the performance of any covenant, agreement or obligation of the Borrower under such Related Document.

(ii) If applicable, to the extent necessary to make the representations and warranties in Section 12(f) (*Litigation*) and 12(j)(iii) (*Compliance with Laws*) true, correct and complete as of the date of the applicable Disbursement, the Borrower shall have delivered an updated **Schedule III** (*Borrower Disclosures*).

(iii) 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 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) (*Officers' Authorization*) and the first sentence of Section 12(m) (*Construction 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 Legal Entity 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 WIFIA Loan 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 WIFIA Loan Documents. Other than such Organizational Documents and the WIFIA Bond Resolution, 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 it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the WIFIA Loan 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 WIFIA Loan 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 WIFIA Loan Documents to which the Borrower is a party, the consummation of the transactions contemplated by the WIFIA Loan Documents, and the fulfillment of or compliance with the terms and conditions of all of the WIFIA Loan Documents, do not and will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(e) Consents and Approvals. All Governmental Approvals required as of the Effective Date and required as of any subsequent date on which this representation is made (or deemed made) for the undertaking, construction and completion by the Borrower of the Project and the operation and maintenance of the System, and to execute and deliver and perform its

obligations under the WIFIA Loan Documents and the Construction Contracts, have been obtained or effected and are in full force and effect. The Borrower is not in default with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person is necessary in connection with the execution, delivery, and performance by the Borrower of the WIFIA Loan Documents and the consummation of any transaction contemplated thereunder, except as have been obtained or made and as are in full force and effect.

(f) Litigation. Except as set forth in **Part B of Schedule III** (*Borrower Disclosures*), 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, the Project or the ability of the Borrower to execute, deliver and perform its obligations under the WIFIA Loan Documents or that in any case could reasonably be expected to result in a Material Adverse Effect.

(g) Pledge of Full Faith and Credit. Pursuant to the terms hereof, as security for the payments required to be made and the obligations required to be performed by the Borrower under this Agreement and the WIFIA Bond, the Borrower has irrevocably pledged its full faith and credit and taxing power pursuant to Oregon Revised Statutes Section 287A.315 for such payment and performance. The obligation of the Borrower to make any payments required under this Agreement and the WIFIA Bond constitutes a Full Faith and Credit Obligation of the Borrower. As of the Effective Date and as of each other date this representation and warranty is made, (A) all actions as are necessary or desirable have been taken to establish a legal, valid, binding, and enforceable Full Faith and Credit Pledge and (B) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any WIFIA Loan Documents, or any instruments, certificates or financing statements in connection with the foregoing, have been paid. The Full Faith and Credit Pledge made pursuant hereto is not governed by 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) (i) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters, (ii) is presently indicted for or otherwise criminally or civilly charged by a Governmental Authority with commission of any of the offenses listed in 2 C.F.R. § 180 or 2 C.F.R. § 1532; and (iii) have, within the three (3) year period preceding the Effective Date, (x) been convicted for or had a civil judgment rendered against the Borrower for any of the offenses within such period or (y) had any public transactions (federal, state or local) terminated for cause or default.

(i) No Lobbying. Pursuant to 31 U.S.C. §1352, to the best of the Borrower's knowledge and belief, (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 (or employee of a member), officer, or employee of the U.S. Congress, in connection with the making of the WIFIA Loan, execution (including amendments

or modifications) of the WIFIA Loan Documents, or any other federal action under 31 U.S.C. §1352(a)(2); and (B) if any funds other than Federal appropriated funds 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 (or employee of a member), officer, or employee of the U.S. Congress in connection with the WIFIA Loan, the Borrower has completed and submitted to the WIFIA Lender Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(j) Compliance with Laws.

(i) The Borrower, and to the best of its knowledge, each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto), 33 U.S.C. §3914 (relating to American iron and steel products), 20 C.F.R. §180.320 and 20 C.F.R. §1532 (relating to non-debarment), 31 U.S.C. §1352 and 49 C.F.R. §20.100 (relating to non-lobbying), and any applicable Sanctions Laws.

(ii) To ensure such compliance, the Borrower has included in all contracts with respect to the Project (A) the contract clauses relating to applicable federal requirements (such as Davis-Bacon and Equal Employment Opportunity) and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j).

(iii) Except as set forth in **Part C of Schedule III** (*Borrower Disclosures*), the Borrower is in compliance with all laws applicable to the System (including the Project) relating to environmental, health or safety matters.

(k) Credit Ratings. The WIFIA Loan has received a public Investment Grade Rating from at least one (1) Nationally Recognized Rating Agency, written evidence of such rating has been provided to the WIFIA Lender prior to the Effective Date, and such rating has not been reduced, withdrawn or suspended as of the Effective Date.

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

(m) Construction Contracts. **Part C of Schedule II** (*Project Details*) sets forth a list of the Existing Construction Contracts as of the Effective Date. With respect to each Construction Contract executed as of any date on which this representation and warranty is made, such Construction Contract is in full force and effect.

(n) 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 Financial

Model and any Updated Financial Model/Plan which have been made in good faith and based on reasonable assumptions) and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading as of the date made or furnished.

(o) Insurance. The Borrower is in compliance with all insurance obligations required under each Construction Contract and the WIFIA Loan Documents (including Section 14(f) (*Insurance*) hereof) 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.

(p) No Prohibited Liens. The Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on any of the Revenues, the Water Fund, or the Borrower's respective rights in any of the foregoing.

(q) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the WIFIA Lender pursuant to **Part B of Schedule V** (*Reporting Requirements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition (including any liabilities or obligations that are required to be disclosed in accordance with GAAP) of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein.

(r) 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.

(s) No Delinquent Taxes or Federal Debt. The Borrower has paid all applicable taxes and other material taxes and assessments payable by it that have become due (other than those taxes or assessments that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by GAAP). 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).

(t) 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 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. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs. The Updated Financial Model/Plan most recently delivered to the WIFIA Lender pursuant to **Part A of Schedule V** (*Reporting Requirements*) demonstrates that the projected Revenues are sufficient to meet the WIFIA Loan Amortization Schedule. 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.

(u) 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 WIFIA Loan 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(m) (*Immunity*).

(v) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other WIFIA Loan 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 were true, correct, and complete as of such earlier date).

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 all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make Disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) [Reserved].

(b) Further Assurances. The Borrower shall, at the request of the WIFIA Lender, authorize, execute, acknowledge and deliver such further certifications, resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be deemed necessary or desirable by the WIFIA Lender, in its sole discretion, for better assuring, conveying, granting, assigning and confirming the rights, pledges, security interests, representations and

warranties and agreements granted or intended to be granted by or set forth in this Agreement and the other WIFIA Loan Documents.

