
LOAN AGREEMENT

Between

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

and

GARNETT, KANSAS

KPWSLF PROJECT NO. 2966

EFFECTIVE AS OF FEBRUARY 11, 2020

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 Master Indenture. The interest of the Authority in the Revenues has been pledged as security for the payment of the principal of, redemption premium, if any, and interest on the Authority's State Revolving Fund Revenue Bonds, pursuant to the Master Indenture.

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RECITALS

KANSAS PUBLIC WATER SUPPLY LOAN FUND LOAN AGREEMENT

THIS LOAN AGREEMENT, effective as of February 11, 2020, by and between the KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT ("KDHE"), acting on behalf of THE STATE OF KANSAS (the "State"), and GARNETT, KANSAS, a "Municipality" according to K.S.A. 65-163d, hereinafter referenced as the "Municipality";

WITNESSETH:

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

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

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

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

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

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

WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "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, for and 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, and amendments thereto, and any applicable regulations thereunder promulgated by the Department of the Treasury.

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

"Dedicated Source of Revenue" shall have the meaning ascribed thereto in *Exhibit B* attached hereto.

"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; provided, however, 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; provided, however, 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) any representation made by or on behalf of the Municipality contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is intentionally false or misleading in any material respect;

(e) any representation made by or on behalf of KDHE contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, is intentionally false or misleading in any material respect;

(f) a petition is filed 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 shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal;

(g) the Municipality shall generally fail 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.

"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 Conditions, attached hereto as *Exhibit I*.

"**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.

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

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

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

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

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

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

"**Municipality**" means Garnett, Kansas, its successors and assigns.

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

"**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.

"Rating Agency" means Moody's Investors Service, Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Fitch Investors Service, Inc., and any other nationally recognized securities rating agency designated by the Authority.

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

"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 water 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 \$13,696,835.00 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. Any amendment to *Exhibit B* shall be effected by written amendment to the Loan Agreement executed by all parties.

Section 2.02. Interest Rate. The interest rate on the loan shall be 1.62% 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 for Project Costs. 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 the following Project Costs:

- (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); or
- (3) interest becoming due on the Loan prior to the initial scheduled payment of principal;
- (4) 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

(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 certify to KDHE that it has 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 in *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, without penalty, if consent from KDHE is obtained. The municipality must provide a written request to KDHE of its desire to prepay, such request shall indicate the actual source of funds that will be used to make the prepayment (specifically proceeds from a tax exempt bond issue, proceeds from a taxable bond issue, cash on hand, or some other instrument) and the desired date of prepayment. KDHE may require the prepayment date coincide with a scheduled repayment date. 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) Any amounts required to be paid by the Authority to the United States of America as arbitrage rebate, arising due to the Municipality's failure to expend proceeds of the Loan at the times certified to KDHE by the Municipality, that result in arbitrage rebate liability for the Authority, but only to the extent that the funds in the Rebate Fund established by the Master Indenture are insufficient to make such payments; and.

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

Section 2.07. Financial Integrity Assurance Conditions. In accordance with the powers granted to the Secretary in the Loan Act, the Secretary may require at any time during the term of this Loan Agreement the requirement of FIAC for the Municipality; provided the Secretary shall not make such requirement so long as the Municipality maintains a financial rating on its general obligation bonds or Additional Revenue Obligations of not less than the lowest category of "A" from any Rating Agency. In addition, the Municipality may elect to comply with FIAC prior to the funding of the Loan or at any time during the term of this Loan Agreement. In either instance, the Municipality and the Secretary hereby agree the conditions are attached hereto as *Exhibit I*. The Municipality will cooperate fully with any recommendations and requirements imposed by the FIAC.

ARTICLE III

REPRESENTATIONS AND COVENANTS OF MUNICIPALITY

Section 3.01. Representations of the Municipality. The Municipality makes the following representations:

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

(1) The Municipality is a municipal corporation 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 Ordinance (adopted substantially in the form attached hereto as *Exhibit F*) and other 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 Municipality, 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 the properties, activities, or its System, or the ability of the Municipality 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 levy and collection of unlimited *ad valorem* taxes to pay the principal of and interest on the Loan; or (9) 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 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. The Municipality is not presently aware of any violation of any 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's Representative's knowledge:

(1) complied with all laws, ordinances, 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 of its property which, if not obtained, would materially adversely affect the ability of the Municipality to complete the Project or operate the Project.

