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**LOAN AGREEMENT**

Between

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

and

**FACILITY**

**KPWSLF PROJECT NO. ##**

**EFFECTIVE AS OF LE DATE**

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*The interest of the Kansas Department of Health and Environment ("KDHE") in the interest portion of the Loan Repayments to be made by the Municipality and certain other revenues (the "Revenues") under this Loan Agreement have been pledged and assigned to the Kansas Development Finance Authority (the "Authority") pursuant to a Pledge Agreement between KDHE and the Authority. The interest of the Authority in the Revenues has been pledged as security for the payment of the principal of, redemption premium, if any, and interest on the Authority's Kansas Public Water Supply Loan Fund Revenue Bonds, pursuant to a Master Bond Resolution adopted by the Authority.*

LOAN AGREEMENT

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KANSAS PUBLIC WATER SUPPLY LOAN FUND  
LOAN AGREEMENT

**THIS LOAN AGREEMENT**, effective as of **Le Date**, by and between the KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT (KDHE"), acting on behalf of THE STATE OF KANSAS (the "State"), and **FACILITY**, a "Municipality" according to K.S.A. 65-163d, hereinafter referenced as the ("Municipality");

**W I T N E S S E T H:**

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

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

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

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

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

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

**WHEREAS**, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

**WHEREAS**, the Municipality has made timely application to KDHE for a Loan to finance all or a

portion of the Project Costs; and

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

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

## **ARTICLE I**

### **DEFINITIONS**

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

**"Additional Payments"** means the payments described in *Section 2.06* hereof.

**"Additional Revenue Obligations"** means any obligation for the payment of money undertaken by the Municipality which is payable from or secured by a pledge of, or lien upon, the System Revenues incurred after the date of execution and delivery of this Loan Agreement, and all Existing Revenue Obligations.

**"Authority"** means the Kansas Development Finance Authority, a public body politic and corporate and an instrumentality of the State, and its successors and assigns.

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

**"Bonds"** means the Kansas Development Finance Authority, Kansas Public Water Supply Revolving Loan Fund Revenue Bonds, issued in one or more series, pursuant to Master Bond Resolution No. 106, and supplements thereto.

**"Code"** means the Internal Revenue Code of 1986, as amended, and, to the extent applicable, U.S. Treasury Regulations promulgated thereunder.

**"Debt Service Coverage Ratio"** means for any Municipal Fiscal Year, the ratio of Net Revenue Available for Debt Service to all payments payable on all Revenue Obligations during that year.

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

**"EPA"** means the Environmental Protection Agency of the United States, its successors and assigns.

**"Event of Default"** means any occurrence of the following events:

- (a) Failure by the Municipality to pay, or cause to be paid, any Loan Repayment required to be

paid hereunder when due.

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

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

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

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

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

(g) Failure of the Municipality generally to pay its debts as such debts become due.

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

(i) Any Event of Default under any Existing Revenue Obligation or Additional Revenue Obligation of the Municipality.

**"Existing Revenue Obligation"** means any obligation for the payment of money undertaken by the Municipality which is payable from or secured by a pledge of, or lien upon, the System Revenues existing or outstanding at the time of execution and delivery of this Loan Agreement by the Municipality.

**"Federal Act"** means the Safe Drinking Water Act, including the Safe Drinking Water Act Amendments of 1996 [PL 104-182] thereto.

"**FIAC**" means the Financial Integrity Assurance Contract, among KDHE, the Authority, KRWFA and the Municipality, the form of which is attached hereto as *Exhibit I*.

"**FIAC Origination Fee**" means the fee charged by KDHE to implement the FIAC, which shall be an amount equal to 1.0% of the original principal amount of the Loan (as adjusted in accordance with the provisions of *Section 2.01* hereof) if such FIAC is entered into in conjunction with the execution of this Loan Agreement, or if the FIAC is entered into after the Municipality commences the Loan Repayments, an amount equal to 1.0% of the outstanding principal amount of the Loan as of the effective date of the FIAC.

"**GAAP**" means generally accepted accounting principles as applicable to municipal utility systems.

"**Green Project Reserve**" means the requirement from Public Law 111-88 indicating that to the extent there are sufficient eligible project applications, 20 % of the funds awarded to the KPWSLF from Public Law 111-88 shall be used by for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

"**Indebtedness**" means any financial obligation of the Municipality evidenced by an instrument executed by the Municipality, including this Loan, Existing Revenue Obligations, Additional Revenue Obligations, general obligation bonds or notes, lease or lease-purchase agreement or similar financial transactions.

"**KDHE**" means the Kansas Department of Health and Environment or its successors in interest.

"**KRWFA**" means the Kansas Rural Water Finance Authority.

"**Loan**" means the loan made by KDHE to the Municipality to finance or refinance a portion of the Project Costs pursuant to this Loan Agreement.

"**Loan Act**" means the Constitution and laws of the State of Kansas, including particularly K.S.A. 65-163d through 65-163u inclusive, as amended and supplemented.

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

"**Loan Origination Fee**" means a fee charged by KDHE to originate the Loan pursuant to this Loan Agreement, which shall be an amount equal to 0.25% of the original principal amount of the Loan, as adjusted in accordance with the provisions of *Section 2.01* hereof.

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

"**Loan Reserve Account**" means the Loan Reserve Account established with the Authority, to be administered in accordance with the provisions of *Section 3.02(c)* hereof.

"**Loan Reserve Account Rate**" for any semi-annual period for Loan Repayments, means the lesser of: (a) Gross Loan Rate or (b) the arbitrage yield on the Bonds applicable to this Loan.

"**Loan Reserve Requirement**" means an amount equal to 10% of the original principal amount of

the Loan, as adjusted in accordance with the provisions of *Section 2.01* hereof.

**"Loan Terms"** means the terms of this Loan Agreement provided in *Article II* hereof.

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

**"Municipality"** means **Facility**.

**"Net Revenues Available for Debt Service"** means, for any Municipal Fiscal Year, its System Revenues for the year, less the ordinary and necessary expenses of operating the System during the year, but not reduced by (a) charges for interest paid on Revenue Obligations, (b) principal paid on Revenue Obligations, (c) Revenue Obligations payable as capital lease payments, or (d) charges for depreciation.

**"Parity Obligation"** means any Revenue Obligation the lien of which on the Municipality's System Revenues stands on a parity basis with any other Revenue Obligation.

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

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

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

**"Qualified Financial Institutions"** means a bank, trust company, national banking association insurance company or other financial services company or entity, whose unsecured loan term debt obligations (in the case of a bank, trust company, national banking association or other financial services company or entity) or whose claims paying abilities (in the case of an insurance company) are rated in any of the two highest rating categories by Fitch IBCA, Inc., Mood 's Investors Service, Inc. or Standard & Poor 's Ratings Group.

**"Regulations"** means Kansas Administrative Regulations (K.A.R.) 28-15-50 to 28-15-65, inclusive, and any amendments thereto promulgated by KDHE pursuant to the Act.

**"Revenue Obligation(s)"** means: (a) the Loan; (b) any revenue bonds of the Municipality outstanding from time to time and payable from, or secured by a pledge of or lien upon, System Revenues; and (c) any capital leases entered into by the Municipality the rentals of which are payable from, or secured by a pledge of or lien upon, System Revenues.

**"Revolving Fund"** means the Kansas Public Water Supply Loan Fund established by the Loan Act.

"**SEC Rule**" means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time or such other similar rule regarding disclosure of information in securities transactions.

"**Secretary**" means the Secretary of KDHE

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

"**System**" means the public water supply system of the Municipality, as the same may be modified or enlarged from time to time, including the Project described in *Exhibit A*, for which the Municipality is making the borrowing under this Loan Agreement, which constitutes or includes a Public Water Supply System.

"**System Revenues**" means all revenues derived by the Municipality from the ownership and operation of the System.