(c) Use of Proceeds. The Borrower shall use the proceeds of the WIFIA Loan solely for purposes permitted by applicable law, 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 (and on or prior to the Development Default Date), the Governmental Approvals in connection with the Project, and prudent utility and industry practice.

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

(e) Operations and Maintenance. The Borrower shall operate and maintain the System (including the Project) substantially in accordance with the Updated Financial Model/Plan most recently delivered by the Borrower to the WIFIA Lender pursuant to **Part A of Schedule V (Reporting Requirements)** and its operations and maintenance plan (that incorporates the Project). The Borrower shall operate and maintain the System (including the Project) in a reasonable and prudent manner and in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable WIFIA Loan Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business and the operation and maintenance of the System.

(f) Insurance.

(i) The Borrower shall at all times procure and maintain or cause to be maintained insurance on the System and the construction of the Project, with responsible insurers, or as part of a reasonable system of self-insurance that is actuarially sound and 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, including insurance against public liability, property damage, workers' compensation, and builders' risk, casualty and liability, as appropriate, and otherwise in accordance with the Related Documents and Construction Contracts. The insurance policies shall be available at all reasonable times for inspection upon request by the WIFIA Lender, its agents and representatives.

(ii) The Borrower shall cause all liability insurance policies that it maintains (excluding property damage, automobile or workers' compensation insurance), to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.

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

(h) Water Fund; WIFIA Debt Service Reserve Account; Permitted Investments.

(i) The Borrower shall maintain the Water Fund in accordance with the terms hereof.

(ii) If a WIFIA Debt Service Reserve Requirement is applicable as set forth in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), then the Borrower shall maintain the WIFIA Debt Service Reserve Account in an amount equal to the WIFIA Debt Service Reserve Requirement in accordance with the terms hereof. If the WIFIA Debt Service Reserve Account is funded with proceeds of the WIFIA Loan, then amounts in the WIFIA Debt Service Reserve Account shall be applied only to make payments with respect to the WIFIA Bond.

(iii) Amounts on deposit in the WIFIA Debt Service Reserve Account (if applicable) 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 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto), 33 U.S.C. §3914 (relating to American iron and steel products), 20 C.F.R. § 180.320 and 20 C.F.R. §1532 (relating to non-debarment), 31 U.S.C. §1352 (relating to non-lobbying), and any applicable Sanctions Laws.

(ii) To ensure such compliance, the Borrower shall include in all contracts with respect to the Project (A) the contract clauses relating to applicable federal requirements (such as Davis-Bacon and Equal Employment Opportunity) and (B) requirements that its contractors (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).

(j) Material Obligations. The Borrower shall pay its material obligations payable from the Revenues promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Revenues or other assets of the System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if

unpaid, might give rise to a Lien upon the System or any part thereof or on the Revenues; 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) SAM Registration and Unique Entity Identifier. The Borrower shall obtain and maintain, on or prior to the Effective Date through (i) the Final Disbursement Date, an active SAM registration status and (ii) the Final Maturity Date, a Unique Entity Identifier.

(l) 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 Loss Proceeds (after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) 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 (after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) 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.

(m) 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.

(n) Accounting and Audit Procedures.

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

(ii) 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 from

(and including) the first Borrower Fiscal Year in which a Disbursement is made under this Agreement and annually thereafter to the extent required by applicable law, except in all cases 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.

(o) 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, monitor and/or inspect any portion of the Project and its operations, 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(o) 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(o) at any time when an Event of Default shall have occurred and be continuing.

(ii) The Borrower shall maintain and retain all pertinent files relating to the Project and the WIFIA Loan, as may be necessary for the WIFIA Lender to facilitate an effective and accurate audit and performance evaluation of the Project, 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 all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make Disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) [Reserved].

(ii) The Borrower shall not incur any Additional Project Obligations while a Payment Default or Bankruptcy Related Event has occurred and is continuing.

(iii) The Borrower may not create, incur or suffer to exist any Additional Project Obligations other than Additional Project Obligations that are Full Faith and Credit Obligations.

(iv) The Borrower may not create, incur or suffer to exist any security interests in, or pledge on, the Revenues to secure Additional Project 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 or impair the Full Faith and Credit Pledge 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); (ii) amend, modify, replace or supplement any Related Document or permit a waiver of any provision thereof in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to result in a Material Adverse Effect; or (iii) terminate, assign or replace any Related Document in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the System or a substantial portion of the assets included in the System, unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the Borrower in the ordinary course of business.

(d) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge 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 permitted by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the Full Faith and Credit Pledge, the Taxes or the Revenues or (B) the availability of the Taxes or the Revenues for the payment and security of the obligations of the Borrower under this Agreement and the WIFIA Bond; and (ii) the Borrower provides to the WIFIA Lender notice of such reorganization, consolidation or merger in accordance with **Part E of Schedule V** (*Reporting Requirements*) and such other information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

(e) Hedging. Other than interest rate hedging transactions permitted under the Indenture, the Borrower shall not enter into any swap or hedging transaction, including any such transaction that is speculative or creates extraordinary leverage or risk, without the prior written consent of the WIFIA Lender.

Section 16. Reporting Requirements. The Borrower agrees to comply with each of the reporting requirements set out in **Schedule V** (*Reporting Requirements*), unless otherwise agreed or waived by the WIFIA Lender in writing.

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

Section 17. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs; provided, that the occurrence of an event set forth in sub-clauses (v) through (and including) (ix) below shall not constitute an Event of Default under this Agreement until the WIFIA Lender has provided a notice of such Event of Default to the Borrower; provided, further, that nothing in this paragraph is intended to limit any obligation of the Borrower hereunder, including any obligation to cure any event or condition contemplated under this Section 17(a):

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

(iii) Acceleration of Obligations. Any acceleration shall occur of the maturity of any Obligation, or any such Obligation shall not be paid in full upon the final maturity thereof.

(iv) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, 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) this Agreement ceases to be effective; (C) this Agreement or the WIFIA Bond ceases to grant a valid and binding Full Faith and Credit Pledge; or (D) any event occurs that results in the impairment of the Full Faith and Credit Pledge.

(v) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Bond or any other WIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Lender of written

notice thereof or (B) the Borrower's knowledge of such failure; provided, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30)-day cure period, then 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.

(vi) 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; provided, that no Event of Default shall be deemed to have occurred under this Section 17(a)(vi) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(g) (*Pledge of Full Faith and Credit*), Section 12(h) (*No Debarment*), Section 12(i) (*No Lobbying*), or Section 12(j) (*Compliance with Laws*), (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.

