



Agenda draft of March 25, 2025
WIFIA CUSIP Number: 421200HX7

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA LOAN AGREEMENT

For Up to \$244,139,000

With

CITY OF HAYWARD, CALIFORNIA

For the

**WATER RESOURCE RECOVERY FACILITY IMPROVEMENTS PHASE II PROJECT
WIFIA ID – N23117CA**

Dated as of [April 15], 2025

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WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between the Borrower (as defined herein) and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America (“**EPA**”), acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, §5021 *et seq.* of Public Law 113-121 as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements for the Nation Act of 2016, Section 4201 of America’s Water Infrastructure Act of 2018, and by Sections 50214 and 50215 of the Infrastructure Investment and Jobs Act of 2021 (collectively, as the same may be amended from time to time, the “**Act**” or “**WIFIA**”), which is classified at 33 U.S.C. §§3901-3915;

WHEREAS, the Act authorizes the WIFIA Lender to enter into agreements to provide financial assistance with one or more eligible entities to make secured loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower has requested that the WIFIA Lender make the WIFIA Loan (as defined herein) in a principal amount not to exceed the Maximum Principal Amount (as defined herein) to be used to pay a portion of the Eligible Project Costs (as defined herein) pursuant to the Application (as defined herein);

WHEREAS, pursuant to the WIFIA Term Sheet (as defined herein), the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of the WIFIA Loan, subject to the terms and conditions contained herein;

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Lender proposes to make funding available to the Borrower for a

portion of the costs of the Project through the issuance of the WIFIA Note (as defined herein), upon the terms and conditions set forth herein;

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Note in accordance with the terms and provisions hereof and of the WIFIA Note; and

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the Borrower set forth in the Application and the supporting information provided by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Lender as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

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

“**2025 Bonds**” has the meaning ascribed to such term in the 2025 Indenture.

“**2025 Indenture**” means that certain Indenture of Trust, between the Borrower and The Bank of New York Mellon Trust Company, N.A., as the Trustee, dated as of March 1, 2025.

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

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

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

“**Additional Obligations**” means Additional Senior Obligations and Additional Subordinated Obligations.

“**Additional Senior Obligations**” means any Senior Obligations issued or incurred after the Effective Date and permitted under Section 15(a) (*Indebtedness*).

“**Additional Subordinated Obligations**” means any Subordinated Obligations issued or incurred after the Effective Date and permitted under Section 15(a) (*Indebtedness*).

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

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

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

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

“**Bankruptcy Related Event**” means, with respect to the Borrower, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 8 (*Repayments*) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Collateral in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the holders of the Obligations, funds on deposit in any of the System Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement for application to the prepayment or repayment of any principal amount of the Senior Obligations.

“**Base Case Financial Model**” means the financial model or plan, prepared by the Borrower and delivered to the WIFIA Lender as part of the Application, forecasting the capital costs of the System (including the Project) and the estimated debt service coverage, rates, revenues, operating expenses and major maintenance requirements of the System (as may be applicable) for the Forecast Period based upon assumptions and methodology provided by the Borrower and

acceptable to the WIFIA Lender as of the Effective Date, which model or plan shall have been provided to the WIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format agreed to by the WIFIA Lender.

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

“**Borrower Fiscal Year**” means (a) as of the Effective Date, the Initial Borrower Fiscal Year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Lender in accordance with **Part E of Schedule V** (*Reporting Requirements*).

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

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or the Project Location.

“**Capitalized Interest Period**” has, if applicable, the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means capitalized interest shall not be applicable with respect to the WIFIA Loan hereunder.

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

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

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

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

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

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

“**Debt Service**” means, as of any date, with respect to any Obligation, the aggregate amount of principal and interest scheduled to become due (either at maturity or by mandatory redemption), calculated with the following assumptions:

(a) principal payments (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) are made in accordance with any amortization schedule published for such principal, including any minimum sinking fund payments;

(b) interest on a variable rate Obligation that is not subject to a swap agreement and that is issued or will be issued as a tax-exempt obligation under federal law, is the average of the Securities Industry and Financial Markets Association (“SIFMA”) Municipal Swap Index, or its successor index, during the 24 months preceding the date of such calculation;

(c) interest on a variable rate Obligation that is not subject to a swap agreement and that is issued or will be issued as a taxable obligation under federal law, is the average of the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (“SOFR”), or its successor index, during the 24 months preceding the date of such calculation;

(d) interest on a variable rate Obligation that is subject to a swap agreement is the fixed swap rate or cap strike rate, as appropriate, if the variable rate has been swapped to a fixed rate or capped pursuant to an interest rate cap agreement or similar agreement;

(e) interest on a fixed rate Obligation that is subject to a swap agreement such that all or a portion of the interest has been swapped to a variable rate shall be treated as variable rate debt under subsections (b) or (c) of this definition of Debt Service;

(f) payments of principal and interest on an Obligation are excluded from the calculation of Debt Service to the extent such payments are to be paid from amounts then currently on deposit with a trustee or other fiduciary and restricted for the payment of Debt Service on such Obligation; and

(g) if 25% or more of the principal of an Obligation is not due until its final stated maturity or within a 12-month period of such final stated maturity, then principal of such Obligation may be projected to amortize over the lesser of 30 years or the useful life of the financed asset, and interest may be calculated according to the debt service schedule for such Obligation or subsections (b)-(e) of this definition of Debt Service, as appropriate.