### **Section 1.02. Rules of Interpretation.**

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

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

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

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

## **ARTICLE II**

### **LOAN TERMS**

**Section 2.01. Amount of the Loan.** Subject to all of the terms, provisions and conditions of this Loan Agreement, and subject to the availability of State and Federal funds and proceeds of Bonds, KDHE will loan an amount not to exceed \$**ln amt** to the Municipality to pay all or a portion of the Project Costs for the Project described in *Exhibit A* hereto. The final actual amount of the Loan may be reduced without revision of any other terms, provisions or conditions of this Loan Agreement, other than the Loan Repayment Schedule (*Exhibit B* hereto), to reflect reductions in the estimated or actual total Project Costs as impacted by opening of bids for construction, change orders, final actual costs, and prepayments. The Municipality shall be responsible for any costs incurred by the Municipality in connection with the Project in excess of the

amount of the Loan. An amendment to *Exhibit B* must be accomplished by written amendment to the Loan Agreement executed by all parties.

**Section 2.02. Interest Rate.** The interest rate on the loan shall be **rate**% per annum, which shall be assessed on the unpaid principal balance to be paid as set out in the Loan Repayment Schedule, *Exhibit B* hereto. This interest rate consists of a net loan interest rate, and a service fee, as described in *Exhibit B*. Any subsequent revision to the amount of the Loan or *Exhibit B* hereto shall not change the gross interest rate on the Loan.

**Section 2.03. Disbursement of Loan Proceeds.**

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

The Municipality may request disbursement for Project Costs, including:

- (1) any eligible planning/design costs incurred prior to execution of this Loan Agreement (initial disbursement request only);
- (2) disbursement for eligible Project Costs if such Project Costs have been incurred and are due and payable to Project contractors (actual payment of such Project Costs by the Municipality is not required as a condition of the payment request);
- (3) interest becoming due on the Loan prior to the initial scheduled payment of principal;
- (4) the amount of the Loan Origination Fee, if not paid from Municipality funds;
- (5) the amount of the FIAC Origination Fee, if not paid from Municipality funds;
- (6) the principal of and interest on any temporary financing obligations issued by the Municipality to pay Project Costs incurred for contracts entered into on or after August 6, 1996; and
- (7) the deposit to the Loan Reserve Account in an amount not to exceed the Loan Reserve Requirement.

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

- (1) there are moneys available in the Revolving Fund to fund the Loan, as determined solely by KDHE;
- (2) the Municipality shall have funds available to pay for that portion of the Project

Costs not eligible (pursuant to the Loan Act or the Federal Act) to be funded under this Loan Agreement;

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

(4) the Municipality continues to maintain reasonable progress towards completion of the Project.

**Section 2.04. Schedule of Compliance; Completion of Project.**

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

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

**Section 2.05. Repayment of the Loan.**

(a) *Loan Repayments.* The Municipality shall pay to KDHE, on or before the due dates, installments of principal and interest on the Loan in accordance with *Exhibit B* attached hereto, until the Loan has been paid in full. Installments of principal and interest on the Loan shall be computed and paid in accordance with the Loan Repayment Schedule on *Exhibit B* as in effect at any time under this Loan Agreement. Notwithstanding any other provision of this Loan Agreement, the first payment of principal and interest due on the Loan shall be made the earlier of two years after receipt by the Municipality of the first disbursement under the Loan or one year after Project completion. The final installment of principal under the Loan shall be fully repaid not later than 20 years after Project completion.

(b) *Prepayment of the Loan.* The Municipality may prepay the outstanding principal of the Loan, in whole, or in part, at any time, without penalty, upon giving 60 days written notice to KDHE of its intent to so prepay; provided, however, a partial prepayment may be made only if the prepayment amount is the greater of 10% of the original principal amount of the Loan or \$50,000. A new *Exhibit B* will be prepared by KDHE following receipt of any acceptable partial prepayment, reamortizing the remaining principal amount over the remaining term of the Loan.

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

(a) The FIAC Origination Fee, if the same was not paid from proceeds of the Loan.

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

payments; and.

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

**Section 2.07. Additional Revenue Obligations.** The Municipality covenants that it will not issue any Additional Revenue Obligations that are senior in lien status to the lien of KDHE on the System Revenues under this Loan Agreement. The Municipality may issue Additional Revenue Obligations payable from, and secured by a lien or charge upon, System Revenues on a parity of lien basis with the lien of KDHE on the System Revenues under this Loan Agreement upon satisfaction of the following conditions:

(a) The Municipality shall not be in default in the payment of principal of or interest under this Loan Agreement or on any Revenue Obligations at the time Outstanding or in making any payment at the time required to be made into the respective funds and accounts created by and referred to in this Loan Agreement (unless such Additional Revenue Obligations are being issued to provide funds to cure such default) nor shall any other Event of Default have occurred and be continuing; and

(b) The Municipality shall sign a certificate evidencing *either* of the following:

(1) The Net Revenues Available for Debt Service for the Municipal Fiscal Year immediately preceding the issuance of additional obligations as reflected by information provided by the Independent Accountant shall have been equal to at least 125% of the average Debt Service Requirements to be paid out of said Net Revenues Available for Debt Service with respect to the Loan and all Parity Obligations, including the Additional Revenue Obligations proposed to be issued.

In the event that the Municipality has instituted any increase in rates for the use and services of the System and such increase shall not have been in effect during the full Municipal Fiscal Year immediately preceding the issuance of Additional Revenue Obligations, the additional Net Revenues Available for Debt Service which would have resulted from the operation of the System during said preceding Municipal Fiscal Year had such rate increase been in effect for the entire period may be added to the stated Net Revenues Available for Debt Service, provided that such estimated additional Net Revenues shall be determined by an independent consulting engineer or independent accountant.

(2) The estimated Net Revenues, as determined by an independent consulting engineer or independent accountant, to be derived by the Municipality from the operation of the System for the Municipal Fiscal Year immediately following the Municipal Fiscal Year in which the project, the cost of which is being financed by such Additional Revenue Obligations, are to be in commercial operation, shall be equal to at least 125% of the average Debt Service Requirements to be paid out of said Net Revenues Available for Debt Service with respect to the Loan and all Parity Obligations, including the Additional Revenue Obligations proposed to be issued.

In the event that the Municipality increases the rates for the use and services of the System prior to the issuance of such Additional Revenue Obligations proposed to be issued, the Municipality may adjust said estimated Net Revenues Available for Debt Service by adding thereto any estimated increase in Net Revenues resulting from any increase in rates for the use and services of the System, which, in the opinion of an independent consulting engineer or independent accountant, are reasonable based on projected operations of the System.

(c) When the issuance of Additional Revenue Obligations of equal stature and priority is

permitted by the Statutes of the State.

(d) The resolution authorizing such Additional Revenue Obligations shall contain or provide for substantially the same terms, conditions, covenants and procedures as established in this Loan Agreement; provided that Additional Revenue Obligations that are not Loans, need not require: (1) the establishment of a debt service reserve account or fund, or (2) the execution of an additional FIAC.

The Secretary may waive any or all or any part of either of the above conditions by written waiver delivered to the Municipality preceding issuance of the Additional Revenue Obligations. The Municipality will not issue any Revenue Obligations as Parity Obligations unless either of the foregoing conditions is first satisfied or waived by the Secretary. The lien on the System Revenues of any Revenue Obligations otherwise issued by the Municipality will be junior and subordinate to the lien of the Loan and any properly issued Parity Obligations.

**Section 2.08. Financial Integrity Assurance Contract.** Prior to disbursement of any Loan proceeds, the Municipality will enter into a FIAC that will provide for ongoing supervision and oversight of the Municipality's: (a) completion of the Project; (b) expenditure of Loan proceeds; (c) operation of the System; and (d) compliance with the covenants and agreements made by the Municipality under this Loan agreement. The FIAC shall be in substantially the form attached hereto as *Exhibit I*. The provider of contract services under the FIAC shall be compensated by KDHE from proceeds of the FIAC Origination Fee; the Municipality shall have no further obligation for fees to KDHE under the FIAC. The Municipality will cooperate fully with any recommendations and requirements imposed by the FIAC provider.