(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 Cost; and

(2) where applicable, to reimburse the Municipality for a portion of the Project Costs, which portion was paid or incurred in anticipation of reimbursement by KDHE as a result of contracts entered into on or after to August 6, 1996 and is eligible for such reimbursement pursuant to the Regulations and the Code.

(h) **Project Costs.** The Municipality certifies that the Project Costs, as listed in *Exhibit D*, is a reasonable and accurate estimation and, upon direction of KDHE, will supply the same with a certificate from its consulting engineer stating that such 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 Dedicated Source of Revenue described on *Exhibit B* attached hereto, which Dedicated Source of Revenue is hereby pledged to the Loan Repayments, Additional Payments and all other obligations of the Municipality under this Loan Agreement.

(b) **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 the 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 (including, without limitation the requirements contained in *Exhibit C* hereto).

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

(1) to exercise its best efforts in accordance with prudent 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.

(d) **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 ordinance of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement, certified by an Authorized Municipality Representative, which shall be in substantially the form attached hereto as *Exhibit F* together with an affidavit of publication thereof in the official newspaper of the Municipality;

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

(4) FIAC, if required by the Secretary, or desired by the Municipality;

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

(e) ***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 System in an efficient manner in accordance with applicable laws and regulations;

(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.

(f) ***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 provisions of this paragraph shall not be construed to prohibit the lease of portions of the System by the Municipality in connection with a lease-purchase transaction to finance improvements to the System; 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.

(g) ***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, if municipal aggregate annual gross receipts are in excess of \$275,000 or if the municipality has outstanding debt in excess of \$275,000. Such audit may be a part of the single agency audit made in accordance with the Federal Single Audit Act of 1984, OMB Circular No. A-133, *Audits of States, Local Governments, and Non-profit Organizations* as amended in 1996 and 2003 and as may be further amended and revised. Such 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 (g)(2) hereof.

(2) The Municipality shall maintain financial statements 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.

(h) **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, if any, constituting the Project, 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, including the System Records and General Accounts, and shall supply such reports and information as the EPA and KDHE may reasonably require in connection therewith.

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

Timing. Any such financial information and operating data shall be provided by the Municipality to KDHE as soon as practicable after it is available, and any such notice of a material event shall be provided by the Municipality to KDHE promptly following the occurrence of the event. Existing Continuing Disclosure Undertakings require that any such financial information and operating data shall be filed by KDHE within 270 days after the end of the Municipal Fiscal Year, as defined in a Continuing Disclosure Undertaking, and that any such notice of a material event be filed by KDHE within 10 business days of the occurrence of the material event. The timing of such requirements may be different in a future Continuing Disclosure Undertaking, and a request by KDHE to the Municipality pursuant to this section may require that such information be provided to KDHE a reasonable period in advance of the filing dates required by a Continuing Disclosure Undertaking.

Annual Information. Any such financial information shall be accompanied by an audit report prepared in accordance with the provisions of subsection (g)(2) hereof, unless such subsection exempts the Municipality from such audit report requirement. The financial information shall be prepared in accordance with GAAP, unless the Municipality has received a waiver from such requirement as permitted by State Law, in which case it shall be prepared on such other basis of accounting that demonstrates compliance with State law. Such requirement for financial information and operating data may be satisfied by submitting the Municipality's comprehensive annual financial report (CAFR) and/or annual report of its System (if System revenues are included in the dedicated source of repayment), unless KDHE notifies the Municipality of the need for additional information. If an audit report is required to be prepared, but is not available within 270 days of the end of the Municipal Fiscal Year, un-audited financial information shall be provided to KDHE pending receipt of the audit report. If the method of preparation and the basis of accounting is changed to a basis less comprehensive than previously described, the Municipality shall provide a specific notice of such change to KDHE when the financial information is provided.

