

CITY OF SPOKANE ADMINISTRATIVE POLICY AND PROCEDURE	ADMIN 5200-23-05 LGL 2023-0031
TITLE: Water and Sewer Rehabilitation Program Policy EFFECTIVE DATE: December 1, 2023 REVISION EFFECTIVE DATE: N/A	

1.0 GENERAL

1.1 The purpose of this policy is to provide uniform operating rules and procedures for the consideration and award of financial assistance (low interest loans) for resident-owned water and sewer infrastructure projects located within the City of Spokane’s service area(s).

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2.0 DEPARTMENTS/DIVISIONS AFFECTED

2.1 This policy shall apply to the Water, Sewer, and Utility Billing Departments.

3.0 REFERENCES

City Council Resolution 2023-0096  
Spokane Municipal Code SMC § 13.03.0304, 13.03.0306, 13.04.1002  
Revised Code of Washington Chapters 35.67, 35.92  
Washington Constitution, Article 8 § 7

4.0 DEFINITIONS

- 4.1 “City” refers to the City of Spokane
- 4.2 “Director” refers to the City’s Director of Public Works
- 4.3 “Qualified Project” means a water or sewer infrastructure repair project which has received an initial determination and/or entered into a contract with the City for reimbursement by the Water and Sewer Rehabilitation Program as applicable under the program.

- 4.4 "Qualified third-party administrator" (Project Administrator) means the selected vendor to administer the program.
- 4.5 "Resident-owned" means development on private property; plot of land and not located within the city right-of-way
- 4.6 "Water and Sewer Rehabilitation Program" also referred to as WSRP means the City program designed to provide financial assistance for costs related to resident-owned qualified projects.

## 5.0 POLICY

- 5.1 Qualified project must be within City's water or sewer service area.
- 5.2 The program is designated to provide financial assistance to single-family property owners with an Area Median Income (AMI) of 80% or less.
- 5.3 The application may only be from the current property owner.
- 5.4 Applicants are limited to currently existing, owner-occupied, single-family residences. New construction is not eligible.
- 5.5 Eligible project costs are outlined in Appendix A, Section 5.2
- 5.6 Ineligible project costs are outlined in Appendix A, Section 5.2
- 5.7 Qualified projects are eligible for low-interest loans up to \$49,995. Loan monthly payments will be added to the Owner's monthly utility bill and repaid through the monthly utility bill.
- 5.8 A priority system may be needed depending on applications received and the availability of annual funds. If needed, the priority for funding projects will be in accordance with public health concerns, public health and environmental protection, and the location of property to available city infrastructure.
  - 5.8.1 Qualified applicants will receive loan funds on a first come first served basis.
    - 5.8.1.1 Projects that are most ready to proceed with construction will be used to distinguish between applications received at the same time.

## 6.0 PROCEDURE

- 6.1 Potential applicants shall complete and submit to Administrator, a pre-eligibility application (application), included herein as "Appendix B." A completed pre-eligibility application is one that fully answers all questions listed in the application.
- 6.2 The completed application will be reviewed by the Administrator, and, if approved, the applicant will be notified they are eligible to enter into a contract with the City.
- 6.3 The Director of Public Works, or their designee, will make the final decision on funding the project, subject to needs and funding. No single project shall exceed the funding amount previously outlined, without the express written permission from the Director of Public Works and approval from the City Council.
- 6.4 The Administrator reviews the application for income and project eligibility.

- 6.5 When the application is approved, the Administrator will manage the selection of the contractor from the approved list and initiation of the contract.
- 6.6 The contractor pulls the required permits.
- 6.7 The contractor completes construction work.
- 6.8 The final work is inspected by City staff.
- 6.9 Loan is turned over to Utility Billing Dept.
- 6.10 Lien recorded by City staff or the Administrator.
- 6.11 Loan repayment begins through monthly utility bill.

7.0 RESPONSIBILITIES

- 7.1 The City of Spokane Integrated Capital Management Department (ICM) shall administer this policy.
- 7.2 ICM will be responsible for managing the Administrator and making program recommendations to the Director.
- 7.3 ICM will be responsible for updating the Director, Utility Billing Department, and City Council annually regarding the program and funding needs.

8.0 APPENDICES

- 8.1 Appendix A – Water and Sewer Rehabilitation Program Overview
- 8.2 Appendix B – Pre-application Template
- 8.3 Appendix C – Loan Documents

APPROVED BY:

Elizabeth Schudel  
Assistant City Attorney

12/1/2023  
Date

Mardene Feist  
Director

12/1/2023  
Date

Garrett Jones  
Interim City Administrator

12/1/2023  
Date

# Appendix A

## Water and Sewer Rehabilitation Program

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### 1. Background

Resident-owned sewer and water connections and systems are a part of the aging infrastructure within the City of Spokane's (The City) Designated Service Areas. Residential water and sewer connections and systems are not maintained by the City of Spokane or its Wastewater or Water Departments. These sewer connections and systems include on-site septic disposal systems, residential sewer pipes and systems, and side sewer laterals, which conveys wastewater from a residence to the public sewer. Residential water service lines are those that connect the meter to the public water supply system. Property owners are responsible for the maintenance and replacement costs of these connections and systems. Costs associated with replacing these systems often are more than an low-income property owner can afford and many require the property owner to borrow or secure a loan to cover the expense. Often, maintenance or repair of these non-publicly maintained utility connections do not qualify for financial assistance from governmental entities, such as through the City's Housing Repair Programs.

### 2. Current Policy

The City has no maintenance or repair obligations for residential connections or systems. City Code requires sewer facilities to be connected to public sewer for all premises (SMC 13.03.0306); to be discharged to the Public Owned Treatment Works (POTW) or authorized on-site sewage disposal system (SMC 13.03.0302A); and to be repaired if not working properly (SMC 13.03.0312). A violation of this section requires the property owner to repair the issue and be compliant within 30 days of notification. The property owner is responsible to maintain the water service pipe connections in good repair and condition. The City has limited authority to make repairs when necessary and will charge the property owner any incurred costs (SMC 13.04.1002). There are few options for financial assistance to property owners for repairs to septic systems, side sewer connections, or water service lines.

SMC 13.03.0304 provides that no new septic systems will be installed within the City limits without a written permit from the Spokane Regional Health District and written authorization by the Director of Wastewater Management. A septic system must be connected to public sewer within the Spokane City limits on the earlier of failure, requires pumping, or within one year of new public sewer availability. Existing septic systems within 200 feet of a public sewer will be required to connect to the City's sewer system and will have a maximum of one (1) year to connect. Abandonment may only be deferred if a septic system is farther than 200 feet from a public sewer line to the property line, with written authorization from the Director of Wastewater Management.

### 3. Reasons to Connect to the Public System

#### 3.1 City Municipal Code Requires Connection to Public Sewer

The Spokane Municipal Code (SMC) requires all properties to be properly connected to the public sewer, in accordance with City requirements (SMC 13.03.0306). SMC 13.03.0304 prohibits any on-site sewage disposal system if (1) public sewer is available, (2) premises are occupied by a significant industrial user, or (3) public health or safety would be adversely affected.

### 3.2 Public Health and Environmental Concerns

Failed septic systems, side sewer, and residential sewer systems leach human waste into groundwater, backyards, the Spokane-Valley Rathdrum-Prairie Sole Source Aquifer, and the Spokane River, which endangers the public and environment. The Spokane-Valley Rathdrum-Prairie Sole Source Aquifer is located under much of the City of Spokane and leaching sewage could be a possible source of contamination to our drinking water. Converting septic systems and repairing or replacing the other systems located within the City's service area will help alleviate a possible source of contamination to the drinking water and health hazards that may exist.

### 3.3 Benefits Property Owners

Septic systems or failing sewer connections can be expensive to maintain or repair. Converting or rehabilitating residential utility systems provides effective long-term cost savings, reduces maintenance costs, and improves property values for property owners. It ensures a properly functioning utility into the future.

### 3.4 Benefits City of Spokane

Property owners served by non-municipal utilities currently look to the City of Spokane for solutions when their sewer does not work or when their water service is inadequate. Often these property owners cannot afford to finance the maintenance or replacement of the system. This program is intended to minimize city resources needed to investigate, educate residents about, and remediate the potential failures of septic and side sewer systems, protect our drinking water source, and comply with environmental regulations.

## 4. Programs in Other Communities

Cities and counties across the nation continue to have challenges with on-site septic systems and residential sewer connections and systems. Several communities or utilities have established policies and programs for the rehabilitation of sewer extensions, elimination of septic systems, and repair of water lines. The motivation for these programs varies from environmental compliance to growth moratoriums.

#### **Financial assistance programs are financed by the jurisdiction in several ways:**

- Costs are paid in part or full either for construction or deferring payment.
- Low-interest loans or grants.
- Costs are reimbursed through utility bills.
- Special programs provide financial assistance for low-income property owners.

## Example programs:

Jurisdiction	Program	Details
Clark Regional Wastewater District (Clark County, WA)	SEP	Cost to connect to sewer 30% deferred if connected within one year; Loan for all new connections: 60 (prime +1.5%) or 120 (prime +3.0%) monthly installments.
Columbus, OH	STEP Loan Program	No-interest loans to cover the two potential costs to the homeowner. The first: the city will defer payment on fees (capacity and frontage) that are normally due at the time of connection; the second: private plumbing costs up to \$10,000. Must hire a licensed sewer contractor.
Fort Wayne, IN	SEP	Connection fee waived; City contributes \$3,200 toward the cost to a contractor; Income-based assistance: the city reduces the assessment on the property.
Martin County, FL	Connect to Protect	Depends on the type of system (Grinder or Vacuum). Grinder – new connection pays \$10,000; reduced to \$8,000 if the homeowner connects within 365 days of the new force main being available. Vacuum – The owner pays a special assessment on the annual property tax bill amortized over 20 years.  Local non-profit lending organization helps reduce loan costs by up to \$1,000.
Tacoma, WA	Septic Amnesty Program	50% reduction in sewer fee up to \$10,000 – property owner must connect within 2 years of sewer becoming available.
	Sewer Conservation Loan Program	Low-interest loan program for repair or replacement of existing (not new) side sewers up to 90%. 2% below prime (min. 4%); \$1k to \$10k. Secured by property lien.
Helena, MT	Service Line Replacement Loan Program	0% interest up to \$15k for SF residential repair or replacement. Term up to 10 years. Water or sewer service lines within 2 ft. of the foundation. (Low income can pay off with the sale or transfer of property). No early payoff penalty. Example Resolution available.
Seattle, WA	Home Repair Loan Program	Low Income; 0% interest. Start at \$3k and a low-income deferred loan.