(vii) Material Adverse Judgment. Any final, non-appealable judgment related to the Full Faith and Credit Pledge, the Taxes, the Revenues, the System or the Project shall be entered against the Borrower which has a material adverse effect on (a) the legality, validity or enforceability of any material provision of any WIFIA Loan Document, (b) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document, (c) the validity or enforceability of the Full Faith and Credit Pledge or (d) the WIFIA Lender's rights or remedies available under any WIFIA Loan Document.

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

(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 (if applicable);

(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 Federal Government program administered by the WIFIA Lender and notify other departments and agencies of such default; and

(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, including all rights and remedies of a secured creditor under the Uniform Commercial Code (if applicable), and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the Borrower under this Agreement, the WIFIA Bond or the other WIFIA 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) If a right of acceleration is or has been granted for the benefit of any Holder of Obligations and such Obligations have been accelerated, then the WIFIA Lender shall have the right to declare the unpaid principal amount of the WIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) No action taken pursuant to this Section 17 shall relieve the Borrower from its obligations pursuant to this Agreement, the WIFIA Bond or the other WIFIA 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 System (including the Project) or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 19. No Personal Recourse. No official, employee or agent of the WIFIA 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 Federal Government, or the WIFIA Lender, solely by virtue 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, Waivers and Termination. No amendment, modification, termination, or waiver of any provision of this Agreement or the WIFIA Bond shall in any event be effective without the prior written consent of each of the parties hereto. Notwithstanding the foregoing sentence, if the first Disbursement of the WIFIA Loan has not occurred on or prior to the Final Disbursement Date, the WIFIA Lender or the Borrower may terminate this Agreement upon no less than ten (10) Business Days' prior written notice to the other party. Once terminated, this Agreement may not be reinstated.

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

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

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

Section 28. Remedies Not Exclusive. No remedy conferred herein or in the WIFIA Bond 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 under the WIFIA Bond or now or hereafter existing at law or in equity or by statute.

Section 29. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided hereunder or under the WIFIA Bond upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or under the WIFIA Bond 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 of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 31. Notices.

(a) All notices, requests, or communication hereunder shall be given in writing.

(b) Notices to the WIFIA Lender should be made by (i) email to the email address noted below for the WIFIA Lender or (ii) submission through another electronic medium or transmission system as designated by and in a format acceptable to the WIFIA Lender, unless otherwise instructed by the WIFIA Lender:

If to WIFIA Lender: Environmental Protection Agency
WJC-E 7334A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

(c) Notices to the Borrower should be made by (i) nationally recognized courier service, (ii) hand delivery, (iii) email, to the email address noted below for the Borrower, or (iv) another electronic medium in a format acceptable to the Borrower, unless otherwise instructed by the Borrower's Authorized Representative:

If to Borrower: The notice details set forth in **Part G of Schedule I**
(*WIFIA Loan Specific Terms*)

(d) 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 or other electronic method, when such email is delivered to the email address specified in this Section 31 or submitted to the electronic medium as directed by the receiving party, in each case with the sender's receipt of an acknowledgement from the intended recipient (such as by a "read receipt," return email, or other written acknowledgement) (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, the Servicer (if any), and any official, employee, agent, advisor or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnatee**") against, and hold each Indemnatee 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 Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement, any Construction Contract, or any Related Document, (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 Indemnatee, 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 non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnatee 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 Construction Contract, or any Related Document, 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 Loan, 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 later of (a) the Substantial Completion Date and (b) other than with respect to a sale or transfer to another Governmental Entity within the Federal Government, the Final Disbursement 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, Waivers and Termination*). Prior to any sale or reoffering of the WIFIA Loan, the WIFIA Lender shall provide reasonable written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering. The Borrower shall not be required to provide any disclosure or take any other action related to a potential sale or reoffering (except for any action expressly required by this Agreement). The provision of any notice pursuant to this Section 33 shall neither (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. Surrender of Bond. Upon the irrevocable payment in full in immediately available funds by the Borrower of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower in accordance with Section 9(b) (*General Prepayment Instructions*).

Section 36. Survival. The indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(o) (*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 37. Integration. This Agreement, together with the other WIFIA Loan Documents, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[The remainder of this page intentionally left blank; signature pages immediately follow.]

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

CITY OF OREGON CITY,
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: Michael S. Regan
Title: Administrator

SCHEDULE I

WIFIA LOAN SPECIFIC TERMS

No.	Item	WIFIA Loan Specific Term
<i>PART A. Key Borrower Metrics</i>		
1.	Effective Date	[___], 2023.
2.	Borrower	City of Oregon City, a Legal Entity organized and existing under the State.
3.	Legal Entity	Municipal corporation.
4.	State	Oregon.
5.	Borrower FEIN	93-6002230.
6.	Borrower Unique Entity Identifier	R9QKAFGEQ293.
7.	Initial Borrower Fiscal Year	The fiscal year of the Borrower commencing on July 1 of any given calendar year and ending on June 30 of the immediately succeeding calendar year.
8.	Application Receipt Date	January 12, 2023.
9.	WIFIA CUSIP Number	[___], as the CUSIP number for the WIFIA Loan for purposes of monitoring through EMMA.
10.	System	The water system owned and operated by the Borrower (and of which the Project is a part).
11.	Revenues	All income, from whatever source derived, from the ownership or operation of the System (other than from taxes) and all investment income thereon.
12.	Trustee	Not Applicable.
13.	Trustee Location	Not Applicable.
14.	[Reserved]	Not Applicable.

No.	Item	WIFIA Loan Specific Term
PART B. Key Project Metrics		
15.	Project	The Project is the Oregon City Water Rehabilitation, Resiliency and Improvement Projects, located at the Project Location, which is designed to improve the ability of the Borrower’s water system to provide high-quality and reliable water service through (i) the supervisory control and data acquisition isolation project, (ii) the pipe rehabilitation program and (iii) the upper system transmission improvements.
16.	Project Location	Clackamas County, Oregon.
17.	Projected Substantial Completion Date	June 30, 2028, as such date may be adjusted in accordance with Part C of Schedule V (Reporting Requirements) .
18.	Development Default Date	June 30, 2030.
19.	NEPA Determination	[Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by EPA on [___], 20[___] in accordance with NEPA. ¹
20.	[Reserved]	Not Applicable.
PART C. Key Loan Metrics		
21.	Maximum Principal Amount	Principal amount up to \$16,311,537.
22.	WIFIA Interest Rate	[___]% per annum.
23.	Default Rate	Interest rate equal to the sum of (a) the WIFIA Interest Rate <i>plus</i> (b) 200 basis points.
24.	Interest Payment Date	Each June 1 and December 1, beginning on the Debt Service Payment Commencement Date.
25.	Capitalized Interest Period	Not Applicable.