Event Notices. For purposes of this section, “material event” shall mean any event with respect to the Municipality (if it is a Principal Participating Municipality) required to be reported by KDHE pursuant to a Continuing Disclosure Undertaking. Upon a determination by KDHE that the Municipality is a Principal Participating Municipality, KDHE will provide instructions to the Municipality identifying such events then required to be reported, and the Municipality agrees to report such events to the extent required by a Continuing Disclosure Undertaking. The existing Continuing Disclosure Undertakings require reporting by a Principal Participating Municipality of four events, relating generally to (i) bankruptcy or insolvency, (ii) merger, consolidation or acquisition, (iii) incurrence of a financial obligation or debt and (iv) default, acceleration, termination or modification of a financial obligation or debt.

(j) **Insurance.** The Municipality will carry and maintain such reasonable amount of all-risk insurance on all properties and all operations of its System as would be carried by similar municipal operators of 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).

(k) **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.

(l) **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 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 (g) and (i)* 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 said assignment in writing;
- (b) the assignee is a city, county, township, water district, improvement district or other political subdivision of the State 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 the Authority under the Master Indenture, nor may the sale endanger the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and
- (e) the Municipality shall, at its expense, provide KDHE and the Authority 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

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 5.02* hereof shall be applied: (a) first, to pay interest on the Loan as the same becomes due and payable; (b) second, to pay principal due and payable on the Loan; (c) third, to pay expenses owed by the Municipality pursuant to *Section 5.03* hereof; and (d) fourth, to pay any other amounts due and payable hereunder as such amounts become due and payable.

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, can require the Municipality to undergo a financial and management operations review or to comply with FIAC if permitted in accordance with *Section 2.07* hereof. 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 - Suite 420
Topeka, Kansas 66612
Attention: Bureau of Water

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

Kansas Development Finance Authority
534 S. Kansas Avenue, Suite 800
700 S.W. Jackson
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, including the Loan 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 the Secretary.

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.

SIGNATURE AND SEAL

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



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

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

Date: 2-19-2020

GARNETT, KANSAS

(Seal)

By: _____

(Printed Name)

Title: _____

Date: _____

ATTEST:

By: _____

(Printed Name)
Title: Clerk

EXHIBIT A

DESCRIPTION OF THE PROJECT

Construction of a new water treatment plant and addition of chemical feed at the raw water pump station.

EXHIBIT B

DEDICATED SOURCE OF REVENUES AND LOAN REPAYMENT SCHEDULE

Dedicated Source of Revenue.

The Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide System 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 as and when the same become due, (c) pay all other amounts due at any time under the Loan Agreement, and (d) pay the principal of and interest on Additional Revenue Obligations as and when the same become due; provided, however, the pledge of the System Revenues contained herein (i) shall be subject to reasonable expenses of operation and maintenance of the System, and (ii) shall be junior and subordinate in all respects to the pledge of System Revenues to any Additional Revenue Obligations. In the event that the System Revenues are insufficient to meet the obligations under the Loan and the Loan Agreement, the Municipality shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement.

Loan Repayment Schedule.

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

KANSAS PUBLIC WATER SUPPLY LOAN FUND

Actual Draws - Actual Interest Rate
 Amortization of Loan Costs as of 2/11/2020

Project Principal: 13,696,835.00
 Interest During Const.: 0.00
 Service Fee During Const.: 0.00
 Loan Reserve Account: 0.00
 Gross Loan Costs: 13,696,835.00

Prepared for:
 City of Garnett, Project No. 2966

<u>Gross Interest Rate Allocation</u>	<u>thru 2/1/2026</u>	<u>after 2/1/2026</u>	Gross Rate:	1.62%
Service Fee Rate:	1.27%	0.35%	Ist Payment Date:	8/1/2022
Net Loan Interest Rate:	0.35%	1.27%	Number of Payments:	40