### ARTICLE III

#### REPRESENTATIONS AND COVENANTS OF MUNICIPALITY

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

(a) ***Organization and Authority.***

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

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

(3) The proceedings of the Municipality's governing body approving this Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Municipality, and authorizing the Municipality to undertake and complete the Project have been duly and lawfully adopted.

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

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

(c) **Non-Litigation.** There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legal organization of the Municipality; (2) its boundaries; (3) the right or title of any of its officers to their respective offices; (4) the legality of any official act taken in connection with obtaining the Loan; (5) the constitutionality or validity of the indebtedness represented by the Loan Agreement; (6) any of the proceedings had in relation to the authorization or execution of this Loan Agreement; (7) the collection of revenues of the System; (8) the imposition and collection of rates, fees and charges for use of the System; (9) the pledging of System revenues to pay the principal of and interest on the Loan; or (10) the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

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

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

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

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

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

(g) **Use of Loan Proceeds.** The Municipality will apply the proceeds of the Loan as described in

**Exhibit D:** (1) to finance or refinance a portion of the Project Costs; and (2) where applicable, to reimburse the Municipality for a portion of the Project Costs paid or incurred in anticipation of reimbursement by KDHE as a result of contracts entered into on or after August 6, 1996 and eligible for such reimbursement pursuant to the Regulations and the Code.

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

### **Section 3.02. Particular Covenants of the Municipality.**

(a) **Dedicated Source of Revenue for Repayment of the Loan.** The Municipality hereby establishes the System Revenues as the Dedicated Source of Revenue; which Dedicated Source of Revenue is hereby pledged to and as security for the Loan Repayments, Additional Payments and all other obligations of the Municipality under this Loan Agreement.

(b) **Rate Covenant.** The Municipality covenants to collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality, as will provide System Revenues sufficient to (1) pay the cost of the operation and maintenance of the System; (2) pay the principal of and interest on the Loan as and when the same become due; (3) pay all Existing Revenue Obligations; (4) pay all other amounts due at any time under this Loan Agreement or any resolution providing for payment of any Existing Revenue Obligation or additional Revenue Obligation; (5) maintain a Debt Service Coverage Ratio of 125%; and (6) maintain the Loan Reserve Account at the Loan Reserve Requirement.

(c) **Application of System Revenues; Funds and Accounts.** The Municipality covenants and agrees that from and after the execution of this Loan Agreement and continuing so long as any of the principal amount of the Loan shall remain Outstanding, it will on the first day of each month administer and allocate all of the System Revenues as follows:

(1) **Operation and Maintenance.** There shall first be paid and credited from month to month as all operation and maintenance expenses of the System as the same become due and payable.

(2) **Debt Service.** There shall next be set aside and credited monthly to a debt service account, the monthly pro rata amount of the Loan Repayments set forth on **Exhibit B** hereto, to the extent necessary to meet on each payment date the payment of all interest on and principal of the Loan. The amounts required to be paid and credited to the debt service account pursuant to this **Section** shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to the debt service accounts established for the payment of principal and interest on all Parity Obligations of the Municipality pursuant to **Section 2.07** hereof. All amounts paid and credited to the debt service account shall be expended and used by the Municipality for the sole purpose of paying the interest on and principal of the Loan as and when the same become due.

(3) **Loan Reserve Account.** The Loan Reserve Account shall be established with the Authority and shall be funded with proceeds of the Loan in accordance with the provisions of **Section 2.03(a)(7)** hereof, or shall be funded from moneys of the Municipality. If funded from proceeds of

the Loan, such funding shall be made during the construction and/or acquisition of the Project in proportionate amounts relating to each disbursement for Project Costs such that when the Project is completed, as evidenced in accordance with the provisions of *Section 2.04(a)*, the Loan Reserve Account shall equal the Loan Reserve Requirement. If funded from moneys of the Municipality, the Loan Reserve Account shall equal the Loan Reserve Requirement prior to the initial disbursement for Project Costs.

Except as hereinafter provided in this *Section*, all amounts paid and credited to the Loan Reserve Account shall be expended and used by the Municipality solely to prevent any default in the payment of interest on or principal of the Loan if the moneys in the debt service account are insufficient to pay the interest on or principal of said Loan as they become due. So long as the Loan Reserve Account aggregates the Loan Reserve Requirement, no payments into said Account shall be required, but if the Municipality is ever required to expend and use a part of the moneys in the Loan Reserve Account for the purpose herein authorized and such expenditure reduces the amount of the Loan Reserve Account below the Loan Reserve Requirement, the Municipality shall transfer all available System Revenues, after providing for the transfers set forth in *subsections (c)(1)* and *(c)(2)* above into the Loan Reserve Account until the Loan Reserve Account shall again aggregate the Loan Reserve Requirement. Moneys in the Loan Reserve Account may be used to prepay and/or retire all Outstanding principal and interest payments under the Loan.

Moneys in the Loan Reserve Account shall be invested as a separate fund in accordance with the provisions and restrictions of the master resolution of the Authority authorizing the issuance of the Bonds. Investment earnings on moneys held in the Loan Reserve Account, not to exceed the Loan Reserve Account Rate, shall be credited to each succeeding Loan Repayment. Investment earnings in excess of the Loan Reserve Account Rate shall be retained by KDHE in the Revolving Loan Fund and shall not be credited to Loan Repayments; provided that if investment earnings on the Loan Reserve Account do not equal the Loan Reserve Account Rate for any Loan Repayment period, investment earnings in excess of the Loan Reserve Account Rate for any previous Loan Repayment period retained in the Revolving Fund shall be credited to future Loan Repayment periods until the Loan Reserve Account Rate shall be achieved for the life of the Loan.

(4) *Surplus Moneys.* After all payments and credits required at the time to be made under the provisions of the preceding subsections have been made, all System Revenues may be expended and used for the following purposes as determined by the governing body of the Municipality:

- (i) Paying the cost of the operation, maintenance and repair of the System;
- (ii) Paying the cost of extending, enlarging or improving the System;
- (iii) Preventing default in, anticipating payments into or increasing the amounts in the debt service account or the Loan Reserve Account;
- (iv) Providing for the prepayment of all or any portion of the Loan or the payment or prepayment of any System Revenue Obligation; or
- (v) Any other lawful purpose in connection with the operation of the System and benefiting the System.

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

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

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

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

(1) to exercise its best efforts in accordance with prudent water treatment utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date set forth in **Exhibit C** hereto; and

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

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

(1) fully executed counterparts of this Loan Agreement;

(2) copies of the resolution of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement, certified by an Authorized Municipality Representative, which shall be in substantially the form attached hereto as **Exhibit F**;

(3) an opinion of the Municipality's counsel substantially in the form set forth in **Exhibit G** attached hereto;

(4) a fully executed FIAC;

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

(6) payment of the FIAC Origination Fee, if not included in the principal amount of the Loan;

(7) payment of the Loan Origination Fee, if not included in the principal amount of the Loan; and

(8) funds to be deposited into the Loan Reserve Account in an amount equal to the Loan Reserve Requirement, if not funded from proceeds of the Loan in accordance with *Section 2.03(a)(7)* hereof; and

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

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

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

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

(3) implement any modification of the rates fees and charges for use of the System that comprise the Dedicated Source of Revenues as the Secretary may require to ensure repayment of the Loan in accordance with the provisions of the Loan Act; and

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

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

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

(j) **Annual Budget.** Prior to the commencement of each of its Municipal Fiscal Years, the Municipality will cause to be prepared and filed with the Secretary a budget setting forth its estimated System Revenues and operating expenses for the next succeeding Municipal Fiscal Year. A copy of such budget will be furnished by the Secretary to the Authority. The budget must be prepared in accordance with the

requirements of State law, and contain, at a minimum, the following:

- (1) An estimate of System Revenues for the Municipal Fiscal Year.
- (2) Estimate of operating expenses for the System for the Municipal Fiscal Year.
- (3) A statement of any anticipated unusual expenses to be incurred by the Municipality for the System during the Municipal Fiscal Year.
- (4) A statement of any necessary replacements to components of the System anticipated during the Municipal Fiscal Year.
- (5) An itemized statement of payments to be made on Existing Revenue Obligations, Loan Repayments and Additional Revenue Obligations to be paid from System Revenues during the Municipal Fiscal Year.
- (6) A statement of the estimated Net Revenues Available for Debt Service for the Municipal Fiscal Year and the Municipality's projected Debt Service Coverage Ratio for the Municipal Fiscal Year.