¹ **Note to Draft:** To be completed once NEPA environmental review has concluded.

No.	Item	WIFIA Loan Specific Term
26.	Interest Only Period	The period commencing from (and including) the Debt Service Payment Commencement Date and ending on December 1, 2030 (or on such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in cash).
27.	Principal Payment Date	Each June 1 and December 1, beginning on December 1, 2030.
28.	Final Maturity Date	The earliest of (a) June 1, 2063; (b) the date on which the maturity of the WIFIA Loan and corresponding WIFIA Bond have been accelerated or subject to mandatory redemption or prepayment (as the case may be) prior to maturity thereof; and (c) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.
29.	[Reserved]	Not Applicable.
<i>PART D. Key Security Metrics</i>		
30.	Lien priority	Not Applicable.
31.	Springing lien	Not Applicable.
32.	Revenue source	The WIFIA Loan shall be payable from all legally available funds of the Borrower, including without limitation, Revenues and Taxes. Without limiting the foregoing, the Borrower expects to use Revenues as the source of repayment for the WIFIA Bond and all of the other obligations of the Borrower under this Agreement. However, the Borrower has not granted a lien on Revenues to secure the WIFIA Bond or other obligations of the Borrower under this Agreement.
33.	Pledge	The WIFIA Loan shall be secured by the Full Faith and Credit Pledge of the Borrower.
34.	System Accounts	Not Applicable.
35.	Water Fund	The Water Fund is the enterprise fund of such name, as established by the Borrower and used to account for the Revenues collected by the Borrower, including any

No.	Item	WIFIA Loan Specific Term
		subaccounts therein.
36.	WIFIA Debt Service Account	Not Applicable.
37.	WIFIA Debt Service Reserve Account	Not Applicable.
38.	Additional Indebtedness	<p>The Borrower may not create, incur or suffer to exist any Additional Project Obligations other than as Full Faith and Credit Obligations.</p> <p>The Borrower may not create, incur or suffer to exist any security interests in, or pledge on, the Revenues to secure Additional Project Obligations.</p>
39.	Flow of Funds	Not Applicable.
40.	[Reserved]	Not Applicable.
<i>PART E. Other Key WIFIA Loan Documents</i>		
41.	WIFIA Bond	The bond issued and delivered by the Borrower in substantially the form of Exhibit A (<i>Form of WIFIA Bond</i>).
42.	Master Bond Resolution	Not Applicable.
43.	WIFIA Bond Resolution	Resolution No. [], adopted by the Borrower's Commission on June 21, 2023, authorizing the execution, delivery and performance by the Borrower of this Agreement, the WIFIA Bond, and certain related actions by the Borrower in connection with the issuance of the WIFIA Loan.
44.	WIFIA Term Sheet	WIFIA term sheet, dated as of the Effective Date, between the Borrower and the WIFIA Lender.
45.	[Reserved]	Not Applicable.
<i>PART F. Fees</i>		

No.	Item	WIFIA Loan Specific Term
46.	Servicing Set-Up Fee	A servicing set-up fee equal to \$11,550.
47.	Construction Period Servicing Fee	An annual construction period servicing fee equal to \$11,550.
48.	Initial Construction Period Servicing Fee	The initial Construction Period Servicing Fee in a pro-rated amount equal to \$2,880 ² .
49.	Operating Period Servicing Fee	An annual operating period servicing fee equal to \$8,670.
<i>PART G. Borrower Related Notices</i>		
50.	Borrower notice details	City of Oregon City 625 Center Street Oregon City, OR 97045-2253 Attention: Matt Zook, Finance Director Email: mzook@orcity.org and Attention: Patty Nelson, Senior Engineer Email: pnelson@orcity.org
51.	Trustee notice details	Not Applicable.

² **Note to Draft:** EPA to provide new fee amounts for a July 2023 closing.

SCHEDULE II
PROJECT DETAILS

PART A. Project Budget.

SOURCES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
WIFIA	\$16,311,537	49.00%
Borrower Cash	\$16,977,314	51.00%
Total Sources of Funds	\$33,288,850	100.00%
USES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
Construction	\$20,087,950	85.55%
Planning & Design	\$2,568,650	7.72%
Land Acquisition	\$1,312,000	3.94%
Other Capital Costs	\$517,700	1.56%
Program Contingency	\$8,389,150	25.2%
Financing Costs	\$413,400	1.24%
Total Uses of Funds	\$33,288,850	100.00%
Total Eligible Project Costs	[]	[]
Total Project Costs	[]	[]

PART B. Construction Schedule.

Projected Substantial Completion Date: June 30, 2028

PROJECT ELEMENT	DESIGN COMPLETION	CONSTRUCTION START	CONSTRUCTION END
SCADA Isolation Project	6/30/2023	7/1/2023	12/31/2023
Pipe Rehabilitation	12/30/2026	5/30/2023	6/30/2028
Upper System Projects	12/31/2025	1/1/2024	6/30/2027

PART C. Existing Construction Contracts.

Contract Name	Effective Date	Amount	Parties	Description
Main Street Water Improvements – WIFIA 2-1 (CI 21-007)	11/23/2022	\$2,230,677.75	ICON Construction and Development and City of Oregon City	Construction Contract

SCHEDULE III

BORROWER DISCLOSURES

PART A. Existing Indebtedness.

1. Full Faith and Credit Obligations

	Agreement/Series	Outstanding Principal as of July 1, 2023
1.	Full Faith and Credit Obligations, Series 2018, issued pursuant to a Financing Agreement and Escrow Agreement, each between the City and U.S. Bank, National Association and dated as of June 5, 2018, maturing on June 1, 2038.	\$12,005,000
2.	PERS Limited Tax Pension Obligations, Series 2005, issued pursuant to a Loan Agreement and Trust Indenture, each between the City and Wells Fargo Bank, National Association and dated as of September 28, 2005, maturing on June 1, 2028.	\$7,445,000

2. General Obligations

	Agreement/Series	Outstanding Principal as of July 1, 2023
1.	General Obligation Bond, Series 2015, issued pursuant to a Bond Purchase Agreement between the City and Pinnacle Public Finance, Inc. and dated as of January 7, 2015, maturing June 1, 2034.	\$3,826,296

PART B. Litigation Disclosure.

None.

PART C. Environmental Matter Disclosure.

None.