Pierce County, WA	Residential Side Sewer Conservation Loan Program	Loans may be made for up to 90% of the estimated project cost. The maximum loan amount is \$10,000. The current interest rate on this loan is 2.42%. Loans must be secured by a lien on the project property. Loan repayments are made monthly and are not part of the regular sewer bill.
Philadelphia, PA	Homeowner Emergency Loan Program	0% interest, installment payment loan for the water service line, water supply line, curb trap, main drain and/or sewer lateral, also basement backup prevention program. For emergency or lead service. Repayment added to water bill for 60 months. 0% interest for good standing on payments years. 5% penalty and missed payment penalty.

### 5. City of Spokane’s Proposed Program

To assist property owners who need to replace residential utilities, the City of Spokane is proposing a five (5) year program that will provide financial assistance to property owners residing within the City of Spokane. The goal of this program is to provide an affordable option for rehabilitating or replacing water and/or sewer connections and systems in need of repair, either by deferral or, in some cases, offset of repair costs. The cost of replacing one of these systems can range from less than \$5,000 to greater than \$35,000. This is a new program for the City of Spokane and as such the number of property owners and the associated costs are undetermined. Most water and sewer disruptions occur with little forewarning and limited time to repair. The program will operate first-come, first-served, based on approved applications; applications will be approved as received until funds are exhausted. Both the need and success of the program will drive future funding discussions and options. The program is expected to be a five (5) year project, subject to available funding, but may be terminated at any time.

The proposed program contains these elements:

Program Management: This program is recommended to be managed by a qualified third party.

Program Evaluation: The program will be reviewed and evaluated on an annual basis. The review will evaluate the number of projects completed, future needs, the amount of funds spent on projects, the amount of funding available for next year, and other criteria, as determined. This evaluation will be compiled into a report and submitted to the Director of Public Works.

Financial policies: The goal of the program will be to provide interim or short-term financial assistance to the property owner that is simple to administer and simple to understand. For this reason, a low-interest loan program is recommended. Loan payments will return to the program. As repayments under the program continue, the investment from utility funds may be able to decrease over time.

Eligibility criteria: Objective eligibility criteria will be established and administered through an Administrative Policy. Criteria elements may include, without limitation, the requirement of the property owner to sign a contract for repayment/terms; use of a licensed contractor; written estimates and invoices to be submitted to the City before any reimbursements; compliance with any applicable

City standards, rules, and regulations; execute lien against the property, etc. A certain amount of evaluation will be needed to determine if a project meets the criteria for this program.

## 5.1 Financial Policies

The City of Spokane Integrated Capital Management has budgeted \$500,000 per year, starting in 2024 and ending in 2028, to finance this program. The amount of funds available for the program will be reviewed each year in consideration of the overall utility budgets, the expected interest in the program, and the amount of loan payments received back to the program. This amount may be adjusted as necessary, during future reviews, depending on overall utility finances. Any amounts remaining at the end of a given year will roll over into the next year.

### *Low-interest loans*

Property owners may apply for a low-interest loan from this program with an interest rate of 3% with a repayment term of up to 120 months. A repayment schedule will be created for each loan based on the cost and the financial ability for repayment by the property owner. A property owner must enter into a written agreement and agree to a lien to be placed on the property until the loan is paid in full. Payments will be made as part of the monthly utility bill.

### *Income Based Assistance*

Property owners who reside in their homes and whose income and resources are below 50% of the AMI may be eligible for a payment deferral upon the future sale of the property after the project is completed.

## 5.2 Eligibility Criteria

A set of criteria will be needed to determine if the project is eligible. A priority system may be needed depending on applications received and the availability of annual funds. Priority criteria should be in accordance with public health concerns, public health and environmental protection, and the location of property to available city infrastructure.

### *Qualifications*

The program will be available for property owners with an Area Median Income (AMI) of 80% or less.

### *Property*

The project must be currently connected to the City of Spokane's water or sewer systems, or in the case of septic systems, be within the City's sewer service area. The application may only be from the current property owner. Applicants are limited to currently existing, owner-occupied, single-family residences. In the future, commercial properties and multi-family housing may be considered if the need is identified and the funding is available. New construction is not eligible.

### *Projects*

Eligible projects include:

- Crushed, broken, leaking side sewer lines
- Corroded, leaking, misaligned water service lines
- Long water service lines
- Residential sewers
- Elimination of septic systems



Eligible Costs include:

- Excavation
- Necessary on-site reroute of plumbing and associated repair
- New pipe, fitting, valves, and appurtenances
- Landscape repair
- Connection to existing sewer pipes or manholes
- Curb and sidewalk repair
- Street repair
- Permits
- Tap/Meter fees

Ineligible Costs include:

- Property enhancements
- New service connections
- New sidewalk outside of the construction area

### 5.3 Process

The proposed process will follow current City rules, regulations, and practices.

1. Property owner will contact the City of Spokane to report a water or sewer problem on their property.
2. City staff confirms it is not a city system problem, but a problem on the private property. Staff will provide information about next steps for the property owner, including details about this program.
3. The property owner applies for the City's program through the qualified third-party vendor.
4. The qualified third-party vendor reviews the application for income and project eligibility.
5. When the application is approved, the qualified third-party vendor will manage the selection of the contractor from the approved list and initiation of the contract.
6. The contractor pulls the required permits.
7. The contractor completes construction work.
8. The final work is inspected by City staff.
9. Loan is turned over to Utility Billing Dept.
10. Lien recorded by Legal/Administrator.
11. Loan repayment begins through utility bill.

### 5.4 Qualified contractor required to perform work

The construction work must be performed by a licensed and bonded contractor qualified for this type of work. The qualified third-party vendor will ensure contractors on the list meet the necessary qualifications.

### 5.5 Funding

Residential utility repairs or replacements generally do not have a preventative maintenance schedule. Repairs or replacement is necessary soon after the problem is identified. The need for this program will vary year by year. The program will be funded annually with any unused funds carried forward to the

next year. The funding amount and funds carried forward will be reviewed annually to determine the appropriate amount needed for this program.

## 5.6 Engagement

The City will provide information to inform those community members that are most likely to be eligible. The City will produce an educational flyer that provides an overview of the types of repairs that may be necessary, details of the program, and steps of the process. The flyer will be used for community engagement, available on the City's Utility Billing webpage, and translated into different languages as appropriate/needed. In addition, the flyer will be shared with the following:

- Neighborhood community centers
- Martin Luther King, Jr Community Center
- Neighborhood Councils
- Resettlement programs such as World Relief and Refuge Connections Spokane
- Non-profit organizations such as Asian Pacific Islander Coalition and Latinos en Spokane
- Qualified contractors on the approved list

## Appendix B

### Water and Sewer Rehabilitation Program Pre-Application

#### Applicant Information

Name(s)		
Property Address		
Zip		
Phone	(h)	(m)
Email		
Total Annual Income*	\$	
Proposed Project Description		
Estimated Project Cost	\$	
Do you consent to a lien?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

\*Proof of income will be required prior to final loan approval

#### What Utility assistance are you seeking?

Water       Sewer

<p>For City Use (checked box means "yes")</p> <p><input type="checkbox"/> Is the applicant the owner of the property?</p> <p><input type="checkbox"/> Is the property a single-family residence located within the City's water or sewer service area?</p> <p><input type="checkbox"/> Is the applicant's total annual income 80% of the area median income?</p> <p><input type="checkbox"/> Does the applicant consent to the placement of a lien on the property for the total cost of the of the project?</p> <p><input type="checkbox"/> Is the applicant eligible for the WSRP?</p>
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Appendix C – Loan Documents

**SECURED PROMISSORY NOTE**

**WSRP PROGRAM**

Date: **DATE**

Principal Amount: **ENTER THE AMOUNT OF LOAN (\$ )**

Interest Rate: *Three and 00/100 percent (3 %) fixed; twelve percent (12%) upon default*

Maturity Date: **MONTH FOLLOWING PLUS 10 YEARS**

Borrower: **ENTER NAME(S) OF BORROWER**

1. **Promise to Pay.** **ENTER NAME(S) OF BORROWER**, ("*Borrower*") promises to pay to the CITY OF SPOKANE, a Municipal corporation, organized and existing under the laws of the State of Washington, 808 West Spokane Falls Boulevard, Spokane, Washington 99201 ("*Lender*"), or order, in lawful money of the United States of America, the principal amount set forth above, together with interest on the unpaid outstanding principal balance from the date funds are actually advanced until paid in full.

2. **Loan Documents.** This Note is given in connection with Borrower's agreement to rehabilitate certain real property located at **ENTER COMPLETE PROPERTY ADDRESS**, City of Spokane, County of Spokane, Washington ("*Property*") as a part of Lender's program. In connection with the execution of this Note, Borrower has also executed several legal documents including, without limitation, a Loan Agreement ("*Loan Agreement*"), a Deed of Trust – WSRP Program ("*Deed of Trust*") and an Agreement for Utility Repair or Replacement Work ("*WSRP Agreement*") (Note, Loan

Agreement, Deed of Trust, Utility Repair or Replacement Agreement and other documents, collectively, "Loan Documents"). Borrower agrees to perform and comply with all of the agreements, terms and conditions of the Loan Documents.