(k) ***Records and Accounts.***

(1) The Municipality shall keep accurate records and accounts for its System (the "System Records"), separate and distinct from its other records and accounts (the "General Accounts"). Such System Records shall be audited annually by an independent certified public accountant or firm of independent certified public accountants, in accordance with generally accepted auditing standards. Such audit may be a part of the single agency audit made in accordance with the Federal Single Audit Act of 1984, OMB Circular No. A-133, ***Audits of States, Local Governments, and Non-profit Organizations*** as amended in 1996 and 2003 and as may be further amended and revised. Such System Records and General Accounts shall be made available for inspection by KDHE at any reasonable time, and a copy of the Municipality's annual audit, including all written comments and recommendations of such accountant, shall be furnished to KDHE within 210 days of the close of the Municipal Fiscal Year being so audited. Such audit report shall be prepared in accordance with subsection (k)(2) hereof, unless the Municipality has received a waiver from such requirement as permitted by state law pursuant to K.S.A. 75-1120a.

(2) The Municipality shall maintain Project accounts in accordance with generally accepted government accounting standards defined in the Government Accounting, Auditing, and Financial Reporting Manual (1994 Ed.), or any revised edition, issued by the Government Finance Officers Association. The financial information shall be prepared in accordance with generally accepted accounting principles (GAAP) for state and local governments.

(l) ***Inspections.*** The Municipality shall permit the EPA, KDHE and any party designated by KDHE to examine, visit and inspect, at any and all reasonable times, the property, constituting the Project and/or the System, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the EPA and KDHE may reasonably require in connection therewith. In addition, at least every five years as long as there is a

principal balance outstanding on the Loan, the Municipality will cause a comprehensive inspection of the System to be conducted by a professional engineer or other qualified inspector approved by KDHE for the purposes of assessing the general condition of the System and making recommendations for repairs, modifications or improvements needed to keep the System functioning efficiently. A written report of the inspection prepared by the inspector shall be filed with the Secretary within a reasonable time after the inspection is completed.

(m) **Financial Information.** The Municipality specifically agrees to provide to KDHE a reasonable number of copies of such financial information and operating data of the Municipality and the System, to the extent necessary for KDHE to comply with its continuing disclosure obligations set forth in the SEC Rule and the Pledge Agreement. Such financial information shall be accompanied by an audit report prepared in accordance with the provisions of *subsection (k)(1)* hereof. Any such requested financial information and operating data, shall be supplied to KDHE within 210 days after the end of the Municipal Fiscal Year. Such requirement may be satisfied by submitting the Municipality's comprehensive annual financial report (CAFR) and/or annual report of its System, unless KDHE notifies the Municipality of the need for additional information. If an audit report is required to be prepared, but is not available within 210 days of the end of the Municipal Fiscal Year, unaudited financial information shall be provided to KDHE pending receipt of the audit report. In addition, the Municipality shall provide KDHE with prompt notification of the occurrence of certain material events. For purposes of this paragraph, "material event" shall mean: (a) principal and interest payment delinquencies on any Indebtedness; (b) non-payment related defaults in agreements authorizing any Indebtedness; (c) rating changes on any Indebtedness; (d) adverse tax opinions or events affecting the tax-exempt status of any Indebtedness; or (e) unscheduled draws on debt service reserves or credit enhancements on any Indebtedness reflecting financial difficulties.

(n) **Insurance.** The Municipality will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the System as would be carried by similar municipal operators of public water supply systems, insofar as the properties are of an insurable nature. The Municipality also will carry general liability insurance in amounts not less than the maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, or other similar future law (currently \$500,000 per occurrence).

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

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

provisions thereof on an ongoing basis so long as this Loan Agreement is in effect.

## ARTICLE IV

### ASSIGNMENT

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

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

- (a) KDHE and the Authority shall have approved the assignment in writing;
- (b) the assignee is a city, county, township, water district, improvement district or other political subdivision of the State of Kansas or any combination thereof;
- (c) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, and obligations under this Loan Agreement; provided, however, such assignment shall not relieve the Municipality of its duties, covenants, and obligations under this Loan Agreement;
- (d) the assignment will not adversely impact KDHE's ability to meet its duties, covenants and obligations under its Pledge Agreement nor may the sale endanger the exclusion from gross income for federal income tax purposes of the interest on any Bonds; and
- (e) the Municipality shall provide KDHE with an opinion of a qualified attorney that each of the conditions set forth in subparagraphs (b), (c), and (d) hereof have been met.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

**Section 5.01. Notice of Default.** If an Event of Default shall occur, the non-defaulting party shall give the party in default and the Authority prompt telephonic notice of the occurrence of such Event of Default, provided the non-defaulting party has knowledge of such Event of Default. Such telephonic notice shall be immediately followed by written notice of such Event of Default given in the manner set forth in *Section 6.01* hereof.

**Section 5.02. Remedies on Default.** Whenever an Event of Default shall have occurred and be continuing, KDHE or the Municipality shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and to become due or to enforce the

performance and observance of any obligation or agreement of KDHE or the Municipality (including, without limitation, withholding remaining Loan disbursements, cancellation of the Loan Agreement and acceleration of the remaining scheduled principal payments set forth on *Exhibit B*, or such other remedies provided to the Secretary in the Loan Act and the Regulations.

**Section 5.03. Expenses.**

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

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

**Section 5.04. Application of Moneys.** Any moneys collected by KDHE pursuant to *Section 5.03* hereof shall be applied (a) first, to pay interest on the Loan as the same becomes due and payable; (b) second, to pay principal due and payable on the Loan; (c) third, to pay expenses owed by the Municipality pursuant to *Section 5.04* hereof; and (d) fourth, to pay any other amounts due and payable hereunder as such amounts become due and payable. To the extent that KDHE's right to receive Loan Repayments is on a parity of lien basis with the lien of Existing Revenue Obligations or Additional Revenue Obligations on the Municipality's System Revenues, such moneys shall be applied prorata to all such obligations.

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

**Section 5.06. Retention of Rights.** Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the parties hereto shall have the right upon the occurrence of an Event of Default to take any action, including (without

limitation) bringing an action against the defaulting party at law or in equity, as such party may, in its discretion, deem necessary to enforce the obligations of the defaulting party pursuant to this Loan Agreement.

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

## ARTICLE VI

### MISCELLANEOUS

**Section 6.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when: (a) hand delivered; (b) mailed by registered or certified United States mail, postage prepaid; or (c) via telefax, with confirmation in the manner set forth in *subsection (b)*, to the parties hereinafter set forth at the following addresses:

- (1) to KDHE:

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

- (2) with a copy to its General Counsel  
to the Authority:

Kansas Development Finance Authority  
555 S. Kansas Avenue, Suite 202  
Topeka, Kansas 66603  
Attention: President,

with a copy to its General Counsel

- (3) to the Municipality:

at the address set forth on *Exhibit H*.