For the avoidance of doubt, interest on any fixed rate Obligation that is not described in any of subsections (a)-(e) of this definition of Debt Service shall be calculated in accordance with the debt service schedule for such Obligation.

“**Debt Service Payment Commencement Date**” means the earlier to occur of (a) the first Payment Date immediately following the later of (i) the first Disbursement or (ii) if there is a

Capitalized Interest Period, the end of the Capitalized Interest Period, in each case as set forth in the WIFIA Loan Amortization Schedule; or (b) the Payment Date falling closest to, but not later than, the fifth anniversary after the Substantial Completion Date.

“**Default**” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

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

“**Development Default**” (a) the Borrower abandons work or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to the Project or (b) the Borrower fails to achieve Substantial Completion of the Project by the Development Default Date, unless such failure to achieve Substantial Completion shall occur by reason of an Uncontrollable Force that is not due to the fault or gross negligence of the Borrower (and which the Borrower could not reasonably have avoided or mitigated), in which case the Development Default Date shall be extended by the number of days equal to the duration of such Uncontrollable Force.

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

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

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

“**DUNS Number**” means, with respect to any Person, a Data Universal Numbering System number issued by Dun and Bradstreet (or a successor entity), or any subsequent number issued by the Federal Government (including through SAM.gov) as the unique entity identifier for such Person.

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

“**Electronic Signature**” means any electronic sound, symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to the California Uniform Electronic Transaction Act (Cal. Civ. Code § 1633.1, et seq.), as amended from time to time and all other applicable law.

“**Eligible Project Costs**” means amounts in the Project Budget approved by the WIFIA Lender, which amounts are paid by or for the account of the Borrower in connection with the Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance and eligible costs that were initially funded with Interim Financing proceeds), which shall arise from the following:

(a) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting,

environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

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

(c) the acquisition of real property or an interest in real property (including water rights, land relating to the Project and improvements to land), environmental mitigation (including acquisitions pursuant to 33 U.S.C. §3905(8)), construction contingencies, and acquisition of equipment; or

(d) capitalized interest (with respect to Obligations other than the WIFIA Loan) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided, that Eligible Project Costs must be consistent with all other applicable federal law, including the Act.

“Eligible Project Costs Documentation” means all supporting documentation with respect to the Eligible Project Costs, including copies of invoices and records evidencing incurred or previously paid Eligible Project Costs, which documentation should contain sufficient detail satisfactory to the WIFIA Lender (e.g., if the Borrower intends to utilize WIFIA Loan proceeds to make construction progress payments for Eligible Project Costs, the documentation should demonstrate that such progress payments are commensurate with the cost of the work that has been completed).

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

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

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

“Event of Loss” means any event or series of events that causes any portion of the System to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a casualty, a failure of title, or any loss of such property through eminent domain.

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

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

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

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

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

“**Final Disbursement Date**” means the earliest of (a) the date on which the WIFIA Loan has been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current WIFIA Loan Disbursement Schedule; (c) the date as of which the Borrower has certified to the WIFIA Lender that it will not request any further disbursements under the WIFIA Loan; (d) the date on which the WIFIA Lender terminates its obligations relating to disbursements of any undisbursed amounts of the WIFIA Loan in accordance with Section 17 (*Events of Default and Remedies*); and (e) the date that is one (1) year after the Substantial Completion Date.

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

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

“**Fitch**” means Fitch, Inc., doing business as Fitch Ratings, and its successors.

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

“**Forecast Period**” means, as of any date, the time period from and including the then-current Borrower Fiscal Year until the later ending date of either (a) the five (5) immediately succeeding Borrower Fiscal Years or (b) the end of the Borrower Fiscal Year in which the Borrower’s then-currently effective capital improvement plan for the System concludes.

“**GAAP**” means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for governmental entities), in effect from time to time in the U.S.

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

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

“Government Obligations” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the U.S. Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

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

“Independent Accountant” means any accountant or firm of such accountants appointed and paid by the Borrower, and who, or each of whom (a) is in fact independent and not under domination of the Borrower; (b) does not have any substantial interest, direct or indirect, with the Borrower; and (c) is not connected with the Borrower as an officer or employee of the Borrower, but who may be regularly retained to make annual or other audits of the books of or reports to the Borrower.

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

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

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

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

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

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

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

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

“**Lien**” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“**Loss Proceeds**” means any proceeds of builders’ risk or casualty insurance (other than any proceeds from any policy of business interruption insurance insuring against loss of revenues upon the occurrence of certain casualties or events covered by such policy of insurance) or proceeds of eminent domain proceedings resulting from any Event of Loss.

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

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

“**Nationally Recognized Rating Agency**” means any nationally recognized statistical rating organization registered with, and identified as such by, the Securities and Exchange Commission.

“**NEPA**” means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

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

“**Net Revenues**” means, for any Borrower Fiscal Year, the Revenues for such Borrower Fiscal Year, less Operations and Maintenance Expenses for such Borrower Fiscal Year.

“**Obligations**” means debt of the Borrower that is secured by a pledge and Lien on all or a portion of the Revenues, including the Senior Obligations and Subordinated Obligations.