3. **Payments; Reduction of Principal.**

3.1 **Optional Payment Schedule.** From the date hereon, Borrower shall pay to Lender, at Lender's sole discretion, in accordance with one (1) of the following option:

Monthly payments of interest only on all amounts disbursed at the rate set forth in Section 5 below, beginning on the first day of the first month after Borrower completes construction phase of the project and continuing on the same day of each month thereafter until the Maturity Date set forth above when Borrower shall pay the entire balance of principal in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.\_\_) plus accrued interest and late charges, if any. Maker will pay a late charge of five percent (5%) of the payment amount to the note holder if the monthly payment is not received within Fifteen (15) days after the due date.

or

Monthly principal and interest payments of approximately \_\_\_\_\_ Dollars (\$\_\_\_\_\_.\_\_) beginning \_\_\_\_\_, 20\_\_ and continuing on the first day of each month thereafter until the Maturity Date set forth above, when all principal, accrued interest and late charges, if any, shall be payable in full. Monthly principal and interest payments shall be determined upon completion of construction phase. Maker will pay a late charge of five percent (5%) of the payment amount to the note holder if the monthly payment is not received within Fifteen (15) days after the due date.

and/or

One deferred loan payment of principal plus accrued interest from the completion of construction in the total sum of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_) on the Maturity Date set forth above.

3.2 **Prepayment.** Maker may prepay interest or principal, in whole or in part, at any time without penalty. No prepayment hereunder shall affect the obligation of the Maker to pay the balloon payment of principal and interest. Prepayments shall not extend or postpone the due date of the balloon payment. Maker may not prepay any amounts due on any superior indebtedness without making pro rata prepayments of this Note.

4. **Terms and Conditions.** The payment shall be applied first to interest accrued to the balloon payment date and then to principal. The payment shall be payable in lawful money of the United States of America which shall be the legal tender for public and private debts at the time of payments and shall be in funds current and available at the time of such payment in Spokane, Washington. The payment shall be made to the Lender, or order, 808 West Spokane Falls Boulevard, Spokane, Washington 99201, or at such other place as the Lender or subsequent holder hereof may

specify in writing from time to time.

5. **Interest Rate.** Provided Maker is not in default as defined below, all sums from time to time owing hereon shall bear interest at the rate of 3 and 0/100 percent (Three %) per annum from the date hereon. Upon occurrence of an Event of Default, all sums owing hereunder shall bear interest at the rate of twelve percent (12%) per annum from the date of occurrence of the Event of Default.

6. **Default and Remedies.**

6.1 **Events of Default.** Borrower will be in default if any of the following happens:

6.1.1 **Default on Indebtedness.** Failure of Borrower to pay when due any sum owing hereunder or under any of the other Loan Documents.

6.1.2 **Failure to Repair or Replace.** Failure of Borrower to complete the required utility repairs in accordance with the approved plans and specifications and the WSRP Agreement within a reasonable time, as determined by Lender, from the date hereon.

6.1.3 **Unapproved Transfer.** Borrower's sale, transfer or other disposition of the Property without the Lender's prior written consent, excluding the creation of a purchase money security interest for household appliances.

6.1.4 **Failure to Reside in Property.** Borrower's failure at any time to reside in the Property as Borrower's primary residence.

6.1.5 **Failure to Comply.** Borrower's failure to comply with any covenant, agreement, term or condition contained in this Note or in any of the Loan Documents.

6.1.6 **Other Defaults.** Borrower's failure to pay, or other default, in any other indebtedness secured by the Property.

6.1.7 **Appointment of Receiver, Etc.; Insolvency.** The appointment of a receiver or liquidator for the Borrower or Borrower's property, the filing of any state or federal bankruptcy or insolvency petition by or against the Borrower, or any assignment by Borrower for the benefit of Borrower's creditors.

6.1.8 **Death.** Borrower's death or, if Borrower is a husband and wife forming a marital community, the death of both husband and wife.

6.1.9 **False Statements.** Any warranty, representation, or statement made or furnished to Lender by or on behalf of Borrower under this Note or the Loan Documents is false or misleading in any material respect at the time made or furnished, or becomes false or misleading at any time thereafter.

6.1.10 **Defective Collateralization.** This Note or any of the Loan Documents ceases to be in full force and effect (including failure of any security agreement to create a valid and perfected security interest) at any time and for any reason.

## 6.2 Remedies.

6.2.1 **Acceleration.** In the event of any default, the Lender or any subsequent holder may, at its option, declare the entire principal balance and accrued interest of this Note immediately due and payable without notice or other demand and may exercise any rights or remedies available under the Loan Documents, at law or in equity. Failure to exercise this option to accelerate shall not constitute a waiver of the right to exercise such option at any time Borrower is in default. All payments made after default shall be applied first to interest then to principal.

6.2.2 **Attorney's Fees, Costs and Expenses.** In the event of any default under this Note, and if this Note is referred to an attorney for collection or suit is brought hereon, the Borrower shall pay to Lender or any subsequent holder all expenses and costs of collection, including, but not limited to, reasonable attorney's fees. Any judgment recovered by the Lender or subsequent holder shall bear interest at twelve percent (12%) per annum on such judgment. The Borrower shall also pay all attorney's fees and costs Lender incurs in connection with any amendment, modification, extension or renewal of the loan evidenced by this Note.

6.2.3 **Venue and Applicable Law.** Borrower agrees that the venue of any action hereon may be laid in the City of Spokane, Spokane County, Washington, at the option of the Lender or subsequent holder, and that this Note shall be construed according to the laws of the State of Washington.

## 7. General Provisions.

7.1 **Liability.** All persons signing this Note as Borrower agree that they shall be liable hereon jointly and severally, and they waive demand, presentment for payment, protest and notice of protest, and of nonpayment. Each such person agrees that any modification or extension of the terms of payment made by the Lender or subsequent holder of this Note with or without notice, at the request of any person liable hereon or owning an interest in any property, real or personal, described in the Deed of Trust, or a release of any party liable for his obligation, or a release of property, real or personal, or any part hereof from the lien of the Deed of Trust shall not diminish or impair his or their liability for the payment hereof.

7.2 **Modification.** The Lender or any subsequent holder may, from time to time at its sole option, extend the time for payment of the outstanding balance of principal or interest or any part thereof, release anyone liable on any of the outstanding principal or interest balance, accept a renewal, modification, or extension of this Note, join in any extension or subordination agreement, or agree in writing with the Borrower hereof to modify the rate of interest or period of amortization of this Note, without liability on the part of the holder hereof. Such action will not affect the obligation of the Borrower or its successors or assigns to pay the outstanding balance of principal or interest and to observe the covenants contained herein or in the several loan documents. Lender or any subsequent holder need not give notice to or obtain the consent of the Borrower or its successors or assigns.

7.3 **Lack of Assignability.** The obligations of the Borrower are not assignable nor assumable by any person or firm, nor may any person or firm take or receive the property "subject to" this Note, without the prior written consent of Lender.

**NOTICE CONCERNING ORAL AGREEMENTS**  
Oral agreements or oral commitments to lend  
money, extend credit or to forbear from  
enforcing repayment of a debt are not

BORROWER:

\_\_\_\_\_  
ENTER NAME(S) OF BORROWER

\_\_\_\_\_  
Date

\_\_\_\_\_  
ENTER NAME(S) OF BORROWER

\_\_\_\_\_  
Date



**HOMEOWNER**  
**WATER AND SEWER REHABILITATION PROGRAM AGREEMENT**  
**“WSRP” PROGRAM**

This Homeowner – WSRP Program Written Agreement Water and Sewer Rehabilitation Program (WSRP) (“Agreement”) is made as of **ENTER DATE OF LOAN DOCS** by The City of Spokane (“City”) and **ENTER NAME(S) OF BORROWER** (“Owner”).

**RECITALS**

- A. The City is a Municipal corporation organized and existing pursuant City owns and operates Wastewater and Water Departments.
- B. The City established WSRP for onsite septic systems, side sewer, water services, private sewers and water lines repair or replacement.
- C. The Owner is a Low-Income Person that has submitted to the City a proposal for use of WSRP Program funds for an eligible utility repair or replacement program under WSRP Program regulations.
- D. The City is willing to provide the Owner a WSRP Program loan in the amount of up to **SPELL THE AMOUNT OF THE LOAN** and No/100 Dollars (**\$TYPE NUMERIC LOAN AMOUNT**) as described more fully below (“Loan”) that the Owner will use for solely for the construction of improvements to the real property and building (“Project”) located at **PROPERTY ADDRESS** City of Spokane, Washington (“Property”), and more particularly described as follows:
- E. To govern the documentation, disbursement and administration of the City’s WSRP Program, the Owner and the City agrees as set forth below.

**AGREEMENT**

1. **Definitions.**
- “**Agreement**” shall mean this Homeowner – WSRP Program Written Agreement – between the City and the Owner, together with all amendments hereto.
  - “**Annual Income**” shall have the meaning set out in part 5 of 24 CFR 5.609.

- **“Area Median Income”** shall mean the median Annual Income for families in the City of Spokane as published by HUD and as adjusted annually by HUD for different family sizes.
- **“Commitment Letter”** shall mean the written loan commitment from the City to the Owner dated as of **ENTER COMPLETE DATE OF COMMIT LTR.**
- **“Contract”** shall mean the written agreement between the Owner and the Contractor, if any, for the Utility Repair or Replacement Work on the Property
- **Contractor”** shall mean the licensed and bonded general contractor in the State of Washington with which the Owner enters into the Contract for the Project, if the Owner chooses to use a Contractor.
- **“City”** shall mean City of Spokane, Washington.
- **“Deed of Trust”** shall mean the Deed of Trust and Security Agreement – WSRP Program, in form and substance satisfactory to the City, encumbering the Property in the full amount of the Loan, which the Owner will execute in favor of the City prior to the release of Loan funds.
- **“Director”** shall mean the City’s Director of Wastewater Management or their designee.
- **“Executive Order”** shall mean Executive Order 11246 of September 24, 1965.
- **“WSRP Program”** shall mean the Water and Sewer Rehabilitation Program funded by the City of Spokane.
- **“Household”** shall mean all persons, related or unrelated, either residing, or intending to reside, in the Property as their primary residence.
- **“Loan”** shall mean a WSRP Program loan in the amount of up to **SPELL THE AMOUNT OF THE LOAN** and No/100 Dollars (**\$TYPE NUMERIC LOAN AMOUNT**) which the Owner will use solely for the construction of improvements to, and completion of the Private Utility Work on, the Project.
- **“Loan Documents”** shall mean the Note, this Agreement, the Deed of Trust, the Contract, if any, the Commitment Letter and any other documents or agreements including required disclosure documents, the City reasonably requires to document the Loan and the WSRP Program requirements pertaining thereto.
- **“Low Income Persons”** shall mean Households or persons whose Annual Income is below 80% of the area median income for **Spokane County as published by HUD.**