All notices given by telefax as aforesaid shall be deemed given as of the date of evidence of receipt thereof by the recipient. All notices given by registered or certified mail as aforesaid shall be deemed duly given as of the date they are so deposited in the United States Postal Service, if postage is prepaid. Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

**Section 6.02. Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon KDHE and the Municipality and their respective successors and assigns.

**Section 6.03. Severability.** In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

**Section 6.04. Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority.

**Section 6.05. Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 6.06. Governing Law and Regulations.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Kansas, including the Act and the Regulations which Regulations are, by this reference thereto, incorporated herein as a part of this Loan Agreement.

**Section 6.07. Consents and Approvals.** Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by KDHE.

**Section 6.08. Further Assurances.** The Municipality shall, at the request of KDHE, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be reasonably necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

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



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

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

Roderick L. Bremby  
Secretary  
"KDHE"

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

**FACILITY  
KANSAS**

(Seal)

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

\_\_\_\_\_  
(Printed Name)

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

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

ATTEST:

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

\_\_\_\_\_  
(Printed Name)

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

***EXHIBIT A***

**DESCRIPTION OF THE PROJECT**

The project consists of:

**EXHIBIT B**

**LOAN REPAYMENT SCHEDULE**

\* \* \* \* \*

**Loan Repayment Schedule**

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

***Principal Forgiveness***

The principal forgiveness amount will be calculated as the total of 20% of the successful bid amount for the construction contract(s) for the project and 20% of the successful construction contract bid amount for any KDHE approved Green Project Reserve component of the project, up to the available Green Project Reserve funding limits. The principal forgiveness will be provided on the date indicated on the KDHE Construction Completion Certificate completed by the municipality. KDHE reserves the right to increase the principal forgiveness as needed to meet requirements of Public Law 111-88.



## *EXHIBIT C*

### CONDITIONS APPLICABLE TO CONSTRUCTION OF THE PROJECT

The standard conditions applicable to the Loan Agreement are:

1. Municipality agrees to expeditiously initiate and complete the Project in accordance with the following schedule:
  - a. Advertisement for bids will not be initiated without written authorization by KDHE.
  - b. Advertising for bids within 30 days of authorization to advertise.
  - c. Bid opening at least 30 days from advertisement for bids.
  - d. Notice of Award will not be issued without written authorization by KDHE.
  - e. Contract award within 60 days of bid opening.
  - f. Issuance of notice to proceed within 30 days of contract award.
  - g. Initiation of operation within 210 days of notice to proceed or no later than December 31, 2008.
  - h. Finalization of construction within 240 days of notice to proceed.
  - i. Project Performance Certification 365 days following Initiation of Operation.

No change may be implemented by the Municipality which will delay or accelerate this schedule without prior approval of KDHE. KDHE must be promptly notified of any proposed changes.

2. Prior to giving a notice to proceed, the Municipality must certify that all easements and rights-of-way necessary to allow construction of the Project have been obtained and comply with the Uniform Relocation Assistance and Real Property Acquisition Policies (40 CFR part 4) (i.e., all real property has been acquired, bonafide options have been taken or formal condemnation proceedings have been initiated for necessary real property).
3. A final plan of operations shall be submitted by the Municipality for approval by KDHE at or prior to 50 percent construction completion. The plan of operation must include, but is not limited to, an overall Project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and the projected revenues to operate and maintain the public water supply system. Revenue projections shall also include the Loan Repayments..
4. The final operations and maintenance manual must be submitted to KDHE at or prior to 90 percent construction completion. The operations and maintenance manual must include, but is not limited to, a description of the operation and managerial responsibility, detailed operation and controls, operators and personnel classification and requirements, operational testing, equipment maintenance schedule, operational records, and emergency operating and shut-down procedures.
5. The rates and ordinances enacting the System user charges and System use requirements (as approved by KDHE) shall be enacted prior to initiation of operation.
6. The Municipality agrees to make prompt payment to its contractor(s) of sums due for construction and to retain only such amounts as may be justified by specific circumstances and provisions of this Loan Agreement or the construction contract.

7. The Municipality hereby assures that the engineering firm principally responsible for supervising construction and for providing engineering services during construction will continue its relationship with the Municipality for a period of up to one year after initiation of operation of the Project. During this period, the engineering firm shall direct the operation of the Project, train operating personnel and prepare curricula and training material for operating personnel. The following specific requirements apply:
  - a. The Municipality agrees the performance standards applicable to the Project are:
    - (1) all construction deficiencies have been resolved.
    - (2) all testing requirements of the specifications have been performed and met.
  - b. The final plan of operations submitted in accordance with *Exhibit C*, Condition No. 3 must include a draft proposal for these services.
  - c. The final operation and maintenance manual submitted in accordance with *Exhibit C*, Condition No. 4 must be accompanied by a final proposal for these services.
  - d. One year after completion of construction and initial operation of the Project, the Municipality shall certify to KDHE whether or not such Project meets the design specifications and requirements contained in subparagraph a. of this condition. Any statement of non-compliance must be accompanied by a corrective action report containing: an analysis of the cause of the Project's inability to meet performance standards; actions necessary to bring it into compliance, and a reasonably scheduled date for positive certification of the Project. Timely corrective action will be executed by the Municipality.
  - e. Municipality agrees to furnish KDHE with an annual report describing actions taken to date to achieve positive certification, planned future activities, the Project's status and potential for positive certifications.
8. In accordance with OMB Circular A-133, which implements the single Audit Act, the Municipality hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish Single Audit Submissions is available on the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>. KDHE will identify Federal funds with each disbursement made, the CFDA number is 66.468 for Capitalization Grants for Drinking Water State Revolving Funds, the federal award is from EPA and the federal award ID is 99751610.
9. If this Project is for a segment of a total project for the System, KDHE does not assume any obligation, commitment, or responsibility for funding any other anticipated steps, phases, segments or stages or any other improvements to the System not constituting the Project. The Municipality agrees to complete the total System improvements of which this Project is a part in accordance with the schedule presented in *Exhibit C(1)*, regardless of whether KDHE funding is available for the remaining System improvements.
10. The Municipality shall obtain any required Corps of Engineers Section 404 and/or Section 10 permit prior to awarding the construction contract.

11. The Municipality shall follow applicable state procurement laws and regulations.
12. The Municipality hereby agrees to implement measures to mitigate all known adverse environmental effects of this project. The following mitigative actions are required:
  - a. proper grading, drainage and slope protection to eliminate erosion;
  - b. riparian habitat will be avoided, and disturbed areas will be reseeded with native plant species;
  - c. directional boring at all stream crossings, where practical, to minimize aquatic habitat impacts;
  - d. in the event that construction work uncovers buried archeological artifacts, the Kansas Historical Society should be contacted immediately; and
  - e. contacting KCC in the event of unexpected circumstances are encountered during construction such as the discovery of abandoned oil, gas, or exploratory holes.
13. The Municipality agrees and consents to KDHE's authority to monitor and enforce compliance with the mitigative measures identified in paragraph 13 above and the Loan Agreement conditions.
14. The Municipality further agrees that those members of the public who participate in the environmental review process shall have the right to appeal the decisions made within that process. Further, that all such appeals shall be conducted pursuant to the Kansas Administrative Procedures Act (K.S.A. 77-5501, *et seq.*) and the Act for Judicial Review (77-601, *et seq.*).
15. The Municipality agrees to comply with the Kansas Act Against Discrimination, K.S.A. 44-1001, *et seq.* and the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111, *et seq.* as provided by law and to include those provisions in every contract or purchase order relating to the Project so that they are binding upon such subcontractors or vendors.
16. In order to comply with KPWSLF wage rate requirements the Municipality shall,
  - (a) insert in full in any contract funded by this loan agreement in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, wage rate contract provisions, found in 29 CFR 5.5, as indicated by EPA and US Department of Labor, generally known as Davis Bacon requirements;
  - (b) while the solicitation remains open, shall monitor [www.wdol.gov](http://www.wdol.gov). on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The municipality shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Municipality may request a finding from KDHE that there is not reasonable time to notify interested contractors of the modification of the wage determination. KDHE will provide a report of its findings to the Municipality.
  - (c) incorporate any modifications or supersedes DOL makes to the wage determination contained in the solicitation if the contract is not awarded within 90 days of bid opening. Unless KDHE, at the

request of the Municipality, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Municipality shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