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

“**Operations and Maintenance Expenses**” means the reasonable and necessary costs paid or incurred by the Borrower to maintain and operate the System, determined in accordance with generally accepted accounting principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and

working order. It includes all reasonable and necessary administrative costs of the Borrower that are charged directly or apportioned to System operation, such as employee salaries and wages, overhead, taxes (if any), permit and license costs, operational charges, and insurance premiums. It excludes, in all cases, depreciation, replacement, and obsolescence charges or reserves therefor, amortization of intangibles and interest expense relating to Subordinated Obligations and unsecured obligations of the Borrower. For the avoidance of doubt, bookkeeping entries and capital charges are excluded from Operations and Maintenance Expenses.

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

“Other Financing Documents” means any agreement, instrument, or document (excluding the WIFIA Loan Documents) entered into between the Borrower and a holder of Obligations providing for the issuance of Obligations secured by a pledge and Lien on all or a portion of the Revenues.

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

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

“Payment Date” means each Interest Payment Date and each Principal Payment Date.

“Payment Default” has the meaning provided in Section 17(a)(i) (*Payment Default*).

“Permitted Debt” means:

- (a) Existing Indebtedness;
- (b) the WIFIA Loan;
- (c) Additional Senior Obligations that satisfy the requirements of Section 15(a) (Indebtedness);
- (d) Additional Subordinated Obligations that satisfy the requirements of Section 15(a) (Indebtedness); and
- (e) indebtedness incurred in respect of hedging transactions permitted under the WIFIA Loan Documents.

“Permitted Investments” means:

- (a) Government Obligations;
- (b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;
- (c) repurchase agreements with creditworthy counterparties, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;
- (d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest rating categories for comparable types of obligations by any Nationally Recognized Rating Agency; and
- (e) money market funds that invest solely in obligations of the U.S., its agencies and instrumentalities, and having a rating by a Nationally Recognized Rating Agency equal to the then applicable rating of the U.S. by such Nationally Recognized Rating Agency.

“Permitted Liens” means:

- (a) The Lien imposed pursuant to the WIFIA Loan Documents;
- (b) The Liens imposed pursuant to the SRF Loan Agreement while the SRF Loan is outstanding and pursuant to the 2025 Indenture while the 2025 Bonds are outstanding;
- (c) Liens securing Additional Senior Obligations that satisfy the requirements of Section 15(a) (Indebtedness) and Liens securing Additional Subordinated Obligations that satisfy the requirements of Section 15(a) (Indebtedness);
- (d) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(j) (Material Obligations);
- (e) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 14(j) (Material Obligations);
- (f) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;
- (g) deposits to secure the performance of trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (h) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 17(a)(viii) (Material Adverse Judgment); and
- (i) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority, including in each case such Person’s successors and permitted assigns.

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

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

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

“**Project Budget**” means the budget for the Project attached to this Agreement as **Part A of Schedule II** (*Project Details*) showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project.

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

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

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

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

“**Related Documents**” means the WIFIA Loan Documents and the Other Financing Documents.

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

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

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

“**S&P**” means S&P Global Ratings, of New York, New York, and its successors.

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

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

“**Senior Obligations**” means (a) Existing Indebtedness that ranks *pari passu* in right of payment and right of security with the WIFIA Note and (b) Additional Senior Obligations that rank senior in right of payment and right of security to the Subordinated Obligations.

“**Senior Obligation Documents**” means, collectively, all leases, installment sale agreements, trust agreements, indentures of trust and other documents prescribing the terms and provisions applicable to any issue of Senior Obligations.

“**Servicer**” means such entity or entities as the WIFIA Lender shall designate from time to time to perform, or assist the WIFIA Lender in performing, certain duties hereunder.

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

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

“**Sewer Rate Stabilization Fund**” means the fund described in Annex D to Schedule I of this Agreement.

“**SRF Loan**” means the payment obligation of the Borrower under the SRF Loan Agreement.

“**SRF Loan Agreement**” means the Agreement, dated as of July 27, 2006, between the Borrower and the California State Water Resources Control Board.

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

“**Subordinated Obligations**” means any Obligation that is fully subordinated to the WIFIA Loan and the WIFIA Note in priority of payment (as to both principal and interest), voting and priority of security interest in the Pledged Collateral, including with respect to payment from revenues and reserves and payment upon default or acceleration of any such Obligations.

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

“**Substantial Completion Date**” means the date on which the Borrower certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender and notice to the WIFIA Lender in accordance with **Part E of Schedule V** (*Reporting Requirements*), that Substantial Completion has occurred.

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

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

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

“**Total Project Costs**” means without duplication Eligible Project Costs and all other (a) costs paid or incurred or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing costs (including costs of issuance) related thereto, including eligible costs that were initially funded with Interim Financing proceeds; (b) amounts, if any, required by the WIFIA Loan Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan or any other Obligations, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) in respect of any indebtedness of the Borrower (other than the WIFIA Loan), in each case in connection with the acquisition, design, construction and equipping of the Project; and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“**UEI**” means, with respect to any Person, a Unique Entity Identifier issued as part of the SAM.gov registration process, or any subsequent number issued by the Federal Government, as the unique entity identifier for such Person.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, pandemic, or act of God (provided, that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided, that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

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

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

“**Wastewater Capital Reserve Fund**” has the meaning set forth in Section 14(p) (*Wastewater Capital Reserve Fund*) of this Agreement.

“**Weighted Average Life**” means, with respect to the WIFIA Loan, as of any date, the number of years (rounded to the nearest one-twelfth) obtained by dividing: (a) the product obtained by multiplying (i) the amount of WIFIA Loan principal payable as of each Principal Payment Date

by (ii) the number of years that will elapse between such date and the making of such payment of principal; by (b) the Outstanding WIFIA Loan Balance as of such date.