SCHEDULE IV

REQUISITION PROCEDURES

This **Schedule IV** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for any Disbursement of the WIFIA Loan. 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 Documents, 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.

PART A. General Requirements.

(a) Manner of Request: All requests by the Borrower for a Disbursement shall be made in writing by electronic submission to the WIFIA Lender, in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement.

(b) Required Documentation: Any request by the Borrower should include the submission of:

(i) a Requisition, in the form attached as **Exhibit D** (*Form of Requisition*), completed and executed by the Borrower's Authorized Representative, and otherwise in form and substance satisfactory to the WIFIA Lender; and

(ii) all Eligible Project Costs Documentation that has not otherwise been provided to the WIFIA Lender in accordance with **Part C of Schedule V** (*Reporting Requirements*) of the WIFIA Loan Agreement.

(c) Timing: Any request for a Disbursement must be received by the WIFIA Lender and the Servicer (if any) at or before 5:00 P.M. (Eastern Time) on either:

(i) the first (1st) Business Day of a calendar month in order to obtain the requested Disbursement by the fifteenth (15th) day of such calendar month;

(ii) the fifteenth (15th) day of a calendar month, in order to obtain the requested Disbursement by the first (1st) day of the immediately following calendar month;

provided, that, (x) if any such day is not a Business Day, the Disbursement request or payment (as the case may be) shall be made by the next succeeding Business Day; (y) the Borrower shall not request to receive more than one (1) Disbursement per month or every thirty (30) days (whichever is longer); and (z) no Disbursements shall be made after the Final Disbursement Date.

PART B. WIFIA Lender Review Process.

(a) The WIFIA Lender shall review the Requisition and the Eligible Project Costs Documentation for compliance with WIFIA Disbursement requirements.

(b) 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. 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. If the amount requested for Disbursement in the Requisition exceeds the available balance of the WIFIA Loan proceeds remaining to be disbursed, the Disbursement request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Lender will so notify the Borrower.

(c) 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: (i) a Default or an Event of Default shall have occurred and be continuing or (ii) the Borrower (1) 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; (2) 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; (3) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Loan Agreement; (4) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement; or (5) 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 sub-clause (5) above, the WIFIA Lender may, in its sole discretion, partially approve a Requisition in respect of any amounts for which adequate Eligible Project Costs Documentation has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts. The WIFIA Lender will notify the Borrower of any withholding, and the reasons therefor.

(d) A Requisition may be rejected in whole or in part by the WIFIA Lender if it is: (i) submitted without signature; (ii) submitted under signature of a Person other than a Borrower's Authorized Representative; (iii) submitted after prior Disbursement of all proceeds of the WIFIA Loan; or (iv) submitted without adequate Eligible Project Costs Documentation. The WIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified under this paragraph (d) must be resubmitted in proper form in order to be considered for approval.

SCHEDULE V
REPORTING REQUIREMENTS

PART A. Updated Financial Model/Plan.

The Borrower shall provide to the WIFIA Lender, not later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, an Updated Financial Model/Plan. The Updated Financial Model/Plan shall reflect the Borrower's reasonable expectations, using assumptions that the Borrower believes to be reasonable, and include: (a) the Borrower's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected Revenues and projected Operating Expenses for a reasonable projection period consistent with the Borrower's operating and financial planning and demonstrating that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining, and repairing the Project; and (b) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model/Plan.

PART 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; provided that the failure of the Borrower to furnish or post the audited financial statements within such one hundred eighty (180)-day period shall not constitute a Default or an Event of Default so long as the Borrower either furnishes to the WIFIA Lender or posts to EMMA under the WIFIA CUSIP Number such financial statements within ninety (90) days after the end of such period, a copy of the audited income statement and balance sheet of the Borrower as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year, (a) setting forth in each case in comparative form the figures for the previous fiscal year; (b) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower; and (c) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

PART C. Construction Monitoring.

(a) 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.

(b) Construction Monitoring Report. During the period beginning from the first quarter following bid advertisement of the first Construction Contract for the Project, through and until Substantial Completion of the Project, the Borrower shall furnish to the WIFIA Lender, on a quarterly basis, the Construction Monitoring Report. The report shall be delivered to the WIFIA Lender within thirty (30) days of the end of each such 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 different than the Projected Substantial Completion Date, the Borrower shall provide in the Construction Monitoring Report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay or difference. The Projected Substantial Completion Date shall automatically be adjusted to the new date specified by the Borrower in the Construction Monitoring Report unless the WIFIA Lender objects to the adjustment in writing to the Borrower within sixty (60) days following receipt of such Construction Monitoring Report on the basis that such report does not demonstrate the matters specified in this paragraph.

(c) Quarterly Certification of Eligible Project Costs. If requested by the WIFIA Lender, on a basis not more frequently than quarterly, the Borrower shall submit to the WIFIA Lender, concurrently with the delivery of the Construction Monitoring Report, a certificate, in the form of **Exhibit E** (*Form of Certification of Eligible Project Costs Documentation*), signed by the Borrower's Authorized Representative, and attaching Eligible Project Costs Documentation as applicable. If there are no applicable Eligible Project Costs for such quarter, the Borrower may notify the WIFIA Lender by written confirmation of the same by email in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement. Within sixty (60) days following the receipt of such certificate and accompanying Eligible Project Costs Documentation (if applicable), the WIFIA Lender shall notify the Borrower confirming (i) which Eligible Project Costs incurred by the Borrower set forth in the certification have been approved or denied (and, if denied, the reasons therefor) and (ii) the cumulative amount of Eligible Project Costs that have been approved as of the date of such notice. Any such approved amounts of Eligible Project Costs shall then be deemed to be available for Disbursement at such time as the Borrower submits a Requisition in respect of such approved amounts in accordance with Section 4 (*Disbursement Conditions*).

(d) Final Specifications. The Borrower shall deliver to the WIFIA Lender, prior to bid advertisement for the Project (including each sub-project or component, if applicable), a copy of the final specifications relating to the development and construction of the Project (or such sub-project or component, as the case may be), demonstrating compliance with all applicable federal requirements and including a summary of the scope of work thereunder.

PART D. Public Benefits Report.

The Borrower shall deliver to the WIFIA Lender the Public Benefits Report (a) no later than thirty (30) days prior to the Effective Date, (b) within ninety (90) days following the Substantial Completion Date and (c) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The Borrower agrees that information described in the Public Benefits Report may be made publicly available by the WIFIA Lender at its discretion.

PART E. Notices.