- **“Maximum Property Value”** shall mean an estimated value of the Property, after rehabilitation of not greater than ninety five percent (95%) of the median purchase price for the area, as described in 24 CFR 92.254(a)(2)(iii).
- **“Note”** shall mean the secured promissory note in the full amount of the Loan which the Owner will execute and deliver to the City prior to the release of Loan funds.
- **“Owner”** shall mean all persons who (1) have any right, title or interest in the Property and (2) reside in the Property as their primary residence, but excluding tenants or live-in caregivers; in connection with this Loan, “Owner” shall include, without limitation, **ENTER NAME(S) OF BORROWER**, their heirs, successors and assigns.
- **“Plans and Specifications”** shall mean the plans and specifications the City shall prepare for the Project in accordance with the WSRP Program’s City’s standards for the utility work, as more fully described in Section 4.5 below.
- **“Project”** shall mean the Owner’s construction of improvements to, and completion of the Utility Work on, the residential housing located on the Property.
- **“Project Schedule”** shall mean the progress schedule prepared by the Owner and Contractor, if applicable, and approved by the City as more fully described in Sections 6.2 and 7.2 below.
- **“Property”** shall mean the real property in **ENTER COMPLETE PROPERTY ADDRESS**, City of Spokane, Washington more particularly described in Recital E above.
- **“Property Standards”** shall mean, as set forth more specifically in Section 5.1 below, generally accepted WSRP and construction industry standards, including compliance with all applicable codes and regulations and completion of the Utility Repair or Replacement Work in all material respects as necessary to allow full residential use and occupancy of the buildings on the Property. In particular, the utility repair or replacement work shall meet all City and State of Washington building codes, **all HUD** and WSRP standards and all applicable zoning ordinances.
- **“Rehabilitation Program”** shall mean the City sponsored program to use WSRP funds for the utility work of substandard owner-occupied housing for Low-Income Persons and families.
- **“Rehabilitation Work”** shall mean the scope of work the Owner undertakes, through the Contractor, to complete the Project and repair the Property in accordance with the terms of this Agreement and the Loan Documents.

2. **Loan.** The City hereby agrees to lend to Owner, and the Owner agrees to borrow from the City, the Loan, which Owner will use for the construction of improvements to the real property and building located at the Property.

2.1. **Purpose of Loan.** The Owner shall use the Loan proceeds to accomplish the construction of utility repair or replacement to the residential housing located on the Property to meet all applicable local code requirements and in accordance with the Plans and Specifications. The Owner will use the Loan to meet the objectives of the WSRP Program in accordance with the applicable guidelines thereof.

2.2. **Commitment Letter.** Additional terms and conditions of the Loan are set forth, in part, in the Commitment Letter from the City to the Owner, which letter is incorporated herein by reference. In the event of a conflict between a provision in the Commitment Letter and any other provisions of this Agreement, such other provision of this Agreement shall control.

3. **Loan Documents.**

3.1. **Note.** The Loan will be evidenced by the Note in favor of the City made by the Owner on the Property in the full amount of the Loan. Provided the Owner is not in default hereunder or under any of the Loan Documents, the Note will bear no interest. Upon default, all sums owing on the Note will bear interest at twelve percent (12%) per annum from the date of default. Provided the Owner is not in default hereunder or under any of the Loan Documents, the Note will bear interest at the rate of Three and 00/100 percent (3%) per annum and, at the City's option, will be payable under one of the following payment structures:

3.1.1. Monthly payments of interest only with the principal balance due and payable on the Maturity Date as defined in the Note; or

3.1.2. Monthly principal and interest payments sufficient to amortize the Loan in full over its Ten (10) year term; or

3.1.3. One deferred loan payment of principal plus accrued interest from the completion of construction due on the Maturity Date as defined in the Note.

3.2. **Deed of Trust.** As security for all funds drawn under the Loan, the Owner shall make, execute and deliver to the City as beneficiary the Deed of Trust in the full amount of the Loan. The Deed of Trust shall be subject only to such encumbrances as the City may hereafter approve or waive in writing.

3.3. **Contract.** If Owner uses a Contractor, Owner and Contractor shall sign the Contract, in a form approved by the City, between the Owner and the Contractor for the construction of the improvements and completion of the Utility Work, which Contract shall bind the Contractor to complete such Repair or Replacement Work at a cost not to exceed the amounts specified in such Contract. Owner will provide the City with a copy of the fully-executed Contract.

3.4. **Other Loan Documents.** Owner shall execute and deliver to the City such other documents and agreements, including without limitation the Commitment Letter and any required disclosure documents, as the City shall request to document to Loan and/or comply with the WSRP Program.

4. **Conditions Precedent to the Obligation of the City to Provide Funds.** The obligation of the City to provide or release any portion of the Loan funds under this Agreement shall, subject to such other terms and conditions of this Agreement as may be applicable thereto, also be conditioned on the following:

4.1. **Loan Documents.** The Owner shall provide the City with fully executed originals of all Loan Documents, including the Contract if the Owner uses a Contractor for the Project.

4.2. **Title and Fire Insurance.** The Owner shall, at the Owner's expense, furnish the City with an acceptable mortgagee's ALTA title insurance policy insuring the City in the amount of the Loan and shall provide fire and extended coverage insurance in the full amount of the Loan, naming the City as the beneficiary and additional loss payee, as its interest may appear. The title policy shall be extended coverage with lien protection endorsement. If the City disburses Loan proceeds in separate draws, the City at the City's option but at the Owner's expense may request the title company to endorse its policy of title insurance at and as of the date of each such subsequent disbursement by the City of Loan proceeds.

4.3. **Other Insurance.** The Owner shall submit to the City, as requested by the City, such forms of construction risk insurance policies against fire, extended coverage and builder's risk in amounts and in form acceptable to City, including the City thereon as an additional insured as its interest may appear, which policies shall be continuously maintained at no cost to the City.

4.4. **Commitment Letter Conditions.** The Owner shall submit to the City as required proof of satisfaction of all conditions noted on the Commitment Letter.

4.5. **Maximum Property Value.** The estimated post-rehabilitation value of the Property, based on the City's pre-rehabilitation appraisal, shall not exceed the Maximum Property Value.

4.6. **Plans and Specifications.** The City shall prepare the Plans and Specification for approval by the Owner and the Contractor, if any. The Plans and Specification shall address at a minimum all local code violations as noted in the City's initial inspection.

4.7. **Project Schedule.** If the Owner uses a Contractor, the Owner shall furnish the Project Schedule to the CITY for its approval.

4.8. **Additional Funding; Sources and Uses.** The Owner will secure additional funds in the amount Zero and no/100 Dollars (\$0.00), which the Owner will apply to



the balance of the construction costs for the Property. The sources and uses of the WSRP Program funds and the additional funds are as follows: **CONTRACT COSTS ESTIMATE \$, SOFT COSTS ESTIMATE \$**. The Owner warrants that all of such additional funding will be used for payment of the construction costs of the Property. In the event of changes in the sources and uses the Owner will submit a revised budget for approval by the City.

4.9. **Federal Funds Availability.** Any obligation of the City to make disbursements of any proceeds of the City Loan is subject to and contingent upon the availability and the City's receipt of the federal funds which are to be used to fund such disbursements.

4.10. **Fees.** The Owner shall promptly pay upon demand of the City all of the City's costs in connection with the closing of the Loan, including, without limitation, its title insurance costs, recording fees, escrow fees, attorney's fees, loan fees and other expenses associated with the Loan. The Owner will further pay all costs incurred by the City in connection with any renewal or modification of the Loan or any other activity undertaken in connection with the administration of the Loan including, without limitation, the City's attorney's fees and costs.

5. **Repair or Replacement of Property.** The Owner will carry out, either personally or through the use of a Contractor, all Work of the Project specified in the approved Plans and Specifications and in the WSRP Program.

5.1. **Property Standards.** The Owner will approve all Work that, in the good faith opinion of the Contractor, if any, the Owner hires to complete the Project and the City, has been accomplished in accordance with generally accepted construction industry and WSRP Property Standards. The Owner will also provide the Project in compliance with all applicable codes and regulations and complete all material respects as necessary to allow full residential use and occupancy of the buildings on the Property. Upon completion, the Project shall meet all City and State of Washington building codes, and WSRP program standards and all applicable zoning ordinances.

5.2. **Bidding.** Unless otherwise approved by the City, if the Owner uses a Contractor, the Owner shall solicit competitive bids for the Contractor, and the Contractor shall solicit competitive bids for any subcontractors and suppliers, in a manner provided for by the City. If the Owner does not use a Contractor, the Owner shall solicit competitive bids for any suppliers in a manner provided for by the City.

5.3. **Lead-Based Paint Requirements.** **The Owner shall undertake the Work,** or cause it to be undertaken, in compliance with the applicable requirements of HUD Lead-Based Paint regulations, 24 CFR Part 35. In particular, the Owner

5.3.1. Shall eliminate any lead-based paint hazards and provide the appropriate certification as required by 24 CFR Section 25.24; and

5.3.2. Shall not use lead-based paint in structures for which the rehabilitation assistance is provided.

5.4. **Inspection of the Work.** The City or its representatives will have the right to inspect the Utility Repair or Replacement Work at all reasonable times for the purpose of ascertaining whether such Utility Repair or Replacement work is in accordance with the requirements of this Agreement, the Contract and applicable laws and codes. While the City and its representatives, including employees, will, in order to protect its interest and the interest of the general public, endeavor to bring to the attention of the Owner and the Contractor, if any, work which is not performed in accordance with this Agreement, the Contract and applicable laws and codes, neither the City nor their respective agents or employees shall be responsible for the failure of the Owner or Contractor, if any, to carry out work in accordance with this Agreement, the Contract and applicable laws and codes, or for the acts or omissions of the Owner, the Contractor (if any), subcontractors, any of their agents or employees, or any others performing any Utility Repair or Replacement Work. The Owner shall take all steps necessary to assure that the City or its designee is permitted to examine and inspect the Utility Repair or Replacement Work and all contracts, materials, equipment, payrolls conditions of employment pertaining to the work, including all relevant data and records.