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

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

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

“**WIFIA Debt Service**” means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the WIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of occurrence of any Bankruptcy Related Event), in each case, (a) as set forth on the WIFIA Loan Amortization Schedule and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of WIFIA Debt Service*).

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

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

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

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

“**WIFIA Lender**” has the meaning provided in the preamble hereto.

“**WIFIA Lender’s Authorized Representative**” means the Administrator and any other Person who shall be designated as such pursuant to Section 22 (*WIFIA Lender’s Authorized Representative*).

“**WIFIA Loan**” means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed the Maximum Principal Amount, to be used to pay Eligible Project Costs.

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

“**WIFIA Loan Balance**” means (a) the aggregate principal amount of the WIFIA Loan disbursed by the WIFIA Lender to the Borrower hereunder, *plus* (b) if applicable, capitalized interest added to the principal balance of the WIFIA Loan pursuant to Section 8(a)(iii) (*Payments of WIFIA Debt Service*), *minus* (c) the aggregate principal amount of the WIFIA Loan repaid or prepaid by the Borrower, as reflected from time to time in the WIFIA Loan Amortization Schedule in accordance with Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*).

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

“**WIFIA Loan Documents**” means this Agreement and the WIFIA Note.

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

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

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

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

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

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

(e) Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry.

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

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

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

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

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

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

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

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

ARTICLE II THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed the Maximum Principal Amount (excluding interest that is capitalized in accordance with this Agreement).

Section 4. Disbursement Conditions.

(a) WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the Borrower in connection with the Project, including, for the avoidance of doubt, Eligible Project Costs that were initially funded with Interim Financing proceeds. Each Disbursement of the WIFIA Loan shall be made pursuant to the procedures of **Schedule IV** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent*

to Disbursements); provided, that no Disbursements shall be made after the Final Disbursement Date.

(b) Subject to this Section 4, any scheduled Disbursement (as reflected in the WIFIA Loan Disbursement Schedule) that remains undrawn as of its scheduled date shall automatically be available for any scheduled Disbursement date thereafter, up to the Final Disbursement Date, with the effect of automatically updating the WIFIA Loan Disbursement Schedule (and the WIFIA Loan Amortization Schedule) without need for the WIFIA Lender's written approval. The Borrower may also amend the WIFIA Loan Disbursement Schedule by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be deemed granted if the WIFIA Lender has not objected within thirty (30) days from receipt of the revised schedule, and which approval shall have the effect of updating the WIFIA Loan Amortization Schedule to reflect the updated WIFIA Loan Disbursement Schedule. Notwithstanding the foregoing, the date of the first Disbursement shall not be earlier than the initial date of Disbursement set out in the WIFIA Loan Amortization Schedule as of the Effective Date.

Section 5. Term. The term of the WIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been indefeasibly paid in full.

Section 6. Interest Rate. The Borrower shall pay interest on the WIFIA Loan Balance at the WIFIA Interest Rate; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the WIFIA Loan Balance at the Default Rate, (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment of the overdue amount of principal of the WIFIA Loan and accrued interest thereon and (b) in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement or waived by the WIFIA Lender and (ii) the WIFIA Loan Balance has been indefeasibly paid in full. Interest shall (x) accrue on the WIFIA Loan commencing on the date of the first disbursement of the WIFIA Loan, (y) be payable commencing on the Debt Service Payment Commencement Date and (z) be computed on the WIFIA Loan Balance on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

Section 7. Security and Priority; Flow of Funds.

(a) As security for the WIFIA Loan, and concurrently with the issuance and delivery of this Agreement, the Borrower hereby pledges, assigns and grants to the WIFIA Lender for its benefit, a Lien on the Pledged Collateral to the extent and in the manner and priority set forth in the WIFIA Loan Documents. The Lien on Net Revenues to secure the WIFIA Loan for the benefit of the WIFIA Lender is and shall be (i) on a parity in right of payment and right of security to the Lien on Net Revenues in favor of the Senior Obligations and (ii) senior in right of payment and right of security to the Lien on Net Revenues in favor of the Subordinated Obligations. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower

shall issue and deliver to the WIFIA Lender, as the registered owner, on or prior to the Effective Date, the WIFIA Note.

(b) Amounts deposited in the Revenue Account shall be applied in the order of priority described in, and in accordance with, the Flow of Funds.

(c) The WIFIA Loan shall be additionally secured by the WIFIA Debt Service Account, including all amounts on deposit therein or credited thereto, which is pledged pursuant to this Agreement only to the WIFIA Lender and any subsequent holder of the WIFIA Note.

Section 8. Repayments.

(a) Payment of WIFIA Debt Service.

(i) No WIFIA Debt Service shall be due or payable prior to the Debt Service Payment Commencement Date. The Borrower shall pay (A) WIFIA Debt Service in the amounts and manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule, as the same may be revised pursuant to Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*) and (B) payments of any other amounts on each other date on which payment thereof is required to be made hereunder; provided, that, in either case if any such date is not a Business Day, payment shall be made on the next Business Day following such date. WIFIA Loan proceeds borrowed and repaid may not be reborrowed.