(a) The Borrower shall, within fifteen (15) days (or such other time as may be specified below) 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:

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

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

(iv) 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, that could reasonably be expected to have a Material Adverse Effect, and (2) any final, non-appealable judgment related to the Full Faith and Credit Pledge, the Taxes, the Revenues, the System or the Project, in each case, that could reasonably be expected to result in the impairment of (A) the Borrower's ability to comply with any of its payment obligations under the WIFIA Bond or this Agreement or (B) the Full Faith and Credit Pledge;

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

(vi) Environmental Notices: any material notice of violation related to the Project or any material change to the Project that could reasonably be expected to affect the NEPA Determination;

(vii) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of any fully executed amendments, modifications, replacements or supplements to any Related Document; provided, that such notice may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(viii) 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 may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

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

(x) Ratings Changes: any change in the rating assigned to the WIFIA Loan or any 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 may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xi) 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;

(xii) 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 Additional Project Obligations, together with a confirmation by the Borrower that incurrence of such additional indebtedness does not constitute a breach or default under this Agreement; provided, that such notice may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xiii) Postings on EMMA: the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document with respect to any Outstanding Obligations relating to annual financial information and operating data and the reporting of significant events; provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xiv) SAM / Unique Entity Identifier: any change in the Borrower's SAM registration status (including any exclusions, expiration or inactive registration) or Unique Entity Identifier (including any expiration or change in effectiveness); provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xv) Reorganization, Consolidation or Merger: the occurrence of any reorganization, consolidation, or merger, together with the agreements and documents authorizing the reorganization, consolidation or merger; and

(xvi) Fiscal Year: any change to or adoption of any fiscal year other than the Initial Borrower Fiscal Year; provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement; and

(xvii) 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.

(b) 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 System, the Project, the Taxes, or the Revenues as the WIFIA Lender may from time to time reasonably request. The Borrower agrees that the delivery of any documents or information under and pursuant to this Agreement shall not be construed as compliance with, or affect in any manner, any obligations of the Borrower under any other contracts, agreements, decrees, Governmental Approvals, or other documents with EPA (other than the WIFIA Loan Documents) or the Federal Government.

SCHEDULE VI
WIFIA LOAN AMORTIZATION SCHEDULE³

[To be attached with final interest rate on the Effective Date]

³ **Note to Draft:** To be finalized by the EPA and Borrower on the day of closing to account for the final interest rate.

EXHIBIT A

FORM OF WIFIA BOND

CITY OF OREGON CITY

**OREGON CITY WATER REHABILITATION, RESILIENCY AND IMPROVEMENT
PROJECTS**

(WIFIA ID – N21143OR)

WIFIA BOND

Interest Rate	Final Maturity Date	Dated Date	WIFIA CUSIP
[]%, subject to the Default Rate (as defined and in accordance with the WIFIA Loan Agreement)	[], subject to adjustment as set forth in the WIFIA Loan Agreement	[]	[]
Registered Owner	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency		
Maximum Principal Amount	\$16,311,537		

THE CITY OF OREGON CITY, a municipal corporation under the laws of the State of Oregon (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the “**WIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all Disbursements made by the WIFIA Lender (such lesser amount being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in that certain WIFIA Loan Agreement, dated as of the date hereof, between the WIFIA Lender and the Borrower (the “**WIFIA Loan Agreement**”). All capitalized terms used in this WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

The WIFIA Debt Service hereof shall be payable in the amounts, manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule in accordance with the WIFIA Loan Agreement (which WIFIA Loan Amortization Schedule may be revised from time to time in accordance with the WIFIA Loan Agreement), until paid in full (which Loan Amortization Schedule, 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 WIFIA Loan Amortization Schedule from time to time to reflect the amount of each Disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder and otherwise in accordance with the terms of the WIFIA Loan Agreement. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on the WIFIA Loan Amortization Schedule 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.

Payments hereon are to be made in accordance with Section 8(b) (*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 made in Dollars and in immediately available funds (without counterclaim, offset or deduction). 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. If the Final Maturity Date is adjusted in accordance with the WIFIA Loan Agreement, the due date of this WIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the WIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this WIFIA Bond without the prior written agreement of the WIFIA Lender. Any such amendment shall be reflected in a revised Loan Amortization Schedule.

This WIFIA Bond has been executed under and pursuant to the WIFIA Loan Documents and is issued to evidence the obligation of the Borrower under the WIFIA Loan Documents to repay the loan made by the WIFIA Lender and any other payments of any kind required to be paid by the Borrower under the WIFIA Loan Agreement or the other WIFIA Loan Documents referred to therein. Reference is made to the WIFIA Loan Agreement for all details relating to the Borrower's obligations hereunder.

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to the WIFIA Loan Agreement. The Borrower shall pay principal and interest on this WIFIA Bond from all lawfully available funds of the Borrower, and pursuant to Oregon Revised Statutes Section 287A.315, the Borrower hereby pledges its full faith and credit and taxing power within the limitations of Section 11 and 11b of Article XI of the Oregon Constitution to pay such amounts.

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), without penalty or premium, and otherwise in accordance with the WIFIA Loan Agreement.

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

The Borrower hereby certifies, recites and declares that all things, conditions and acts required by the Constitution and Statute of the State of Oregon and by the WIFIA Loan Agreement to exist, to have happened and to have been performed precedent to an in the issuance of this WIFIA Bond, do exist, have happened and have been performed in due time, form and manner, as required by law, and that this WIFIA Bond is a valid and binding obligation of the Borrower which is enforceable against the Borrower in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws or judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally. This WIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

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

CITY OF OREGON CITY,
by its authorized representative

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title:

(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 WIFIA Bond and all rights thereunder.

Dated: _____

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

EXHIBIT B

FORM OF CLOSING CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [___], 2023 (the “**WIFIA Loan Agreement**”), by and among City of Oregon City (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator (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 to Effectiveness*) of the WIFIA Loan Agreement, the undersigned, as the 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)(v) 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 WIFIA Loan 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 (A) any Related Document authorizing the Borrower to enter the WIFIA Loan Agreement and issue the corresponding WIFIA Bond and (B) any Related Document with respect to which all or a portion of the proceeds are or will be applied to fund all or any portion of Total Project Costs, in each case 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 the Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled;
- (c) pursuant to Section 11(a)(v)(A) of the WIFIA Loan Agreement, (i) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs; (ii) the aggregate amount of Eligible Project Costs previously incurred prior to the Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs; and (iii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;
- (d) pursuant to Section 11(a)(v)(B) 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;