5.5. **Change Orders.** The City shall have approved all change orders prior to execution by the Owner and the Contractor. In reviewing proposed change orders, the City shall undertake a reasonableness analysis and may reject a proposed change order if, as a result of such analysis, it determines that the change order and/or the proposed cost thereof is unreasonable. If, as a result of the discovery of latent defects or unforeseen health and safety hazards, it is necessary to make a change order or orders which exceed the contingency amount (i.e., ten percent (10%) of the original price under the Contract), the City may, at its option, and after consultation with the Owner, reevaluate the scope of utility repair or replacement assistance to be provided and, in conjunction therewith, order the elimination or reduction of certain work items set forth in the Project Schedule or work write-up note related to bringing the Property into substantial compliance with the applicable housing code.

5.6. **Sufficient Funds.** The Owner will provide at all times, when necessary, sufficient funds to provide for such Project completion with all practical dispatch in a sound, economical and efficient manner.

5.7. **No Assignment.** The Owner may not assign any Loan funds to be disbursed hereunder or any rights of the Owner under this Agreement except upon the City's prior written consent.

5.8. **Incorporation of Equal Opportunity Regulations.** The Owner hereby agrees that to incorporate or cause to be incorporated into any Contract, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the federal government pursuant to a grant, contract, loan, insurance or guaranty, the Equal Opportunity Clause found in 41 CFR Chapter 60 Part 60-1.4.

6. **WSRP by Contractor.** The Owner may accomplish the WSRP work of the Property through the Contractor pursuant to the Contract and through such written subcontracts as the Contractor may make, with the prior concurrence of the Director.

6.1. **Contractor Selection.** Pursuant to the competitive bidding required in Section 5.2 above, the Owner may select the Contractor to perform the work on the Property provided that the Contractor's bid is within 10% of the City's cost estimate for the Utility Repair or Replacement Work. If the bid exceeds 10% of the City's cost estimate, the City reserves the right to reject the bid.

6.2. **Project Schedule.** The Owner and the Contractor shall adhere to the following schedule for commencing, proceeding with and completing the Utility Work on the Property:

Select the Contractor: \_\_\_\_\_ . 201 \_\_\_\_\_ ;

Execute the Contract: ESTIMATED CONTRACT DATE;

Commence the WSRP Work: ESTIMATED CONTRACT DATE;

Complete the WSRP Work: ESTIMATED COMPLETION DATE

6.3. **Contractor's Warranty.** The Owner shall cause the Contractor, upon completion of the Utility Repair or Replacement Work, to give to the Owner and the City a one (1) year unconditional warranty of the labor and materials used in the Utility Repair or Replacement Work, on such form as the City shall designate.

6.4. **Contractor and Subcontractor Compliance.** If the Owner uses a Contractor, the Owner agrees to assist and be cooperative actively with the City in obtaining the compliance of the Contractor and all subcontractors with the Equal Opportunity Clause referenced in Section 5.8 above and with the rules, regulations and relevant orders of the Secretary of Labor. The Owner shall cause the Contractor to furnish the City with such information as they may require for the supervision of such compliance, and to otherwise assist the City in the discharge of the primary responsibility for securing compliance.

6.5. **Certain Contractors Ineligible for Contract Awards.** The Owner will not award any Contract to be paid for in whole or in part with the proceeds of the Loan to any Contractor who is, at the time, ineligible under the provisions of any applicable regulations issued by the Secretary of Labor, United States Department of Labor, to receive an award of such Contract.

6.6. **Debarred Contractors.** The Owner further agrees to refrain from entering into any Contract or Contract modification subject to the Executive Order, with a Contractor debarred from, or who has not demonstrated eligibility for government contracts and federally-



assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity Clause referenced in Section 5.8 above as may be imposed upon contractors and subcontractors by the Secretary of Housing and Urban Development or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, if the Owner fails or refuses to comply with these undertakings, the City may take any or all of the following actions: (a) Cancel, terminate or suspend in whole or in part this Loan application and this Agreement; (b) refrain from extending any further assistance to the Owner under the WSRP Program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such the Owner; and (c) refer the case to the Department of Justice for appropriate legal proceedings.

**7. Rehabilitation by Owner.** Subject to the City's approval, the Owner may carry out the Rehabilitation Work himself or herself.

**7.1. Demonstrated Ability.** The Owner must demonstrate to the City's reasonable satisfaction that the Owner possesses the requisite skill and experience to perform the Rehabilitation Work in a timely manner.

**7.2. Project Schedule.** The Owner shall adhere to the following schedule for commencing, proceeding with and completing the Utility Repair or Replacement Work on the Property:

Commence the Utility Repair or Replacement Work: **ESTIMATED CONTRACT DATE;**

Complete the Utility Repair or Replacement Work: **ESTIMATED COMPLETION DATE**

**7.3. Owner's Employment Practices.** The Owner will be bound by the Equal Opportunity Clause referenced in Section 5.8 above with respect to Owner's own employment practices when the Owner participates in federally-assisted construction work pursuant to this Agreement.

## **8. Loan Proceeds Disbursement; Payment**

### **8.1. General.**

8.1.1. Upon execution this Agreement and of the Note, the recording of the Deed of Trust and the other Loan Documents and the satisfaction of any other conditions precedent applicable to Loan disbursement, the proceeds of the Loan will be disbursed in accordance with this Agreement and with applicable City requirements and regulations. The Owner does not have a right to the Loan proceeds other than to have the same disbursed in accordance with the terms of this Agreement. All expenditures will be in compliance with 24 CFR 92.206, and the City will only provide funds for work completed.

8.1.2. Project expenses shall be paid based on vouchers for actual expenses incurred or paid submitted by the Owner on forms specified by the City, with adequate

and proper documentation of eligible costs incurred in compliance with 24 CFR 92.206 and necessary for disbursement requirements. All such expenses shall be in conformance to the approved Project budget. Budget revision and approval shall be required prior to payment of any expenses not conforming to the approved Project budget.

8.1.3. The City reserves the right to inspect records and the Project site to determine that reimbursement and compensation requests are reasonable. The City also reserves the right to hold payment until adequate documentation has been provided and reviewed.

## **8.2. Repair or Replacement by Contractor**

8.2.1. The proceeds of the Loan shall be withdrawn and used only as necessary for disbursement to the Contractor for payment of indebtedness incurred for labor performed and materials incorporated into the Project, or for reimbursement to the Owner for payments made by the Owner for such purposes. The City shall apply all proceeds of the Loan not so withdrawn to reduce the outstanding and unpaid principal amount of the Loan and any additional amounts secured by the Deed of Trust.

8.2.2. The Contractor will be paid only for the Contractor's actual cost of providing such Utility Repair or Replacement Work. The Owner will require the Contractor to so agree and provide such documentation as the City may reasonably require to show that the Contractor does not receive any payment in excess of the Contractor's actual cost for the completion of the Utility Repair or Replacement Work.

8.2.3. All disbursements shall be upon certification by the Contractor and by the Owner of the percentage of work completed and the cost thereof. Before the City makes any disbursements, the Owner shall provide the City with a true and correct statement of all indebtedness incurred for labor performed and materials ordered and/or delivered, and shall have the right to inspect all records, books and accounts relating to the work. The City may, at its option, require the Owner to provide a statement setting forth the names of all contractors, subcontractors and materialmen engaged on the project since the date of the last request for disbursement, and may further require lien waivers, releases or receipts from substantiating payment for all work, services and labor performed and materials supplied. The City shall perform an inspection in connection with each request for disbursement to determine that the applicable portion of the Utility Repair or Replacement Work was completed in accordance with the Plans and Specifications. The City may, at its option, make any such payments to the Owner, or to the Owner and the Contractor jointly, or to the Contractor or to subcontractors, materialmen or laborers engaged in rendering labor or materials to the Project.

8.2.4. Upon the Owner's and the City's acceptance of the work, the City, through the City staff acting on the City's behalf, will approve progress payments and final payment, withholding such sums as provided by the Contract until all the conditions of the Contract are met. Requests for payment shall, when applicable, be accompanied by certificates of

compliance with Federal Wage and Labor Standard provisions and Equal Employment Opportunity requirements.

8.2.5. Final payment to the Owner or Contractor shall be made only upon the City's receipt of such satisfactory evidence as the City may require that (a) the construction is complete in accordance with the City Standards and the Contract, (b) the Owner has issued its written acceptance thereof, and (c) all mechanics' or materialman's liens upon the Project (or claims of mechanics or materialmen which, with notices or passage of time, or both, would mature into a lien) shall have been satisfied, released or bonded. The Contractor shall have issued the warranty described in Section 6.5 above. The title insurance required by this Agreement shall have been updated with current endorsements at the Owner's expense. The City shall perform an inspection in connection with the request for final disbursement to determine that the Utility Repair or Replacement Work was completed in accordance with the Plans and Specifications. These requirements are for the benefit of the City, and the City, at its option, shall have the right to waive any such requirements.

### **8.3.—Rehabilitation by Owner.**

~~8.3.1.— No person, including the Owner, shall be entitled to payment for any labor performed in connection with the Rehabilitation Work. If the any person receives payment for such labor, the Owner shall withdraw from the Project and use Loan proceeds only as necessary for disbursement to the Owner for payment of indebtedness incurred for materials incorporated into the Project, provided that the CITY shall apply all proceeds of the Loan to reduce the outstanding and unpaid principal amount of the Loan and any additional amount secured by the Deed of Trust.~~

~~8.3.2.— The Owner may only request reimbursement by WSRP Program funds when the Project is complete and the Owner certifies that the funds are needed to pay eligible costs. The Owner will be reimbursed upon completion of the Project and only for the cost of materials involved in such Rehabilitation Work and will provide such documentation as the CITY may require to show that the Owner does not receive payments in excess of the Owner's actual cost for materials in the Rehabilitation Work. The CITY shall perform an inspection in connection with the request for disbursement to determine that the Rehabilitation Work was completed in accordance with the Plans and Specifications.~~

8.3.3. In connection with the disbursement of Loan proceeds, the Owner shall provide the CITY a true and correct statement of all indebtedness incurred for materials ordered and/or delivered and the CITY shall have the right to inspect all records, books and accounts relating to the work. The CITY may, at its option, require the Owner to provide a statement setting the names of all materialmen engaged on the Project since the date of the last request for disbursement, and may further require lien waivers, releases or receipts from all such parties and other data satisfactory to the CITY substantiating payment for all materials supplied. The CITY may, at its option, make such payments to the Owner or materialmen providing materials to the Project.