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

(iii) If a Capitalized Interest Period is applicable as set forth in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), during the Capitalized Interest Period, no payment of principal or interest on the WIFIA Loan will be required to be made. On each Interest Payment Date occurring during the Capitalized Interest Period (including the day immediately following the end of the Capitalized Interest Period), interest accrued and not paid on the WIFIA Loan during each such six (6) month period shall be capitalized and added to the WIFIA Loan Balance, as set forth in the WIFIA Loan Amortization Schedule. Within thirty (30) days after the end of the Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower stating the WIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other WIFIA Loan Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the Borrower by the WIFIA Lender that an Event of Default has occurred and that the WIFIA Lender is ending the Capitalized Interest Period, in which case interest shall no longer be capitalized, payments of interest shall be due and payable beginning on the next Interest Payment Date

and payments of principal shall be due and payable beginning on the next Principal Payment Date, in each case in accordance with the terms hereof.

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

(v) Any defeasance of the WIFIA Loan in accordance with applicable law shall not be deemed a repayment or prepayment of the WIFIA Loan in full, and the Borrower shall comply with all of its obligations hereunder and under the other WIFIA Loan Documents (other than with respect to payments of WIFIA Debt Service, which payments shall continue to be made in accordance with the WIFIA Loan Amortization Schedule by the succeeding entity assuming the Borrower's payment obligations), unless otherwise agreed by the WIFIA Lender, until the irrevocable payment in full in immediately available funds of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto.

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

(c) Adjustments to WIFIA Loan Amortization Schedule.

(i) The WIFIA Lender may, from time to time, modify the WIFIA Loan Amortization Schedule included in **Schedule VI (WIFIA Loan Amortization Schedule)** to reflect (A) any change to the WIFIA Loan Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower hereunder in accordance with this Agreement, (C) any mathematical corrections as the WIFIA Lender may determine are necessary, and (D) with the written consent of the Borrower (not to be unreasonably withheld), such other information as the WIFIA Lender may determine is necessary for administering the WIFIA Loan and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the WIFIA Loan Amortization Schedule as a result of a decrease in the WIFIA Loan Balance shall be applied to reduce future payments due on the WIFIA Loan in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(b) (*General Prepayment Instructions*). If the WIFIA Loan Amortization Schedule is modified pursuant to this Section 8(c), the WIFIA Lender shall provide the Borrower with a copy of such revised WIFIA Loan Amortization Schedule, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents. The WIFIA Lender may also, from time to time or when so requested by the

Borrower, advise the Borrower by written notice of the amount of the WIFIA Loan Balance as of the date of such notice. Absent manifest error, the WIFIA Lender's determination of the WIFIA Loan Balance and all matters as set forth on the WIFIA Loan Amortization Schedule shall be deemed conclusive evidence thereof absent manifest error; provided, that neither the failure to make any such determination, modification, or recordation nor any error in such determination, modification, or recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

(ii) The Borrower shall have the right to propose adjustments to the WIFIA Loan Amortization Schedule with respect to the WIFIA Loan exercisable once on or prior to the date that is one hundred and twenty (120) days preceding the first Principal Payment Date, such adjustments to be submitted by the Borrower to the WIFIA Lender in the form of an updated Schedule VI (*WIFIA Loan Amortization Schedule*), together with (i) an explanation setting out the reason for such proposed adjustments (such as material unforeseen changes to the Project schedule, costs, or the Borrower's funding strategy), (ii) an updated rating affirmation or current public rating from a Nationally Recognized Rating Agency on the WIFIA Loan (or other Senior Obligations, as the WIFIA Lender may agree) demonstrating the Borrower's continued creditworthiness, and (iii) a certificate, to be satisfactory to the WIFIA Lender in its sole discretion, reflecting the proposed adjustments to the WIFIA Loan Amortization Schedule; provided that (x) the form of and any adjustment to the WIFIA Loan Amortization Schedule, together with the Borrower's explanation and the rating affirmation, shall be acceptable to the WIFIA Lender, (y) the Weighted Average Life of the WIFIA Loan shall not exceed 42 (forty-two) years measured as of the initial disbursement date of the WIFIA Loan and (z) the WIFIA Loan Amortization Schedule shall comply with all applicable requirements under this Agreement and law, including the Additional Bonds Test. Such revised WIFIA Loan Amortization Schedule shall become effective upon the approval by the WIFIA Lender in its sole discretion.

Section 9. Prepayment.

(a) Optional Prepayments. The Borrower may prepay the WIFIA Loan, without penalty or premium, (i) in full on any Business Day or (ii) in part on any Payment Date (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, that such prepayment shall be in a principal amount of \$1,000,000 plus any integral multiple of \$1.00 in excess thereof), in each case from time to time but not more than once annually in accordance with 33 U.S.C. §3908(c)(4)(A). The Borrower may make such prepayment by paying to the WIFIA Lender such principal amount of the WIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment and all fees and expenses then due and payable to the WIFIA Lender. Each prepayment of the WIFIA Loan pursuant to this Section 9(a) shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice, signed by the Borrower's Authorized Representative and delivered to the WIFIA Lender not less than thirty (30) days prior to the requested date of prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA

Lender. Anything in this Section 9(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of the entire WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the WIFIA Note to the Borrower or its authorized representative, in accordance with Section 31 (*Notices*) or as otherwise agreed between the parties hereto. If the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender may make a notation on the WIFIA Loan Amortization Schedule indicating the amount of principal of and interest on the WIFIA Loan then being prepaid. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on an updated WIFIA Loan Amortization Schedule shall be conclusive evidence thereof; provided, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. All partial prepayments of principal shall be applied to reduce the WIFIA Loan Balance such that the remaining scheduled principal payments for the WIFIA Loan set out in the WIFIA Loan Amortization Schedule are reduced substantially *pro rata*. If such funds have not been so paid on the prepayment date, such principal amount of the WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 10. Fees and Expenses.