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

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

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

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

(h) establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the municipality should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. The municipality must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. . The municipality s shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

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

evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

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

(k) must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

17. Prior to 90% of project completion the municipality agrees to execute a water conservation plan using the most recent municipal water conservation plan guidelines provided by the Kansas Water Office.
18. The Municipality must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on the Municipality. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

19. Municipalities that receive over \$100,000 in KPWSLF funds shall comply with the Anti-Lobbying Act, Title 40 CFR Part 34, and file an Anti-Lobbying Certification form and the Disclosure of Lobbying Activities form to KDHE when required. Furthermore the Municipality shall require that the language of this certification be included in the award of any contracts funded by this loan.
20. The Municipality certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." The Municipality must ensure that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov).

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**EXHIBIT D**

**USE OF LOAN PROCEEDS**

The loan proceeds will be utilized to pay the costs of:

Project Description	Approximate Cost
1. Construction:	\$
2. Engineering: All actual costs of planning, design and construction engineering, construction inspection, final plan of operation, operation and maintenance manual, user charge and ordinance development, and project performance services.	\$
3. Administration: All reasonable costs of legal and financial administrative support directly provided by the project, costs of interest during construction, emergency costs associated with the project activities during construction, and the costs associated with obtaining the necessary easements for the project.	\$
4. Loan Costs: All costs associated with the required Loan Reserve Account (equal to 10% of the loan), Financial Integrity Assurance Contract (FIAC) Fee (equal to 1% of the loan), and Loan Origination Fee (0.25% of the loan).	\$
<b>Total</b>	<b>\$ ln amt</b>

***EXHIBIT E***

**INSTRUCTIONS FOR REQUESTING DISBURSEMENT**

1. All payment requests must be filed on the Outlay Report and Request for Disbursement Form and represent the actual completion level of the project at the date the request is prepared.
2. All cost entries must be based upon allowable work in place which is due and payable. This means that you may not request payment for:
  - a. Any work or services which have not been explicitly approved by the KDHE in the Loan Agreement or subsequent amendments.
  - b. Any work performed under a change order unless written approval of the change order has been given by the State.
  - c. Any ineligible project costs.
  - d. Any retainage which you are withholding from the construction contractor, engineer, etc.
  - e. Easements acquired through eminent domain are not eligible for funding.
  - f. Costs associated with the approval, preparation, issuance and sale of bonds, and other costs incidental to normal operating overhead of a municipality, whether performed by municipal employees, the engineer, or the attorney.

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

3. Submit two original signatures of the form and one set of supporting documentation directly to:

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

You should retain one copy for your records.

4. The Authorized Municipality Representative identified in the Loan Agreement remains the principal contact for all project matters.

**EXHIBIT E**

KWPCRF or KPWSLF OUTLAY REPORT AND REQUEST FOR DISBURSEMENT (See Instructions)	1. AGENCY TO WHICH THIS REPORT IS SUBMITTED: KDHE - BUREAU OF WATER	2. KDHE PROJECT NUMBER ASSIGNED
	MUNICIPAL PROGRAMS SECTION OR PUBLIC WATER SUPPLY SECTION	KWPCRF PROJECT # C20 _____ KPWSLF PROJECT # _____

3. TYPE OF REQUEST: FINAL _____ PARTIAL _____	4. PAYMENT REQUEST NUMBER #	5. PERIOD COVERED BY THIS REPORT FROM (Mo, day, year) TO (Mo, day, year)
--	--------------------------------	---

6. RECIPIENT ORGANIZATION INFORMATION	7. FEIN NUMBER:
NAME :	
NO. & STREET :	
CITY :	
STATE AND ZIP CODE	

8. TO: THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, ACTING ON BEHALF OF THE STATE OF KANSAS UNDER THE LOAN AGREEMENT EFFECTIVE AS OF \_\_\_\_\_, BETWEEN KDHE AND the \_\_\_\_\_.

The undersigned hereby requests that the following amounts be paid to the following payees for the following Project Costs as defined in said Agreement:

CLASSIFICATION	(a) Total amount requested	(b) Payee	(c) Description	Total Approved (KDHE use only)
a. Administrative expense				See KDHE Attached Sheet or Reverse Side
b. Preliminary expense (Planning and Design)				
c. Land, structures, right-of-way (Not allowable)				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Construction and project improvement cost				
h. Equipment (By Separate Contract)				
i. Miscellaneous cost				
j. Total cumulative to date (sum of lines a thru i)	\$0.00			
k. Deductions for program income				
l. Net cumulative to date (Line j minus line k)	\$0.00			
m. Disbursements Paid to Date				
n. Amount due this Request (Line l minus Line m)	\$0.00			
o. Percentage of physical completion of project				

9. CERTIFICATION: I hereby state and certify that: (i) the amounts requested are or were necessary and appropriate in connection with the purchase, construction and installation of the Project, have been properly incurred and are a proper disbursement of the proceeds of the Loan and that an inspection has been performed and all work is in accordance with the terms of the Loan; have been paid or are justly due to the persons whose names and addresses are stated above; and have not been the basis of any previous requisition from the proceeds of the Loan; (ii) as of this date, except for the amounts specified above, there are no outstanding statements which are due and payable for labor, wages, materials, supplies or services in connection with the acquisition, purchase, construction, improvement, repair, rehabilitation or extension of the Wastewater Treatment Works or the Water Supply/Treatment/Distribution Works; (iii) all representations made in the Agreement remain true as of the date of this request; and (iv) no adverse developments affecting the financial condition of the Recipient or its ability to complete the Project or to repay the Loan have occurred.

a. RECIPIENT:	b. KDHE Representative Certifying to line 8.n.  Rodney R. Geisler or David F. Waldo
Signature of Authorized Certifying Official	Signature of Authorized Certifying Official <b>See KDHE Attached Sheet or Reverse Side</b>
Typed or Printed Name and Title	Typed or Printed Name and Title Chief, Municipal Programs Section or Public Water Supply
Date Submitted	Date Approved
Telephone (Area Code, number & ext.)	Telephone (Area Code, number & ext.) 785-296-5527 or 296-5503

**\* AMOUNT ROUNDED DOWN TO NEAREST WHOLE DOLLAR PER KWPCRF PROGRAM REQUIREMENT.**

**INSTRUCTIONS FOR OUTLAY REPORT AND REQUEST FOR DISBURSEMENT**

Please type or print legibly. Items 1, 4, 5, 6, 8.n., and 8.o. are self-explanatory; specific instructions for other items are as follows:

Item	Entry	Item	Entry
2	Enter the assigned KPWSLF project number.	8h	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
3	Mark as appropriate. If the request is final, the amounts billed should represent the final cost of the project	8i	Enter the amounts for all items not specifically mentioned above.
7	Enter the complete employer identification number assigned by the U.S. Internal Revenue Service [or FICE institution code if requested by the Federal agency].	8j	Enter the total cumulative amount to date which should be the sum of lines a through i.
8	Use only columns a, b, and c	8k	Enter the total amount of program income applied to the loan agreement. Identify on a separate sheet of paper the sources and types of the income.
8a	Enter amounts expended for such items as travel, legal fees, rental of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.	8l	Enter the net cumulative amount to date which should be the amount shown on line j minus the amount on line k.
8b	Enter amounts pertaining to the work of location and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.	8m	Enter the amount of reimbursements paid to date.
8c	Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way.	8n	Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines l and m. If different, explain on a separate sheet.
8d	Enter basic fees for services of architectural engineers.	9a	To be completed and signed by the duly authorized recipient representative official. The date should be the actual date the form is submitted to the funding agency.
8e	Enter other architectural engineering services. Do not include any amounts shown on line d.	9b	To be completed by the funding agency official representative who is certifying to the percent of project completion as provided for in the terms of the loan agreement. Recipient leave blank.
8f	Enter inspection and audit fees of construction and related programs.		
8g	Enter those amounts associated with the actual construction of, addition to, or restoration of infrastructure.		