9. **Representations and Warranties.** The Owner represents and warrants to the City as of the date of this Agreement and as of the date of each disbursement of Loan proceeds, as of the date of any renewal, extension or modification of the Loan, and at all times any indebtedness exists under the Loan:

9.1. **Financial Information.** Each financial statement of the Owner supplied to the City truly and completely disclosed the Owner's financial condition as of the date of the statement, and there has been no material adverse change in the Owner's financial condition subsequent to the date of the most recent financial statement supplied to the City. The Owner has no material contingent obligations except as disclosed in such financial statements.

9.2. **Legal Effect.** This Agreement constitutes, and any instrument or agreement the Owner is required to give hereunder, when delivered, will constitute, legal, valid and binding obligations of the Owner enforceable against the Owner in accordance with their respective terms.

9.3. **Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Agreement, shall have the same meanings as set forth in the "CERCLA," "SARA," the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules or regulations adopted pursuant to any of the foregoing. Except as disclosed to and acknowledged by the City in writing, the Owner represents and warrants that: (a) during the period of the Owner's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about any of the Property. (b) the Owner has no knowledge of, or reason to believe that there has been (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Property, or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters. (c) neither the Owner nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under or about the Property; and any such activity shall be conducted in compliance with all applicable federal, state and local laws, regulations, and ordinances, including without limitation those laws, regulations and ordinances described above. The Owner authorizes the City and its agents to enter upon the Property to make such inspections and tests as the City may deem appropriate to determine compliance of the Property with this section of the Agreement. Any inspections or tests made by the City shall be at the Owner's expense and for the City's purposes only and shall not be construed to create any responsibility or liability on the part of the City to the Owner or to any other person. The representations and warranties contained herein are based on the Owner's due diligence in investigating the Property for hazardous waste. The Owner hereby (a) releases and waives any future claims against the City for indemnity or contribution in the event the Owner becomes liable for clean up or other costs under any such laws, and (b) agrees to indemnify and hold harmless the City against any and all claims, losses, liabilities, damages,

penalties, and expenses which the City may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to the Owner's ownership or interest in the Property, whether or not the same was or should have been known to the Owner. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the Indebtedness and the termination or expiration of this Agreement and shall not be affected by the City's acquisition of any interest in the Property, whether by foreclosure or otherwise.

9.4. **Litigation and Claims.** No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against the Owner is pending or threatened, and no other event has occurred which may materially adversely affect the Owner's financial condition or properties, other than litigation, claims, or other events, if any that have been disclosed to and acknowledged by the City in writing.

9.5. **Taxes.** To the best of the Owner's knowledge, all tax returns and reports of the Owner that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by the Owner in good faith in the ordinary course of business and for which adequate reserves have been provided.

9.6. **Binding Effect.** This Agreement, the Note, the Deed of Trust and all Loan Documents are binding upon the Owner as well as upon the Owner's successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

9.7. **Information.** All information heretofore or contemporaneously herewith furnished by the Owner to the City for the purposes of or in connection with this Agreement or any transaction contemplated hereby is, and all information hereafter furnished by or on behalf of the Owner to the City will be, true and accurate in every material respect on the date as of which such information is dated or certified; and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading.

9.8. **Survival of Representation and Warranties.** The Owner understands and agrees that the City is relying upon the above representations and warranties in extending Loan advances to the Owner. The Owner further agrees that the foregoing representations and warranties shall be continuing in nature and shall remain in full force and effect until such time as the Owner's Loan and Note shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

10. **Affirmative Covenants.** The Owner covenants and agrees with the City that, while this Agreement is in effect, the Owner will do as follows:

10.1. **Title VI of the Civil Rights Act of 1964.** The Owner will utilize the proceeds of the Loan in compliance with all requirements imposed by or pursuant to regulations

of the City. The Owner also agrees not to discriminate upon the basis of race, color, creed or national origin in the sale, lease, rental, use or occupancy of the Property rehabilitated with the assistance of the Loan. The United States shall be deemed to be beneficiary of these provisions both for and in its own right and also for the purpose of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit this provision has been provided and shall have the right, in the event of any breach of this provision to maintain any actions or suits at law or in equity or any other proper proceedings to enforce the curing of such breach.

10.2. **Other Agreements.** The Owner will comply with all terms and conditions of all other agreements, whether now or hereafter existing, between the Owner and any other party and notify the City immediately in writing of any default in connection with any other such agreements.

10.3. **Loan Proceeds.** The Owner will use all Loan proceeds solely for the Rehabilitation Work on the Property, unless the City specifically consents to the contrary in writing.

10.4. **Taxes, Charges and Liens.** The Owner will pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon the Owner or the Owner's properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of the Owner's properties, income, or profits. The Owner upon demand of the City will furnish to the City evidence of payment of the assessment, taxes, charges, levies, liens and claims and will authorize the appropriate governmental official to deliver to the City at any time a written statement of any assessments, taxes, charges, levies, liens and claims against the Owner's properties, income, or profits.

10.5. **Performance.** The Owner will perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Owner and the City in a timely manner, and promptly notify the City if the Owner learns of the occurrence of any event which constitutes an Event of Default under this Agreement or any of the Loan Documents.

10.6. **Operations.** In the performance of this Agreement and the construction of improvements of the Property, the Owner shall comply, in all material respects, with applicable Federal and State laws, orders, rules and regulations as any agency having jurisdiction thereto, and the Owner shall defend, protect and save harmless the County and the City, their officers and employees, from and against all claims, suits, actions, liability, loss, damage and expense arising from any failure of the Owner, its architect, agents, contractors or subcontractors, to comply with the same. Any such requirement which, under the applicable federal grant Agreement, is required to be set forth in this Agreement is by this reference incorporated herein as though fully set forth at this point.

10.7. **Inspection.** The Owner will permit employees or agents of the City at any reasonable time to inspect the Property, the Project and any and all collateral for the Loan and the Owner's other properties and to examine or audit the Owner's books, accounts and records and to make copies and memoranda of the Owner's books, accounts and records. If the Owner now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, the Owner, upon request of the City, shall notify such party to permit the City free access to such records at all reasonable times and to provide the City with copies of any records it may request, all at the Owner's expense.

10.8. **Additional Assurances.** The Owner will make, execute and deliver to the City such promissory notes, mortgages, deeds of trust, security agreements, financing statements, instruments, documents and other agreements as the City or its attorneys may reasonably request to evidence and secure the Loan and to perfect all security interests.

10.9. **Household Disclosure to City.** The Owner will disclose to the City on or before the execution of this Agreement, and at any time upon the City's request, the names of all persons in the Owner's Household and their Annual Incomes, if such persons are 18 years of age or older.

11. **Default.** Each of the following shall be an Event of Default under this Agreement:

11.1. **Default on Indebtedness.** Failure of the Owner to pay when due any sum owing hereunder, under the Note or under any of the other Loan Documents.

~~11.2. **Failure to Rehabilitate.** Failure of the Owner to complete the Rehabilitation Work in accordance with the approved Plans and Specifications and with the Project Schedule.~~

11.3. **Unapproved Transfer.** The Owner's sale, transfer or other disposition of the Property without the City's prior written consent, excluding the creation of a purchase money security interest for household appliances.

11.4. **Failure to Reside in Property.** The failure of the Owner, or of all Owners if there is more than one Owner, at any time to reside in the Property as the Owner's primary residence.

11.5. **Failure to Comply.** The Owner's failure to comply with any covenant, agreement, term or condition contained in this Agreement, the Note or in any of the Loan Documents.

11.6. **Other Defaults.** The Owner's failure to pay, or other default, in any other indebtedness secured by the Property.



11.7. **Appointment of Receiver, Etc.; Insolvency.** The appointment of a receiver or liquidator for the Owner or the Owner's property, the filing of any state or federal bankruptcy or insolvency petition by or against the Owner, or any assignment by the Owner for the benefit of the Owner's creditors.

11.8. **Death.** The Owner's death or, if the Owner is a husband and wife forming a marital community, the death of both husband and wife.

11.9. **False Statements.** Any warranty, representation, or statement made or furnished to City by or on behalf of the Owner under this Agreement, the Note or the Loan Documents is false or misleading in any material respect at the time made or furnished, or becomes false or misleading at any time thereafter.

11.10. **Defective Collateralization.** This Agreement, the Note, the Deed of Trust or any of the Loan Documents ceases to be in full force and effect (including failure of any security agreement to create a valid and perfected security interest) at any time and for any reason.

12. **Remedies.** Upon the occurrence of an Event of Default, the City shall have the following nonexclusive remedies:

12.1. **Cancellation of Commitment.** At its option, the City reserves the right to cancel the Loan and terminate its obligation hereunder and under any other Loan Documents evidencing the Loan if, for a period of sixty (60) days from the date of execution of the Note, the Owner shall have failed or refused to cause the commencement of physical Utility Repair or Replacement Work on the Property, or if the Owner shall have failed or refused to complete such Utility Repair or Replacement Work within a reasonable time, as determined by the City, after commencing the work. The City shall exercise this cancellation by sending written notice thereof to the Owner at its mailing address set forth below. In the event of cancellation after the City has disbursed funds, any amounts so disbursed shall become immediately due and payable. The City's failure to exercise this right of cancellation shall not be deemed a waiver thereof as long as the Utility Repair or Replacement Work remains incomplete.

12.2. **Acceleration.** The City or any subsequent holder may, at its option, declare the entire principal balance and accrued default interest, if any, of this Note immediately due and payable without notice or other demand and may exercise any rights or remedies available under the Loan Documents, at law or in equity. Failure to exercise this option to accelerate shall not constitute a waiver of the right to exercise such option at any time the Owner is in default. All payments made after default shall be applied first to default interest, then to late charges, if any, then to due but unpaid interest and then to principal.