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

(i) the Servicing Set-Up Fee, which shall be due and payable within thirty (30) days after receipt by the Borrower of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the date of the first Disbursement of the WIFIA Loan);

(ii) the Construction Period Servicing Fee, which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the period beginning from the Effective Date through (and including) the end of the Federal Fiscal Year during which the Substantial Completion Date occurs; provided, that the Initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt by the Borrower of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the date of the first Disbursement of the WIFIA Loan); and

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

(b) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) and each Operating Period Servicing Fee shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year during which such fee is due. The WIFIA Lender shall notify the Borrower of the amount of each such fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(c) Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt by the Borrower of any invoice from the WIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Loan Documents and the transactions hereby and thereby contemplated, including attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with: (i) the enforcement of or attempt to enforce, or the monitoring, protection or preservation of any right or claim under, the Lien on the Pledged Collateral or any provision of this Agreement or any of the other WIFIA Loan Documents or the rights of the WIFIA Lender thereunder; (ii) any amendment, modification, re-execution, waiver, or consent with respect to this Agreement or any other WIFIA Loan Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default.

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

ARTICLE III CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

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

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

(ii) The Borrower shall have delivered to the WIFIA Lender a complete and fully executed copy of each Related Document with respect to the issuance or incurrence of any obligations all or a portion of the proceeds of which obligations are or will be applied to fund all or any portion of Total Project Costs, in each case that has been

entered into on or prior to the Effective Date, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect, and that all conditions contained in such other Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled.

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

(iv) Counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-1** (*Opinions Required from Counsel to Borrower*) and bond counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-2** (*Opinions Required from Bond Counsel*)).

(v) The Borrower shall have delivered to the WIFIA Lender a certificate, signed by the Borrower's Authorized Representative, substantially in the form attached hereto as **Exhibit B** (*Form of Closing Certificate*) (the "**Closing Certificate**"), designating the Borrower's Authorized Representative, confirming such person's position and incumbency, and certifying as to the satisfaction of the certain conditions precedent (and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such satisfaction), including the following:

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

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

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

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

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

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

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

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

(viii) The Borrower shall have paid in full all invoices delivered by the WIFIA Lender to the Borrower as of the Effective Date for any applicable Servicing Fees and the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(b) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender shall have no obligation to make any Disbursement of the WIFIA Loan to the Borrower (including the initial Disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

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

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

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

(C) the aggregate amount of all Disbursements (including the requested Disbursement amount but excluding any interest that is capitalized in accordance with the terms hereof) does not exceed the lesser of (1) the maximum principal amount of the WIFIA Loan or (2) the amount of Eligible Project Costs paid or incurred by the Borrower;

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

(E) (1) the Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products); and (2) supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender;

(F) the representations and warranties of the Borrower set forth in this Agreement and in each other WIFIA Loan Document are true and correct as of each date on which any disbursement of the WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date);

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

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

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

(iii) The Borrower shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (*Fees and Expenses*) and (B) all invoices delivered by the WIFIA Lender to the Borrower, for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(iv) The Borrower shall have demonstrated to the WIFIA Lender's satisfaction that (A) the consultation process under Section 106 of the National Historic Preservation Act relating to the Project has concluded and (B) the Borrower has not carried out any destruction, excavation, mobilization or other ground-disturbing work prior to the conclusion of such consultation process.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

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

(a) Organization; Power and Authority. The Borrower is a Legal Entity duly organized and validly existing under its Organizational Documents and the laws of the State, has full legal right, power and authority to do business in the State and to enter into the WIFIA Loan Documents then in existence, to execute and deliver this Agreement and the WIFIA Note, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement, the WIFIA Note, and the other WIFIA Loan Documents. Other than such Organizational Documents, there are no additional instruments or documents necessary for the Borrower to execute and deliver, or to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents.

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

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

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

(e) Consents and Approvals. All Governmental Approvals required as of the Effective Date and required as of any subsequent date on which this representation is made (or deemed made) for the undertaking, construction and completion by the Borrower of the Project and the operation and maintenance of the System, and to execute and deliver and perform its obligations under the WIFIA Loan Documents and the Construction Contracts, have been obtained or effected and are in full force and effect. The Borrower is not in default with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person is necessary in connection with the execution, delivery, and performance by the Borrower of the WIFIA Loan Documents and the consummation of any transaction contemplated thereunder, except as have been obtained or made and as are in full force and effect.