**NOTE: TWO ORIGINAL SIGNATURE DISBURSEMENT REQUESTS AND ONE SET OF SUPPORTING DOCUMENTATION MUST BE SUBMITTED**

**EXHIBIT F**

**FORM OF MUNICIPALITY RESOLUTION**

**EXCERPT OF MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
FACILITY**

**HELD ON \_\_\_\_\_ [RESOLUTION DATE]**

The Governing Body of the **Facility** met in \_\_\_\_\_ [regular/special] session at the usual meeting place, at \_\_\_\_\_ [time], the following members being present and participating, to-wit:

Absent:

The \_\_\_\_\_ [Title of Presiding Officer] declared that a quorum was present and called the meeting to order.

\*\*\*\*\*

(Other Proceedings)

Thereupon, there was presented a resolution entitled:

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

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

Yes: \_\_\_\_\_.

No: \_\_\_\_\_.

Thereupon, the \_\_\_\_\_ [Title of Presiding Officer] declared said Resolution duly adopted and the Resolution was then [duly numbered Resolution No. \_\_\_\_\_ and was] signed by the \_\_\_\_\_ [Title of Presiding Officer] and the signature attested by the \_\_\_\_\_ [Title of Recording Officer].

\*\*\*\*\*

(Other Proceedings)

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

(SEAL)

\_\_\_\_\_  
[Title of Recording Officer]

**RESOLUTION NO. \_\_\_\_\_**

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

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

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

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

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

**WHEREAS**, the Kansas Development Finance Authority (the "Authority") and KDHE have entered into a Pledge Agreement (the "Pledge Agreement") pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities for public water supply system projects (the "Projects") and to pledge the Loan Repayments (as defined in the Pledge Agreement) received pursuant to such Loan Agreements to the Authority; and

**WHEREAS**, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

**WHEREAS**, Facility (the "Municipality") is a municipality as said term is defined in the Loan Act which operates a water system (the "System"); and

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

**WHEREAS**, the Municipality has, pursuant to the Loan Act, submitted an Application to KDHE to obtain a loan from the Revolving Fund to finance the costs of improvements to its System consisting of the following particulars:

*[See Exhibit A of the Loan Agreement]*

(the "Project"); and

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

**WHEREAS**, KDHE has informed the Municipality that it has been approved for a loan in amount of not to exceed \$ **In amt** (the "Loan") in order to finance the Project; and

**WHEREAS**, the governing body of the Municipality hereby finds and determines that it is necessary and desirable to accept the Loan and to enter into a loan agreement and certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreement.

**THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF FACILITY**

**Section 1. Authorization of Loan Agreement.** The Municipality is hereby authorized to accept the Loan and to enter into a certain Loan Agreement with an effective date of **Le Date**, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the "Loan Agreement") to finance the Project Costs (as defined in the Loan Agreement). The governing body's Chairman [Title of Presiding Officer] is hereby authorized to execute the Loan Agreement in substantially the form presented to the governing body this date, with such changes or modifications thereto as may be approved by the governing body's \_\_\_\_\_ [Title of Presiding Officer], and the Municipality ' s legal counsel, the governing body's \_\_\_\_\_ [Title of Presiding Officer]'s execution of the Loan Agreement being conclusive evidence of such approval. The governing body's \_\_\_\_\_ [Title of Recording Officer] is hereby authorized to attest the signature of the \_\_\_\_\_ [Title of Presiding Officer] and to apply the Municipality's official seal to the document.

**Section 2. Establishment of Dedicated Source of Revenue for Repayment of Loan.** Pursuant to the Loan Act, the Municipality hereby establishes the System Revenues (as defined in the Loan Agreement) as the dedicated source of revenue for repayment of the Loan. In accordance therewith, the Municipality shall collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide revenues sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the principal of and interest on the Loan, any Existing Revenue Obligations and Additional Revenue Obligations (as said terms are defined in the Loan Agreement) as and when the same become due, and (c) pay all other amounts due at any time under the Loan Agreement. Such dedicated source of revenue is hereby pledged as security for repayment of the Loan.

**Section 3. Further Authority.** The governing body's \_\_\_\_\_ [Title of Presiding Officer] and \_\_\_\_\_ [Title of Recording Officer] are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Resolution, and to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 4. Governing Law.** The Resolution and the Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

**Section 5. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by a majority of the governing body of the Municipality.

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**ADOPTED** by the governing body on \_\_\_\_\_, [Resolution Date] and signed by the governing body's \_\_\_\_\_ [Title of Presiding Officer].

(SEAL)

\_\_\_\_\_

[Title of Presiding Officer]

ATTEST:

\_\_\_\_\_

[Title of Recording Officer]

**EXHIBIT G**

**FORM OF OPINION OF MUNICIPALITY'S COUNSEL**

[Date]

Kansas Development Finance Authority  
Topeka, Kansas

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

Re: Loan Agreement effective as of Le Date, between the Kansas Department of Health and Environment, acting on behalf of the State of Kansas, and Facility (the "Municipality")

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

In this connection, I have examined the following:

- (a) an executed or certified copy of the Loan Agreement;
- (b) proceedings adopted or taken by the Municipality to authorize and approve the Project to be constructed with the proceeds of the Loan evidenced by the Loan Agreement;
- (c) Resolution No \_\_\_\_\_ of the Municipality (the Resolution@) adopted on \_\_\_\_\_, [Resolution Date], and other proceedings of the Municipality taken and adopted in connection with the authorization, execution and delivery of the Loan Agreement, and the establishment of a Dedicated Source of Revenue for repayment of the Loan evidenced by the Loan Agreement;

\*\*\*[Describe Existing Revenue Obligation documentation, if applicable]\*\*\*  
and

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

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

Based upon the foregoing, it is my opinion, as of the date hereof, that:

1. The Municipality is a political subdivision duly created, organized and existing under the laws of the State.
2. The Municipality operates a Public Water Supply System, as said term is defined in the Loan Act.
3. The Project has been duly authorized by the Municipality.
4. The Municipality has all requisite legal power and authority to, and has been duly authorized under the terms and provisions of the Resolution to, execute and deliver, and perform its obligations under, the Loan Agreement.
5. The Loan Agreement has been duly authorized, executed and delivered by the Municipality and constitutes a valid and binding agreement of the Municipality enforceable in accordance with its terms, subject as to enforcement of remedies to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights heretofore or hereafter enacted, and subject further to the exercise of judicial discretion in accordance with general principles of equity. In rendering this opinion I have assumed due authorization, execution and delivery of the Loan Agreement by the State, acting by and through KDHE.
6. By adopting the resolution, the Municipality has duly authorized the Dedicated Source of Revenue for repayment of the Loan to be made pursuant to the Loan Agreement.
7. To the best of my knowledge, the execution and delivery of the Loan Agreement by the Municipality will not conflict with or result in a breach of any of the terms of, or constitute a default under, any resolution, indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Municipality is a party or by which it or any of its property is bound or any of the rules or regulations applicable to the Municipality or its property or of any court or other governmental body.