- (e) pursuant to Section 11(a)(v)(C) of the WIFIA Loan Agreement, (i) the Borrower's FEIN is 93-6002230, as evidenced by the Borrower's W-9, which has been delivered to the WIFIA Lender, and the Borrower's Unique Entity Identifier is R9QKAFGEQ293, in each case as set forth on Part A of Schedule I (*WIFIA Loan Specific Terms*) to the WIFIA Loan Agreement, and (ii) the Borrower registered with SAM and obtained confirmation of active SAM registration status, which has been delivered to the WIFIA Lender;
- (f) pursuant to Section 11(a)(v)(D) of the WIFIA Loan Agreement, the Borrower's WIFIA CUSIP Number is [___], as set forth on Part A of Schedule I (*WIFIA Loan Specific Terms*) to the WIFIA Loan Agreement, and which confirmation has been delivered to the WIFIA Lender;
- (g) pursuant to Section 11(a)(v)(E) of the WIFIA Loan Agreement, the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan 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;
- (h) pursuant to Section 11(a)(v)(F) 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 the date of the Application; and
- (i) pursuant to Section 11(a)(vi) of the WIFIA Loan Agreement, the rating letter delivered to the WIFIA Lender pursuant to such Section 11(a)(vii) has not been reduced, withdrawn or suspended as of the Effective Date.

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

CITY OF OREGON CITY,
by its authorized representative

By: _____
Name:
Title:

ANNEX A TO EXHIBIT B

INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the City Recorder of the City of Oregon City, an Oregon municipal corporation, (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):

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

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of [___], 2023.

CITY OF OREGON CITY,
by its authorized representative

By: _____
Name:
Title:

EXHIBIT C

FORM OF PUBLIC BENEFITS REPORT

Pursuant to Section 11(a)(vii) and Part D of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement (as defined below), City of Oregon City (the “**Borrower**”) is providing this Public Benefits Report in connection with the Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement dated on or about the date hereof (the “**WIFIA Loan Agreement**”), between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator.

Reporting Period: [Prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) following the fifth (5th) anniversary of the Substantial Completion Date]

(i) The number of total jobs and direct jobs projected to be created by the Project during the period between the Effective Date and the Substantial Completion Date:

WIFIA projects that the Project will create [__] total jobs, of which the Borrower projects [__] will be direct jobs.

(ii) Indicate (yes or no) whether the Project will assist the Borrower in complying with applicable regulatory requirements, and if yes, describe how the project assists with regulatory compliance:

Yes

If yes, additional description: [____]

No

(iii) The Project will assist the Borrower with the following environmental measure:

[____].

EXHIBIT D

FORM OF REQUISITION

VIA EMAIL

United States Environmental Protection Agency⁴
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) and Schedule IV (*Requisition Procedures*) of the WIFIA Loan Agreement, dated as of [___], 2023 (the “**WIFIA Loan Agreement**”), by and between CITY OF OREGON CITY (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the Borrower hereby requests a 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 the following:

1.	Project name	[___]
2.	Borrower name	[___]
3.	WIFIA Loan ID	[___]
4.	Borrower DUNS Number	[___]
5.	Borrower FEIN number	[___]
6.	Requisition number	[___]
7.	Requested Disbursement amount	[\$___]
8.	Requested date of Disbursement (the “Disbursement Date”)⁵	[___]
9.	Total amounts previously disbursed under the WIFIA Loan Agreement	[\$___]
10.	Wire or ACH transfer instructions (please specify method)	[___]

⁴ If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.

⁵ Note this should be the actual disbursement date on which the Borrower requests to receive the funds, not the date that this Requisition form is submitted to the WIFIA Lender.

11. As of the date hereof, and immediately after giving effect to the Disbursement of WIFIA Loan proceeds requested under this Requisition, (a) no Default or Event of Default and no event of default under any other Related Document shall have occurred and be continuing and (b) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document, shall have occurred and be continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since the Effective Date.
13. The aggregate amount of all Disbursements (including the requested Disbursement amount under this Requisition) does not exceed (a) the maximum principal amount of the WIFIA Loan or (b) the amount of Eligible Project Costs paid or incurred by the Borrower.
14. The Eligible Project Costs for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of (a) WIFIA Loan proceeds or (b) any other source of funding for the Project as identified in the Project Budget.
15. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender.
16. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date).
17. The Borrower has delivered all required deliverables under and in compliance with the requirements of Schedule V (*Reporting Requirements*), except as has been otherwise agreed by the WIFIA Lender.
18. The amount hereby being requested for Disbursement is with respect to Eligible Project Costs for which [all][a portion][none] of the Eligible Project Costs Documentation was previously submitted to and approved by the WIFIA Lender in accordance with Schedule IV (*Requisition Procedures*) and Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement. The [following table below][attached excel sheet] sets out a summary of

any Eligible Project Costs that have not otherwise been previously submitted to the WIFIA Lender for approval, and supporting Eligible Project Costs Documentation in respect of such new Eligible Project Costs is attached hereto.⁶

19. None of the Holder(s) of Obligations under an Obligation Document has exercised remedies permitted thereunder for an event of default that occurred (and was not cured or waived by the expiration of any applicable grace period), in respect of the performance of any covenant, agreement or obligation of the Borrower under such Related Document.

								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 Federal Government in connection with the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001, to the extent the Federal Government deems appropriate.

Date: _____

CITY OF OREGON CITY,
by its authorized representative

By: _____

Name:

Title: _____

⁶ See Schedules IV, V and Exhibit E of the WIFIA Loan Agreement for additional details on EPC Documentation.

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.

EXHIBIT E

FORM OF CERTIFICATION OF ELIGIBLE PROJECT COSTS DOCUMENTATION

VIA EMAIL

United States Environmental Protection Agency¹²
 1200 Pennsylvania Avenue NW
 WJC-E 7334A
 Washington, D.C. 20460
 Attention: WIFIA Director
 Email: WIFIA_Portfolio@epa.gov

Re: Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR)

Ladies and Gentlemen:

Pursuant to Part C of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, dated as of [___], 2023 (the “**WIFIA Loan Agreement**”), by and between CITY OF OREGON CITY (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the Borrower hereby presents this certificate in connection with the Borrower’s delivery of Eligible Project Costs Documentation to the WIFIA Lender. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

The undersigned does hereby represent and certify the following:

1. This certificate is being delivered to the WIFIA Lender in connection with the Eligible Project Costs during the period between [___] and [___] (the “**Quarterly Period**”).
2. A summary of the Eligible Project Costs incurred, invoiced and/or paid (as the case may be) is set out in the [attached excel sheet][table on the following page:]

							WIFIA USE ONLY	
Vendor or Contractor Name ¹³	Invoice Number ¹⁴	Invoice Date	Payment Date	Invoice Amount	Activity Type ¹⁵	Description of Activity ¹⁶	Approved Amount	Notes

¹² If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.
¹³ If the expectation is to seek reimbursement for internal costs, enter “Internally financed activities.”
¹⁴ Vendor’s number indicated on the invoice sent to the Borrower.
¹⁵ 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**,
 (continued from previous page)

3. The anticipated sources of funding for such Eligible Project Costs are [listed below][set forth in the attached excel sheet].
4. Supporting Eligible Project Costs Documentation for the above Eligible Project Costs for the Quarterly Period are also attached hereto.¹⁷
5. The most recently delivered Construction Monitoring Report delivered in accordance with Part C of Schedule V (*Reporting Requirements*) sets out a summary of the progress of construction of the Project, no change has occurred since the date of such Construction Monitoring Report that could reasonably be expected to cause a Material Adverse Effect, and the Borrower is otherwise in compliance with Part C of Schedule V (*Reporting Requirements*).