(f) Litigation. Except as set forth in **Part B of Schedule III** (*Borrower Disclosures*), there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the System, the Project or the ability of the Borrower to execute, deliver and perform its obligations under the WIFIA Loan Documents or that in any case could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. (i) This Agreement and the Organizational Documents together establish, and (ii) the Borrower has taken all necessary actions to pledge, assign, and grant, in each case for the benefit of the WIFIA Lender, legal, valid, binding and enforceable Lien on the Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to and in accordance with this Agreement, and the security interests created in the Pledged Collateral have been duly perfected under applicable State law. Such Lien is in full force and effect and is not subordinate or junior to any other Liens in respect of the Pledged Collateral, except for the Liens arising by operation of law, and is not *pari passu* with any Liens other than the Lien on the Pledged Collateral securing the Senior Obligations. As of the Effective Date, the SRF Loan and 2025 Bonds are the only Existing Indebtedness ranking *pari passu* in right of payment and right of security with the WIFIA Loan and the WIFIA Loan is senior in right of payment and right of security to all Subordinated Obligations. The Borrower is not in breach of any covenant set forth in Section 14(b) (*Securing Liens*). As of the Effective Date and as of each other date this representation and warranty is made, (A) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary

or desirable has been taken to establish a legal, valid, binding, and enforceable and, if applicable, first priority perfected, Lien on the Pledged Collateral in favor of the WIFIA Lender to the extent contemplated by this Agreement, and (B) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any WIFIA Loan Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. §180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. §180.995 and supplemented by 2 C.F.R. §1532.995) (i) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters, (ii) is presently indicted for or otherwise criminally or civilly charged by a Governmental Authority with commission of any of the offenses listed in 2 C.F.R. §180 or 2 C.F.R. §1532; and (iii) have, within the three (3) year period preceding the Effective Date, (x) been convicted for or had a civil judgment rendered against them for any of the offenses within such period or (y) had any public transactions (federal, state or local) terminated for cause or default.

(i) No Lobbying. Pursuant to 31 U.S.C. §1352, to the Borrower's knowledge, (A) no Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any Person for influencing or attempting to influence an officer or employee of an agency, a member (or employee of a member), officer, or employee of the U.S. Congress, in connection with the making of the WIFIA Loan, execution (including amendments or modifications) of the WIFIA Loan Documents, or any other federal action under 31 U.S.C. §1352(a)(2); and (B) if any funds other than Federal appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any agency, a member (or employee of a member), officer, or employee of the U.S. Congress in connection with the WIFIA Loan, the Borrower has completed and submitted to the WIFIA Lender Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(j) Compliance with Laws.

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

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

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

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

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

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

(n) Information. The information furnished by, or on behalf of, the Borrower to the WIFIA Lender, when taken as a whole, is true and correct in all material respects (other than for projections and other forward-looking statements contained in the Base Case Financial Model and any Updated Financial Model/Plan which have been made in good faith and based on reasonable assumptions) and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading as of the date made or furnished.

(o) Insurance. The Borrower is in compliance with all insurance obligations required under each Construction Contract and the WIFIA Loan Documents (including Section 14(f) (*Insurance*) hereof) as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower's self-insurance program is actuarially sound.

(p) No Prohibited Liens. Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Pledged Collateral, the System, the Project, the Revenues, or the Borrower's respective rights in any of the foregoing.

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

(r) Securities Laws. Under existing law, the WIFIA Note may be issued and sold without registration under the Securities Act of 1933, as amended, and any State blue sky laws.

(s) No Delinquent Taxes or Federal Debt. The Borrower has paid all applicable taxes and other material taxes and assessments payable by it that have become due (other than those taxes or assessments that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by GAAP). The Borrower has no delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

(t) Sufficient Funds. The amount of the WIFIA Loan, when combined with all other funds committed for the development and construction of the Project as set forth under the various sources of funds in the Project Budget, will be sufficient to carry out the Project, pay all Total Project Costs anticipated for the development and construction of the Project and achieve Substantial Completion by the Projected Substantial Completion Date. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs. The Updated Financial Model/Plan most recently delivered to the WIFIA Lender pursuant to **Part A of Schedule V** (*Reporting Requirements*) demonstrates that the projected Net Revenues are sufficient to meet the WIFIA Loan Amortization Schedule. The Borrower has developed, and identified adequate Revenues to implement, a plan for operating, maintaining, and repairing the Project over the useful life of the Project.

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

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

Section 13. Representations and Warranties of WIFIA Lender. The WIFIA Lender represents and warrants that:

(a) Power and Authority. The WIFIA Lender has all requisite power and authority to make the WIFIA Loan and to perform all transactions contemplated by the WIFIA Loan Documents to which it is a party.

(b) Due Execution; Enforceability. The WIFIA Loan Documents to which it is a party have been duly authorized, executed and delivered by the WIFIA Lender, and are legally valid and binding agreements of the WIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the WIFIA Lender executing each of the WIFIA Loan Documents to which the WIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the WIFIA Lender.

ARTICLE V COVENANTS

Section 14. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Note and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are indefeasibly paid in full and the WIFIA Lender no longer has any commitment to make Disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Rate Covenant.

(i) The Borrower shall comply with all requirements and conditions specified in Annex A of Schedule 1 (*Rate Covenant*).

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

(c) Use of Proceeds. The Borrower shall use the proceeds of the WIFIA Loan solely for purposes permitted by applicable law, this Agreement and the other WIFIA Loan Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule (and on or prior to the Development Default Date), the Governmental Approvals in connection with the Project, and prudent utility and industry practice.

(ii) The Borrower shall comply with Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the

verification requirements set forth in 2 C.F.R. §§180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

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

(f) Insurance.

(i) The Borrower shall at all times procure and maintain or cause to be maintained insurance on the System and the construction of the Project, with responsible insurers, or as part of a reasonable system of self-insurance that is actuarially sound and adequately funded, in such amounts and against such risks (including damage to or destruction of the System) as are customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties, including insurance against public liability, property damage, workers' compensation, and builders' risk, casualty and liability, as appropriate, and otherwise in accordance with this Agreement and the Construction Contracts. The insurance policies shall be available at all reasonable times for inspection upon request by the WIFIA Lender, its agents and representatives.