Payment Number	Payment Date	Beginning Balance	Interest Payment	Principal Payment	Service Fee	Total Payment	Ending Balance
1	8/1/2022	13,696,835.00	23,969.46	291,311.90	86,974.90	402,256.26	13,405,523.10
2	2/1/2023	13,405,523.10	23,459.67	293,671.52	85,125.07	402,256.26	13,111,851.58
3	8/1/2023	13,111,851.58	22,945.74	296,050.26	83,260.26	402,256.26	12,815,801.32
4	2/1/2024	12,815,801.32	22,427.65	298,448.27	81,380.34	402,256.26	12,517,353.05
5	8/1/2024	12,517,353.05	21,905.37	300,865.70	79,485.19	402,256.26	12,216,487.35
6	2/1/2025	12,216,487.35	21,378.85	303,302.72	77,574.69	402,256.26	11,913,184.63
7	8/1/2025	11,913,184.63	20,848.07	305,759.47	75,648.72	402,256.26	11,607,425.16
8	2/1/2026	11,607,425.16	20,312.99	308,236.12	73,707.15	402,256.26	11,299,189.04
9	8/1/2026	11,299,189.04	71,749.85	310,732.83	19,773.58	402,256.26	10,988,456.21
10	2/1/2027	10,988,456.21	69,776.70	313,249.76	19,229.80	402,256.26	10,675,206.45
11	8/1/2027	10,675,206.45	67,787.56	315,787.09	18,681.61	402,256.26	10,359,419.36
12	2/1/2028	10,359,419.36	65,782.31	318,344.97	18,128.98	402,256.26	10,041,074.39
13	8/1/2028	10,041,074.39	63,760.82	320,923.56	17,571.88	402,256.26	9,720,150.83
14	2/1/2029	9,720,150.83	61,722.96	323,523.04	17,010.26	402,256.26	9,396,627.79
15	8/1/2029	9,396,627.79	59,668.59	326,143.57	16,444.10	402,256.26	9,070,484.22
16	2/1/2030	9,070,484.22	57,597.57	328,785.34	15,873.35	402,256.26	8,741,698.88
17	8/1/2030	8,741,698.88	55,509.79	331,448.50	15,297.97	402,256.26	8,410,250.38
18	2/1/2031	8,410,250.38	53,405.09	334,133.23	14,717.94	402,256.26	8,076,117.15
19	8/1/2031	8,076,117.15	51,283.34	336,839.71	14,133.21	402,256.26	7,739,277.44
20	2/1/2032	7,739,277.44	49,144.41	339,568.11	13,543.74	402,256.26	7,399,709.33
21	8/1/2032	7,399,709.33	46,988.15	342,318.62	12,949.49	402,256.26	7,057,390.71
22	2/1/2033	7,057,390.71	44,814.43	345,091.40	12,350.43	402,256.26	6,712,299.31
23	8/1/2033	6,712,299.31	42,623.10	347,886.64	11,746.52	402,256.26	6,364,412.67
24	2/1/2034	6,364,412.67	40,414.02	350,704.52	11,137.72	402,256.26	6,013,708.15
25	8/1/2034	6,013,708.15	38,187.05	353,545.22	10,523.99	402,256.26	5,660,162.93
26	2/1/2035	5,660,162.93	35,942.03	356,408.94	9,905.29	402,256.26	5,303,753.99
27	8/1/2035	5,303,753.99	33,678.84	359,295.85	9,281.57	402,256.26	4,944,458.14
28	2/1/2036	4,944,458.14	31,397.31	362,206.15	8,652.80	402,256.26	4,582,251.99
29	8/1/2036	4,582,251.99	29,097.30	365,140.02	8,018.94	402,256.26	4,217,111.97
30	2/1/2037	4,217,111.97	26,778.66	368,097.65	7,379.95	402,256.26	3,849,014.32
31	8/1/2037	3,849,014.32	24,441.24	371,079.24	6,735.78	402,256.26	3,477,935.08
32	2/1/2038	3,477,935.08	22,084.89	374,084.98	6,086.39	402,256.26	3,103,850.10
33	8/1/2038	3,103,850.10	19,709.45	377,115.07	5,431.74	402,256.26	2,726,735.03
34	2/1/2039	2,726,735.03	17,314.77	380,169.70	4,771.79	402,256.26	2,346,565.33
35	8/1/2039	2,346,565.33	14,900.69	383,249.08	4,106.49	402,256.26	1,963,316.25
36	2/1/2040	1,963,316.25	12,467.06	386,353.40	3,435.80	402,256.26	1,576,962.85
37	8/1/2040	1,576,962.85	10,013.71	389,482.87	2,759.68	402,256.26	1,187,479.98
38	2/1/2041	1,187,479.98	7,540.50	392,637.67	2,078.09	402,256.26	794,842.31
39	8/1/2041	794,842.31	5,047.25	395,818.04	1,390.97	402,256.26	399,024.27
40	2/1/2042	399,024.27	2,533.80	399,024.27	698.19	402,256.26	0.00
		Totals	1,410,411.04	13,696,835.00	983,004.36	16,090,250.40	