Date: _____

CITY OF OREGON CITY¹⁸

By: _____

Name:

Title: _____

which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest on other Project Obligations during construction, 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.

¹⁶ 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 documentation.

¹⁷ See Schedules IV and V of the WIFIA Loan Agreement for additional details on EPC Documentation.

¹⁸ To be executed by the Borrower's Authorized Representative.

EXHIBIT F

FORM OF CONSTRUCTION MONITORING REPORT

VIA EMAIL

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, DC 20460
Attn: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR)

This Construction Monitoring Report for the period of [*insert relevant quarterly period*] (the “**Quarterly Period**”) is provided pursuant to Part D of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, dated as of [___], 2023 (the “**WIFIA Loan Agreement**”), by and between CITY OF OREGON CITY (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 Construction Monitoring Report have the meanings assigned to those terms in the WIFIA Loan Agreement.

1. **Project Status.** Provide a narrative summary of the Project’s construction progress during the Quarterly Period, including with respect to the Project components or sub-projects where appropriate. Complete the table in Appendix A to update the Project scope, schedule, and costs with the latest information.

--

2. **Current Projected Substantial Completion Date:** _____

If the current Projected Substantial Completion Date differs than the date set forth in the Construction Monitoring Report most recently delivered to the WIFIA Lender (or, if no such report has yet been provided, the date of the Projected Substantial Completion Date set forth in the WIFIA Loan Agreement as of the Effective Date), provide a description in reasonable detail for such projected delay or difference:

--

3. **Material Problems (if any)**

Note any problems encountered or anticipated during the construction of the Project during the Quarterly Period that (1) impedes Project completion within the scope, costs, and schedule

outlined in the WIFIA Loan Agreement or (2) relates to unforeseen complications in connection with the construction of the Project. This may include commissioning/start-up issues, constructability issues for the Project as planned, adverse impacts to Project surroundings, changes in or issues with meeting environmental or federal compliance requirements, and unanticipated or abnormal permit approval timelines. Include an assessment of the impact and any current plans to address the problems.

4. Other Matters Related to the Project (if applicable)

Date: _____

CITY OF OREGON CITY

By: _____

Name: _____

Title: _____

APPENDIX A 19 / 20

Option 1: Use for individual or combination of sub-projects

Project Scope		Project Schedule						Project Costs		
Project Component	Completed (Y/N)	Contract/Vendor	Bid Advertisement Date	Contract Award Date	NTP Effective Date	Original Substantial Completion Date	Estimated Substantial Completion Date	Original Contract Amount	Estimated Costs to Complete	Costs Earned or Paid to Date
Total										

Option 2: Use for program of sub-projects

Project Scope					Project Schedule						Project Costs		
Project Component	Complete (Y/N)	Description	Location	Covered by existing NEPA?	Contract/Vendor	Bid Advertisement Date	Contract Award Date	NTP Effective Date	Original Substantial Completion Date	Estimated Substantial Completion Date	Original Contract Amount	Estimated Costs to Complete	Costs Earned or Paid to Date
Total													

Table Definitions:

Project Component – project name or ID as tracked by the borrower

Complete (Y/N) – indication that project is complete, and no additional updates will be provided

Description (program of projects only) – brief overview of scope of work for the project component.

Location (program of projects only) – physical project boundaries

Covered by existing NEPA? (program of projects only) – refer to the environmental review documents that is the basis for the NEPA finding. Is the project within the geographic scope and scope of activities described in the documents?

Contract/Vendor – the contract identifier and contractor that is/will be completing the project construction.

Bid Advertisement Date – the date the bid was advertised

Contract Award date – the date the contract was awarded

NTP Effective date – the effective date to proceed with the construction in the Notice to Proceed

Original Substantial Completion Date – the substantial completion date for the given project as noted in the original contract award

Estimated Substantial Completion Date – the latest date estimate for substantial completion for the given project component

Original Contract Amount – the original contract award amount

Estimated Costs to Complete – the latest cost estimates to complete the given project component

Costs Earned or Paid to Date – the latest incurred contract costs for the given project component

Total – Total the cost amounts across all project components and contracts

¹⁹ Appendix A summarizes all project components that will be bid in the next quarter, are currently under construction, or have completed construction. It should be a cumulative list of projects that is updated each quarter. A Microsoft Excel spreadsheet with similar table format is acceptable.

²⁰ Include the appropriate option and delete the other option prior to circulating a draft to the Borrower.

EXHIBIT G

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

VIA EMAIL

[Date]

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, DC 20460
Attn: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Project: Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR)

Dear Director:

This Notice is provided pursuant to Part E of Schedule V (*Reporting Requirements*) of that certain WIFIA Loan Agreement (the “**WIFIA Loan Agreement**”), dated as of [___], 2023, by and between CITY OF OREGON CITY (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 certificate 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) the Project has satisfied each of the requirements for Substantial Completion set forth in the Construction Contracts;
- (b) Substantial Completion has been declared under each of the relevant Construction Contracts and copies of the notices of Substantial Completion under such agreements are attached to this certification;
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved and the Substantial Completion Date is [___]; and
- (d) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.

CITY OF OREGON CITY,

by its authorized representative

By: _____

Name:

Title:

EXHIBIT H-1²¹

OPINIONS REQUIRED FROM GENERAL COUNSEL TO BORROWER

²¹ **Note to Draft:** Borrower Counsel opinion currently under review and subject to EPA team comment in all respects.

EXHIBIT H-2²²

OPINIONS REQUIRED FROM BOND COUNSEL TO BORROWER

²² **Note to Draft:** Bond Counsel opinion currently under review and subject to EPA team comment in all respects.