12.3. **Attorney's Fees, Costs and Expenses.** Upon the occurrence of an Event of Default, and if this Agreement is referred to an attorney for collection or suit is brought hereon, the Owner shall pay to the City all expenses and costs of collection, including, but not limited to,



reasonable attorney's fees. Any judgment recovered by the City or subsequent holder shall bear interest at twelve percent (12%) per annum on such judgment.

12.4. **Venue and Applicable Law.** The Owner agrees that the venue of any action hereon may be laid in the City of Spokane, Washington, at the option of the City or subsequent holder, and that this Agreement shall be construed according to the laws of the State of Washington.

13. **Miscellaneous.**

13.1. **County as Third Party Beneficiary.** The provisions of this Agreement are made for the benefit of, and are fully enforceable by, the County.

13.2. **Interest of Certain Federal Officials.** No member or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of the proceeds of the Loan, or to any benefit to arise from the same.

13.3. **Bonus, Commission, or Fee.** The Owner will not pay any bonus, commission or fee for the purpose of obtaining the County's approval of its application for the Loan, or any other approval or concurrence required by the County or its designee to complete the construction work financed in whole or in part with the Loan.

13.4. **Interest of City Personnel.** No member of the City who exercises any functions or responsibilities in connection with the administration of any of this program, and no other officer or employee of the City who exercises such functions or responsibilities, shall have any interest, direct or indirect, in the proceeds of the Loan, or in any contract or agreement entered into by the Owner for the performance of work financed in whole or in part with the proceeds of the Loan.

13.5. **Interest of Other Local Public Officials.** No member of the City Council and no other public official of the City who exercises any functions or responsibilities in connection with the administration of the Loan shall have any interest, direct or indirect, in the proceeds of the Loan, or in any contract or agreement entered into by the Owner for the performance of work financed in whole or in part with the proceeds of the Loan.

13.6. **Waiver of Personal Liability of Individuals.** No member, official or employee of the City shall be personally liable to the Owner or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Owner or its successor or on any obligation under the terms of this Agreement.

13.7. **Anti Lobbying.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the Owner, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering

into of any cooperative agreement, and the extension, continuation, renewal , amendment, or modification of any Federal contract, grant, loan or cooperative agreement. If any funding source other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit standard form LLL, "Disclosure Form to report lobbying in accordance with its instructions."

13.8. **Compliance With Laws and Requirements; Indemnification.** In the performance of this Agreement, the construction of improvements and the management of the Property, the Owner shall comply, in all material respects, with applicable Federal and Washington state laws, orders, rules and regulations as determined by agency having jurisdiction thereto, and the Owner shall defend, protect and save harmless the City, their officers and employees, from and against all claims, suits, actions, liability, loss, damage and expense arising from any failure of the Owner, its architect, agents, contractors or subcontractors, to comply with the same. Any such requirement which, under the applicable federal grant agreement, is required to be set forth in this Agreement is by this reference incorporated herein as though fully set forth at this point.

13.9. **Fees.** The Owner shall promptly pay upon demand of the City all of the City's costs in connection with the closing of the Loan, including, without limitation, its title insurance costs, recording fees, escrow fees, attorney's fees, loan fees and other expenses associated with the Loan. The Owner will further pay all costs incurred by the City in connection with any renewal or modification of the Loan or any other activity undertaken in connection with the administration of the Loan including, without limitation, the City's attorney's fees and costs.

13.10. **Limit of Liability.** All liability and obligation of the City arising pursuant to this Agreement and any payment to be made by the City pursuant to this Agreement shall be satisfied exclusively and solely from City funds made available for such purpose, and no creditor or other person or entity of whatever nature shall have any recourse to the assets, credits, or services of the City by reason of any liability or obligation arising out of this Agreement, and neither this Agreement nor any note, loan or other documents hereunder shall constitute a debt or indebtedness of the City within the meaning of any constitutional, statutory, local, or charter provision.

13.11. **Notices and Demands.** Any notice or demand which either party hereto is required or desires to give to or make upon the other shall be in writing and shall be delivered or made by United States registered or certified mail, return receipt requested, postage prepaid, addressed in the case of the City to:

The City of Spokane

808 West Spokane Falls Blvd

Spokane, WA 99201

and addressed in the case of the Owner to:

**ENTER BORROWER(S) NAME**

**ENTER PROPERTY LOCATION**

**CITY, STATE ZIP**

subject to the right of any such party to designate a different address by notice similarly given. Any notice or demand so sent shall be deemed to have been given or made when delivered as evidenced by the return receipt.

13.12. **Successors and Assigns.** The terms of this Agreement shall be binding upon the parties hereto, their respective successors and assigns; provided, however, the Owner shall not assign or transfer any of its rights, duties, benefits, obligations, liabilities or responsibilities under this Agreement without the express written consent of the City.

13.13. **Modification.** This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions hereof may be waived only by a written instrument signed by the parties or, in the case of a waiver, the party waiving compliance.

13.14. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

13.15. **Survival.** All warranties, representations, and covenants made by the Owner in this Agreement or in any certificate or other instrument delivered by the Owner to the City under this Agreement shall be considered to have been relied upon by the City and will survive the making of the Loan and delivery to the City of the Loan Documents, regardless of any investigation made by the City or on the City's behalf.

13.16. **Waiver.** The City shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by the City. No delay or omission on the part of the City in exercising any right shall operate as a waiver of such right or any other right. A waiver by the City of a provision of this Agreement shall not prejudice or

constitute a waiver of the City's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by the City, nor any course of dealing between the City and the Owner constitute a waiver of any of the City's rights or of any obligations of the Owner as to any future transactions. Whenever the consent of the City is required under this Agreement, the granting of such consent by the City in any instance shall not constitute continuing consent in subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of the City.

13.17. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**NOTICE CONCERNING ORAL AGREEMENTS**  
**Oral agreements or oral commitments to lend  
money, extend credit or to forbear from  
enforcing repayment of a debt are not**

**CITY OF SPOKANE**

\_\_\_\_\_  
**ENTER BORROWER(S) NAME**

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

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

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

\_\_\_\_\_  
Date

**EXHIBIT A**

**LEGAL DESCRIPTION**

**ENTER LEGAL DESCRIPTION OF PROPERTY**

When recorded, return to:

City of Spokane

808 West Spokane Falls Blvd.

Spokane, Washington 99201

## WATER AND SEWER REHABILITATION PROGRAM

### DEED OF TRUST

DATE: **ENTER DATE**

Reference # (if applicable) \_\_\_\_\_

Grantor(s):

1. **ENTER VESTED BORROWER'S NAME**
2. **ENTER VESTED BORROWER'S NAME**

Grantees

1. City of Spokane

Legal Description:

**ENTER LEGAL DESCRIPTION OF PROPERTY**

Assessor's Tax Parcel ID#: **ENTER ASSESSOR'S TAX PARCEL NUMBER**

This Deed of Trust – Water and Sewer Rehabilitation Program (“WSRP”) Program (“Deed of Trust”) is made as **ENTER DATE OF LOAN DOCS** by **ENTER BORROWER'S NAME(S), AND MARITAL STATUS**, whose address is **ENTER COMPLETE PROPERTY ADDRESS (“Borrower”)**, \_\_\_\_\_

\_\_\_\_\_ Title Insurance Company, whose address is: \_\_\_\_\_, WA  
\_\_\_\_\_ ("Trustee"), and the Beneficiary, City of Spokane, \_\_\_\_\_  
\_\_\_\_\_ a public corporation, whose address is: 808 West Spokane Falls Boulevard, Spokane,  
Washington 99201 ("Lender").

1. **Conveyance in Trust.** For the purpose of securing payment and performance of the obligations described in Section 2 below, Borrower grants, bargains, sells, conveys, mortgages and warrants to Trustee and Beneficiary, with power of sale and with right of entry and possession, all estate, right, title and interest which Borrower now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, the "Property"): (a) the real property located in the City of Spokane, Washington, as described in Exhibit A attached hereto and incorporated herein by reference ("Property"); (b) all buildings, structures and improvements now located or later to be constructed on the Property and all fixtures, now or later to be attached to all or any part of the Property and Improvements; (c) all existing and future appurtenances, privileges, easements, rights of way, franchises and tenements of the Property, including without limitation all minerals, oil, gas, other hydrocarbons and associated substances, and air rights, water, water rights and water stock; (d) all books and records pertaining to any and all of the Property; and (e) all proceeds of, additions and accretions to, substitutions and replacements for, and changes in the Property.

2. **Obligations Secured.** This Deed of Trust shall secure the following obligations:

2.1. **Note.** The repayment of the indebtedness evidenced by Borrower's Secured Promissory Note – WSRP Program in the principal sum of **SPELL THE AMOUNT OF THE LOAN** and 00/100 Dollars (**\$TYPE NUMERIC LOAN AMOUNT**), and all renewals, extensions and modifications thereof ("Note").

2.2. **Loan Documents.** Performance of the covenants of the Borrower contained in this Deed of Trust and in the WSRP Program Loan Agreement, dated **ENTER DATE OF LOAN DOCS** ("Loan Agreement"), the loan commitment letter from the Lender dated **ENTER DATE OF COMMITMENT LTR**, ("Commitment Letter"), the Agreement for Water and Sewer Rehabilitation Program Program between Lender and Borrower dated **ENTER DATE OF LOAN DOCS**, ("WSRP Agreement") and all other documents that Borrower executes in connection with the Loan, as defined in the Loan Agreement ("Loan Documents").

2.3. **Advances.** The payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust.

2.4. **Future Advances.** Payment of all future advances made by Lender, at Lender's option and at Borrower's request.

3. **Uniform Commercial Code Security Agreement.** This Deed of Trust is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in the items. Borrower agrees that Lender may file this Deed of Trust, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to



execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproduction of this Deed of Trust in such form as Lender may require to perfect a security interest with respect to the items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in the items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in this Deed of Trust as to such items. In exercising any of the remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in this Deed of Trust.