EXHIBIT C

CONDITIONS APPLICABLE TO CONSTRUCTION OF THE PROJECT

The standard conditions applicable to the Loan 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 360 days of notice to proceed or no later than October 31, 2022.
 - h) Finalization of construction within 390 days of notice to proceed.
 - i) Project Performance Certification 365 days following Initiation of Operation.
 - j) 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 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:
 - i) all construction deficiencies have been resolved.
 - ii) all testing requirements of the specifications have been performed and met.
 - b) The final plan of operation and operation and maintenance manual submitted in accordance with *Exhibit C*, Condition No. 3 and 4.
 - c) One year after completion of construction and initial operation of the Project, the Municipality shall certify to KDHE whether or not such Project meets the design specifications and requirements contained in subparagraph a. of this condition. Any statement of non-compliance must be accompanied by a corrective action report containing: an analysis of the cause of the Project's inability to meet performance standards; actions necessary to bring it into compliance, and a reasonably scheduled date for positive certification of the Project. Timely corrective action will be executed by the Municipality.
 - d) 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 2 CFR 200, which implements the single Audit Act, the Municipality hereby agrees to obtain a single audit from an independent auditor if it expends \$750,000 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: <https://harvester.census.gov/facweb/Default.aspx> . 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 99751618.
- 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) if any riparian trees are removed they will be replaced by pole plantings or saplings;
 - d) directional boring at all stream crossings, where practical, to minimize aquatic habitat impacts;
 - e) in the event that construction work uncovers buried archeological artifacts, the Kansas Historical Society should be contacted immediately; and
 - f) 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 12 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 <https://beta.sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The municipality shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Municipality may request a finding from KDHE that there is not reasonable time to notify interested contractors of the modification of the wage determination. KDHE will provide a report of its findings to the Municipality.
 - c) incorporate any modifications or supersedes DOL makes to the wage determination contained in the solicitation if the contract is not awarded within 90 days of bid opening. Unless KDHE, at the request of the Municipality, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Municipality shall monitor <https://beta.sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

- d) review all subcontracts subject to Davis-Bacon entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- e) either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order, if the Department of Labor (DOL) issues a revised wage determination applicable to the contract after the award of a contract or the issuance of an ordering instrument due to a DOL determination that the municipality has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. The Municipality's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.
- f) provide written confirmation in a form satisfactory to KDHE indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified 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 CFR 5.6 (a)(6), all interviews must be conducted in confidence. The Municipality must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of SF 1445 are available from EPA on request;
- h) establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. The municipality shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- i) periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The municipality shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis -Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the municipality must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. The municipality must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. In addition, during the examinations the municipality shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- j) periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item (h) and (i) above.