Very truly yours,

***EXHIBIT H***

**MUNICIPALITY'S NOTICE ADDRESS**

Facility  
Address  
City, Kansas Zip

## *EXHIBIT I*

### **FORM OF FINANCIAL INTEGRITY ASSURANCE CONTRACT**

This Contract is entered into as of **Le Date**, between the **KANSAS RURAL WATER FINANCE AUTHORITY**, a body corporate and politic of the State of Kansas (the "Authority") and **FACILITY**, a municipality of the State of Kansas (the "Municipality") participating in the Kansas Public Water Supply Loan Fund program (the "Program"), with the approval and for the benefit of the **KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT** ("KDHE"), the administrator of the Program and for the benefit of the **KANSAS DEVELOPMENT FINANCE AUTHORITY** ("KDFFA"), as provider of certain financial services to the Program..

#### **Recitals**

**A.** The Municipality has entered into a certain Loan Agreement (the "Loan Agreement") with KDHE, pursuant to the provisions of K.S.A. 65-165d *et seq.* (the "Loan Act") to finance improvements to the Municipality's public water supply system (the "System"), pursuant to the Program.

**B.** The Loan Act specifically grants to the Secretary of KDHE (the "Secretary") certain powers and remedies to enforce the Loan Agreement. The Loan Agreement permits the Municipality to enter into this contract and also permits the Secretary to require the Municipality to enter this contract as a means of assisting the Municipality to maintain financial integrity of the System over the term of the Loan Agreement.

**C.** KRWFA has been approved by KDHE to provide the Municipality with assistance in discharging certain System and financial management responsibilities expressly or implicitly undertaken in the Loan Agreement.

**D.** The Municipality agrees to engage the services of KRWFA for such purposes, and this contract sets forth KRWFA's undertakings with respect to the Municipality, the Municipality's obligations to KRWFA and their joint obligations to KDHE to assist in the performance of the Municipality's covenants pursuant to the Loan Agreement.

**E.** Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

#### **Agreements**

**IN ADDITION TO THE SPECIFIC COVENANTS OF THE MUNICIPALITY CONTAINED IN THE LOAN AGREEMENT, WHICH ARE INCORPORATED HEREIN BY REFERENCE, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:**

**1. *Quarterly Management Report.*** The Municipality will complete a quarterly management report of operating data and financial information in the form prescribed by KRWFA and review the same at the next meeting of the Municipality's governing body after completion of the report. A copy of the report as reviewed and approved by the Municipality's governing body will be retained in the official records of the Municipality and shall also be furnished to KRWFA. The initial Quarterly Management Report shall be submitted to KRWFA in the first full calendar quarter following the first draw of loan funds by the Municipality.

**2. Inspection of Books and Records.** The Municipality will make available its financial books and records for inspection by a duly authorized representative of KRWFA upon reasonable written request of KRWFA.

**3. Annual Budget.** Not later than 90 days prior to the beginning of each fiscal year of the Municipality, the Municipality will furnish to KRWFA a proposed System budget for the ensuing fiscal year in the form prescribed by state statute, with such further modifications as may be required by KRWFA. KRWFA will review the proposed System budget and return the same to the Municipality within 30 days with KRWFA's recommendations, if any. Not later than the date required by statute, other legal document requirement or 30 days prior to the beginning of the Municipality's fiscal year, whichever is earlier, the Municipality's governing body will adopt a budget of anticipated receipts and expenditures of the System for the ensuing fiscal year. A copy of such adopted System budget will be retained in the official records of the Municipality and a copy shall be furnished to KRWFA. The initial budget of the Municipality shall be submitted to KRWFA for the fiscal year of initial draw against loan funds.

**4. Annual Audit.** Not less than 90 days prior to the end of the Municipality's fiscal year, the Municipality shall submit to KRWFA a written report stating the identity of the certified public accountant that has been engaged to conduct the audit of the Municipality's financial records for the preceding fiscal year required by the Loan Agreement, and the anticipated date of receipt of the report of such audit. The Municipality shall cause an audit of its financial records, in a form required by the Loan Agreement, to be completed not less than 180 days after the end of each fiscal year or such earlier date as may be required by statute or other legal document requirement, whichever is earlier. Copies of such audit report shall be: (a) submitted to the Municipality's governing body for review; (b) retained in the Municipality's official records; and (c) furnished to KRWFA. The initial audit of the Municipality shall be submitted for the fiscal year of the initial draw against loan funds.

**5. Proposed Remediation Plan.** Within 60 days of receipt of the Municipality's audit report, KRWFA shall review the same to determine compliance with the financial covenants contained in the Loan Agreement. If the Municipality is not in compliance with the financial covenants set forth in the Loan Agreement, or if a municipality not otherwise committed to meet a specified debt service coverage ratio fails to maintain at least a 1.0 coverage ratio KRWFA will make recommendations to the Municipality for remediation of the deficiencies. KRWFA shall also review the audit and the quarterly management reports required by *Section 1* hereof, for developing trends, which, if continued, will result in noncompliance in future years. Within 30 days after receipt of KRWFA's recommendations, the Municipality's governing body will meet to review such recommendations and will submit to KRWFA its written plan for curing the deficiencies and/or implementing KRWFA's recommendations.

**6. Assistance in Implementation of Prescribed Changes.** KRWFA will provide the Municipality with assistance in implementing a remediation plan that will assure future compliance with required financial covenants as soon as is practically feasible, including implementation of changes in the water rates or operational practices of the Municipality as may be prescribed by the Secretary pursuant to the Loan Act.

**7. Compliance Certification.** KRWFA will provide KDHE with an annual written compliance report for the Municipality within the time period set forth in *Section 5* hereof for review of the annual audit. Such report shall indicate compliance or non-compliance by the Municipality with its requirements under the

Loan Agreement. Any recommendations provided by KRWFA pursuant to *Sections 5* and/or *6* hereof shall be included in such report. In the event that the Municipality does not implement such recommendations within a reasonable time, KRWFA shall immediately notify the Secretary of such noncompliance.

**8. Fees.** KRWFA shall be paid the FIAC Origination Fee as compensation for its services under this contract for the entire term of the Loan Agreement. The fee may be included in the amount of the Loan Agreement if this contract is entered into at the time of the Loan Agreement, or may be paid by the Municipality (upon the execution of the Loan Agreement) to KDFB for remittance to KRWFA.

**9. Dissemination of Information.** KRWFA shall provide to KDHE and KDFB copies of all reports, recommendations and other written material received by KRWFA from the Municipality or sent by KRWFA to the Municipality pursuant to the terms of this contract.

**10. Term.** This contract shall take effect upon its signature and delivery by the parties hereto, and will remain in effect until all payments to be made by the Municipality under the Loan Agreement have been paid in full.

**11. Binding Effect; Beneficiaries.** This contract shall bind the parties hereto, their respective successors and assigns, and is made for the benefit of KDFB and KDHE, and the parties.

[BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

**EXECUTED AND DELIVERED** on behalf of the parties by an authorized signatory as of the dates hereinafter set forth.

**KANSAS RURAL WATER FINANCE AUTHORITY**

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

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

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

**FACILITY**

By \_\_\_\_\_

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

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

**APPROVED:**

**KANSAS DEPARTMENT OF HEALTH  
AND ENVIRONMENT**

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

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

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

## EXHIBIT J

### FORM OF QUALIFIED USER CERTIFICATE

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

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

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

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

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

**“Opinion of Bond Counsel”** means the written opinion of a firm of nationally recognized Bond Counsel acceptable to KDFFA to the effect that the proposed action or the failure to act will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

**“Qualified User”** means the City, a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

2. The Municipality is the owner of the Financed Facility. As long as any portion of the Loan is unpaid the Municipality will never permit any of the Financed Facility to be used in any Non-

Qualified Use without first notifying KDFA and KDHE in writing and obtaining an Opinion of Bond Counsel.

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

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

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

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

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

**Facility**

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title