#### 4. **Construction Loan Provisions.**

4.1. **WSRP Agreement and Loan Agreement.** Borrower agrees to comply with the covenants and conditions of the WSRP Agreement, which is hereby incorporated by reference in and made a part of this Deed of Trust. All advances made by Lender pursuant to the Water and Sewer Rehabilitation Program Program shall be indebtedness of Borrower secured by this Deed of Trust, and such advances may be obligatory as provided in the WSRP Agreement. All sums disbursed by Lender prior to completion of the improvements to protect the security of this Deed of Trust up to the principal amount of the Note shall be treated as disbursements pursuant to the WSRP Agreement. All such sums shall bear interest from the date of disbursement at the highest contract rate which may be collected from Borrower under applicable law at the time and shall be payable upon notice from Lender to Borrower requesting payment therefore.

4.2. **Breach.** From time to time as Lender deems necessary to protect Lender's interests, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claim which relates to the construction of the Property and which Borrower may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the WSRP Agreement, Lender, at Lender's option, with or without entry upon the Property, (i) may invoke any of the rights or remedies provided in the agreement, (ii) may accelerate the sums secured by this Deed of Trust and invoke those remedies provided herein, or (iii) may do both.

#### 5. **Rights and Duties of Parties.**

5.1. **Real Property Covenants.** The Borrower covenants that (i) Borrower is lawfully seized of the estate hereby conveyed and has the right to grant, convey and assign the Property; (ii) the Property is unencumbered; and (iii) Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.



5.2. **Payment.** The Borrower shall promptly pay when due the indebtedness evidenced by the Note and all other sums secured by this Deed of Trust if and when such payment is required.

5.3. **Charges; Liens.** The Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums and other impositions attributable to the Property by Borrower making payment, when due, directly to the payee thereof, of in such manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this Section, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. The Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Deed of Trust, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, the Borrower shall not allow any lien, mortgage or other encumbrance inferior to this Deed of Trust to be perfected against the Property.

5.4. **Hazard Insurance:**

5.4.1 **Duty to Insure Property.** The Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to the Lender against loss by fire, hazards included within the term "extended coverage," rent loss and such other hazards, casualties, liabilities and contingencies as Lender shall require and in such amounts and for such periods as Lender shall require. All premiums or insurance policies shall be paid by the Borrower making payment, when due, directly to the carrier, or in such other manner as the Lender may designate in writing.

5.4.2 **Policies.** All insurance policies and renewals thereof shall be in a form acceptable to the Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. The Lender shall have the right to hold the policies, and the Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of a policy, the Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender.

5.4.3 **Loss.** In the event of loss, the Borrower shall give immediate written notice to the insurance carrier and to the Lender. The Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (i) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property or (ii) to apply the balance of such proceeds to the payment of the sums secured by this Deed of Trust, whether or not then due.

5.4.4 **Proceeds.** If the insurance proceeds are held by the Lender to reimburse the Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. The Lender may, at Lender's option, condition disbursement of the proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen

and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the Property is sold pursuant to this Deed of Trust or if the Lender acquires title to the Property, Lender shall have all of the right, title and interest of the Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

**5.5. Preservation and Maintenance of Property.** The Borrower (i) shall not commit waste or permit impairment or deterioration of the Property, (ii) shall not abandon the Property, (iii) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as the Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (v) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, and (vi) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Deed of Trust or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

**5.6. Use of Property.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Borrower shall not initiate or acquire or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

**5.7. Protection of Lender's Security.**

**5.7.1 Lender's Rights.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankruptcy debtor or decedent, then Lender, at Lender's option, may make such appearance, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in this Deed of Trust.

**5.7.2 Additional Indebtedness.** Any amounts disbursed by Lender pursuant to this Section, with interest thereon, shall become additional indebtedness of the Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the

indebtedness secured hereby. Nothing contained in this Section shall require Lender to incur any expense or take any action hereunder.

5.8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property.

5.9. **Books and Records.** Borrower shall keep and maintain at all times at Borrower's address stated below, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Upon Lender's request, Borrower shall furnish to Lender a balance sheet, a statement of income and expenses of the Property and a statement of charges in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant. Borrower shall furnish, together with the foregoing financial statements and at any other time upon Lender's request, a rent schedule for the Property, certified by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable, the rent paid and such other information as the Lender shall require.

5.10. **Condemnation.**

5.10.1 **Proceedings.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to Lender.

5.10.2 **Award.** Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust, whether or not then due, with the balance, if any, to Borrower. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

5.11. **Borrower and Lien not Released.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, extend the time for payment of the indebtedness or any part thereof, reduce payments thereon, release anyone liable on any of the indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release from the lien of this Deed of Trust any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination

agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this Section shall not affect the obligation of Borrower to Borrower's successors or assigns to pay the sums secured by this Deed of Trust and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

5.12. **Forbearance by Lender not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Deed of Trust after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust, nor shall Lender's receipt of any awards, proceeds or damages under this Deed of Trust operate to cure or waive Borrower's default in payment of sums secured by this Deed of Trust.

5.13. **Estoppel Certificate.** Borrower shall within ten (10) days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

5.14. **Reconveyance.** Upon payment or forgiveness of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

## 6. **Transfers of Property.**

6.1. **Prohibited Transfers.** On (i) sale or transfer of all or any part of the Property, or any interest therein, including leasing or renting the property, or (ii) the granting of any deed of trust or other encumbrance on the Property subordinate to this Deed of Trust, the Lender may, at Lender's option, declare all sums secured by this Deed of Trust to be immediately due and payable and may invoke any remedies permitted by this Deed of Trust.

6.2. **Exceptions.** This option shall not apply in the case of sales or transfers of fixtures or any personal property incident to replacement with items of like kind.

## 7. **Default and Acceleration; Remedies.**

7.1. **Default.** For purposes of this Deed of Trust, "default" is Borrower's breach of, or failure to comply with, any covenant, agreement, term or condition contained in the Note, this Deed of Trust, the Loan Agreement or any other Loan Documents. Default shall include, but not be limited to:

7.1.1 **Default on Indebtedness.** Failure of Borrower to pay when due any sum owing hereunder or under any of the other Loan Documents.

7.1.2 **Failure to Repair or Replace.** Failure of Borrower to complete the required repairs in accordance with the approved plans and specifications and the WSRP Agreement within a reasonable time, as determined by Lender, from the date hereon.

7.1.3 **Unapproved Transfer.** Borrower's sale, transfer or other disposition of the Property without the Lender's prior written consent, excluding the creation of a purchase money security interest for household appliances.

7.1.4 **Failure to Reside in Property.** Borrower's failure at any time to reside in the Property as Borrower's primary residence.

7.1.5 **Failure to Comply.** Borrower's failure to comply with any covenant, agreement, term or condition contained in this Note or in any of the Loan Documents.

7.1.6 **Other Defaults.** Borrower's failure to pay, or other default, in any other indebtedness secured by the Property.

7.1.7 **Appointment of Receiver, Etc.; Insolvency.** The appointment of a receiver or liquidator for the Borrower or Borrower's property, the filing of any state or federal bankruptcy or insolvency petition by or against the Borrower, or any assignment by Borrower for the benefit of Borrower's creditors.

7.1.8 **Death.** Borrower's death or, if Borrower is a husband and wife forming a marital community, the death of both husband and wife.

7.1.9 **False Statements.** Any warranty, representation, or statement made or furnished to Lender by or on behalf of Borrower under this Note or the Loan Documents is false or misleading in any material respect at the time made or furnished, or becomes false or misleading at any time thereafter.

7.1.10 **Defective Collateralization.** This Note or any of the Loan Documents ceases to be in full force and effect (including failure of any security agreement to create a valid and perfected security interest) at any time and for any reason

7.2. **Acceleration.** Upon Borrower's default and after expiration of any required notice period, Lender, at Lender's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand. After giving Borrower notice of default in the manner prescribed by applicable law, Lender may invoke the power of sale and any other remedies permitted by applicable law or provided herein. Borrower acknowledges that the power of sale herein granted may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the nonexistence of a breach or any other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees and costs of documentary evidence, abstracts and title reports.

7.3. **Sale.** If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's decision to cause the Property to be

sold. Trustee and Lender shall give such notices as the laws of Washington may require to Borrower and to such other persons as the laws of Washington prescribe, and after the lapse of such time as may be required by applicable law, Trustee shall sell the Property according to the laws of Washington. Trustee may sell the Property at any time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property for a period or periods not exceeding a total of one hundred twenty (120) days by public announcement at the time and place fixed in the notice of sale. Lender or Lender's designee may purchase the Property at any sale.

7.4. **Deed and Proceeds.** Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including, but not limited to, Trustee's and attorney's fees and costs of title evidence; (ii) to all sums secured by this Deed of Trust in such order as Lender, in Lender's sole discretion, directs; and (iii) the excess, if any, to the clerk of the superior court of the county in which the sale took place.

7.5. **Remedies Cumulative.** Each remedy provided in this Deed of Trust is distinct and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

7.6. **Waiver of Marshalling.** Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of such assets in connection with the exercise of any remedies permitted by applicable law or provided herein.

## 8. **Miscellaneous.**

8.1. **Notice.** Except for any notice required under applicable law to be given in another manner, (i) any notice to Borrower provided for in this Deed of Trust or in the Note shall be given by mailing such notice addressed to Borrower at Borrower's address stated below or at such other address as Borrower may designate by notice to Lender as provided herein, and (ii) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust or in the Note shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

8.2. **Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, the Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the Sections of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

8.3. **Waiver of Statute of Limitations.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligations secured by this Deed of Trust.

8.4. **Substitute Trustee.** In accordance with applicable law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

8.5. **Use of Property.** The Property is not used principally for agricultural or farming purposes.

**NOTICE CONCERNING ORAL AGREEMENTS**  
Oral agreements or oral commitments to lend  
money, extend credit or to forbear from  
enforcing repayment of a debt are not

**BORROWER:**

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ENTER BORROWER'S NAME(S)

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ENTER BORROWER'S NAME(S)

Borrower's Address:

PROPERTY LOCATION

CITY, STATE ZIP

State of Washington

County of Spokane

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
\_\_\_\_\_ (is/are) the person(s) who appeared before me, and said person(s) acknowledged that  
(he/she/they) signed this instrument and acknowledged it to be (his/her/their) free and voluntary act  
for the uses and purposes mentioned in the instrument.

Witness my hand and official seal.

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

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
Residing in: \_\_\_\_\_

Appointment Expires: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION**

**ENTER THE LEGAL DESCRIPTION OF PROPERTY**