- k) must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact Julie Milazzo at Milazzo.Julie@epa.gov or 206-553-2429 ; and to the appropriate DOL Wage and Hour District Office listed at www.dol.gov/whd/america2.htm.
- 17) The Municipality must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. Other civil rights laws may impose additional requirements on the Municipality. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.
- 18) Municipalities that receive over \$100,000 in KPWSLF funds shall comply with the Anti-Lobbying Act, Title 40 CFR Part 34, and file an Anti-Lobbying Certification form and the Disclosure of Lobbying Activities form to KDHE when required. Furthermore, the Municipality shall require that the language of this certification be included in the award of any contracts funded by this loan.
- 19) The Municipality certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 2 CFR Part 180 and Subpart C of 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions." The Municipality must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and Subpart B of 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient may search for exclusion records at www.sam.gov.
- 20) The Municipality hereby agrees to the following Disadvantaged Business Enterprise (DBE) requirements:
- a) Adopt the MBE/WBE Fair Share Objective/Goals established between KDHE and EPA for construction of the project. These goals will be made part of the construction contract specifications.
 - b) Make the good faith efforts to contact DBE firms set out in 40 CFR Section 33.301 whenever procuring construction services for the project.
 - c) Comply with the administrative provisions found in 40 CFR Section 33.302
 - d) If the loan amount is greater than \$250,000, maintain a bidders list of contractors and subcontractors that have previously bid on KPWSLF projects as required by 40 CFR Section 33.501(b).
- 21) The Municipality agrees to submit to KDHE a completed EPA Form 5700-52A by April 15 and October 15 beginning the year the notice to proceed for construction has been issued thru the year construction has been completed.
- 22) The Municipality agrees to comply with Executive Order No. 11246 by including Section 202 of E.O. 11246 in all contracts funded in part with proceeds of this loan.
- 23) The Municipality is prohibited from procuring goods or services from persons who have been convicted of violations of the Clean Air Act or the Clean Water act.
- 24) None of the funds made available by this loan agreement shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and

steel products used in the project are produced in the United States. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

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

EXHIBIT D

USE OF LOAN PROCEEDS

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

<u>Project Description</u>	<u>Approximate Cost</u>
1. Construction: Construction of a new water treatment plant and addition of chemical feed at the raw water pump station.	\$12,096,835.00
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.	\$1,500,000.00
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.	\$100,000.00
<i>Total</i>	\$ 13,696,835.00

EXHIBIT E

INSTRUCTIONS FOR REQUESTING DISBURSEMENTS

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 the Municipality. This could include repayment or crediting to KDHE the interest earned on overpaid funds, and any penalties that can result from this action.

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

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

You should retain one copy for your records.

EXHIBIT E - REQUEST FOR DISBURSEMENT FROM KDHE REVOLVING LOAN PROGRAMS

INDICATE WHICH LOAN PROGRAM THIS REQUEST IS FOR: KANSAS WATER POLLUTION CONTROL REVOLVING FUND _____ KANSAS PUBLIC WATER SUPPLY LOAN FUND _____	KDHE PROJECT NUMBER (REFER TO LOAN AGREEMENT) KWPCRF PROJECT # C20 KPWSLF PROJECT #
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DISBURSEMENT REQUEST FOR THIS LOAN? YES _____ NO _____	RECIPIENT INFORMATION NAME : ADDRESS or PO box (include City, State, Zip) :
PAYMENT REQUEST NUMBER :	

The undersigned hereby requests that the following amounts be disbursed for the following Project Costs as defined in the loan agreement:

Classification	Invoice amounts (invoices must be attached)	Invoiced from (list payee(s))	Description
a. Administrative expense (loan admin services, publication fees, attorney fees, etc.)			
b. Engineering services expense			
c. Land, easements (Not allowable under KWPCRF)			
d. Construction Contract Expense			
e. Equipment (by separate KDHE approved contract or procedure)			
f. Miscellaneous cost (not categorized above)			
g. Total Invoices Submitted (sum of lines a thru i)			
h. Deductions for other sources of funding used (from grants or cash on hand)			
i. Total Disbursement Requested from KDHE * (Line g minus line h)			

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 as stated above; and have not been the basis of any previous requisition from the proceeds of the Loan; (ii) all representations made in the Agreement remain true as of the date of this request; and (iii) no adverse developments affecting the financial condition of the Recipient or its ability to complete the Project or to repay the Loan have occurred.

RECIPIENT NAME:

Signature of Authorized Certifying Official

Typed or Printed Name and Title

Date Signed	Telephone (Area Code, number & ext.)	Email