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

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

(h) System Accounts; Permitted Investments.

(i) The Borrower shall maintain the Revenue Account in accordance with the terms hereof and the other WIFIA Loan Documents. All Revenues received shall be deposited into the Revenue Account when and as received in trust for the benefit of the holders of the Obligations, subject to the application of Revenues to Operations and Maintenance Expenses of the System. The Borrower shall not apply any portion of the Revenues in contravention of this Agreement or any other WIFIA Loan Document. Any funds then on deposit in the WIFIA Debt Service Account (if applicable) shall only be used for payments of WIFIA Debt Service by the Borrower in accordance with the WIFIA Loan Documents and shall be held in trust for the benefit of the WIFIA Lender.

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

(iii) Amounts on deposit in the WIFIA Debt Service Account shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

(i) Compliance with Laws.

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

(ii) To ensure such compliance, the Borrower shall include in all contracts with respect to the Project (A) the contract clauses relating to applicable federal requirements (such as Davis-Bacon and Equal Employment Opportunity) and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(i) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 14(i).

(j) Material Obligations. The Borrower shall pay its material obligations payable from the Revenues promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Pledged Collateral or other assets of the System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon the System or any part thereof or on the Revenues or the Pledged Collateral; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(k) SAM Registration and DUNS Number or UEI. The Borrower shall obtain and maintain, on or prior to the Effective Date through (i) the Final Disbursement Date, an active SAM registration status and (ii) the Final Maturity Date, a DUNS Number or UEI.

(l) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the System (including the Project) or any part thereof, the Borrower shall (i) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such Event of Loss and (ii) apply all Loss Proceeds (after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) in respect of such Event of Loss as follows:

(i) If the Borrower has determined that it needs to use the Loss Proceeds to make additions, betterments, extensions or improvements to the System in order for it to operate the System in an efficient and economical manner and to operate, maintain and preserve the System in good repair and working order, the Borrower shall use such Loss Proceeds to make such additions, betterments, extensions or improvements. If the amount of such Loss Proceeds shall exceed the costs of such additions, betterments, extensions or improvements, the excess shall be applied to any lawful purpose of the System, including (i) the payment of Debt Service, (ii) the prepayment or discharge of the WIFIA Loan and any Senior Obligations, and (iii) the payment of capital costs of improvements to the System.

(ii) If the Borrower has determined that it does not need to use the Loss Proceeds to make additions, betterments, extensions or improvements to the System in order for it to operate the System in an efficient and economical manner and to operate, maintain and preserve the System in good repair and working order, the Borrower shall use such Loss Proceeds for any lawful purpose of the System, including (i) the payment of Debt Service, (ii) the prepayment or discharge of the WIFIA Loan and any Senior Obligations, and (iii) the payment of capital costs of improvements to the System.

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

(n) Accounting and Audit Procedures.

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

including, with respect to the WIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

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

(o) Access; Records.

(i) So long as the WIFIA Loan or any portion thereof shall remain Outstanding and until five (5) years after the WIFIA Loan shall have been paid in full, the WIFIA Lender shall have the right, upon reasonable prior notice, to visit, monitor and/or inspect any portion of the Project and its operations, to examine books of account and records of the Borrower relating to the Project, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts relating to the Project with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 14(o) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the WIFIA Lender may request. The Borrower agrees to pay all out-of-pocket expenses incurred by the WIFIA Lender in connection with the WIFIA Lender's exercise of its rights under this Section 14(o) at any time when an Event of Default shall have occurred and be continuing.

(ii) The Borrower shall maintain and retain all pertinent files relating to the Project and the WIFIA Loan, as may be necessary for the WIFIA Lender to facilitate an effective and accurate audit and performance evaluation of the Project, until five (5) years after the later of the date on which (A) all rights and duties under this Agreement and under the WIFIA Note (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Project, the WIFIA Loan or this Agreement is finally resolved or, if the WIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the WIFIA Lender and the Borrower. The Borrower shall provide to the WIFIA Lender in a timely manner all records and documentation relating to the Project that the WIFIA Lender may reasonably request from time to time.

Section 15. Negative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Note and all of the Obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are indefeasibly paid in full and the WIFIA Lender no longer has any commitment to make Disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) Program Requirements. The Borrower may not create, incur or suffer to exist any Obligations (1) the payments with respect to which are senior or prior in right of payment by the Borrower of the WIFIA Loan or (2) secured by a Lien on the Pledged Collateral that is senior to the Lien on the Pledged Collateral in favor of the WIFIA Lender or (3) all or a portion of the proceeds of which are or will be applied at any time to fund all or any portion of Total Project Costs, that are secured by a Lien on any assets or property of the Borrower other than the Pledged Collateral. While a Payment Default or an Event of Default relating to a Bankruptcy Related Event has occurred and is continuing, Borrower shall not incur any indebtedness of any kind payable from or secured or supported by the Pledged Collateral, including Permitted Debt, without the prior written consent of the WIFIA Lender.

(ii) Issuance of Additional Obligations. The Borrower shall not issue or incur any Additional Obligations except in accordance with all requirements and conditions set forth in the Additional Bonds Test.

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i) extinguish the Rate Covenant; (ii) extinguish or impair the Lien on the Pledged Collateral or any dedicated source of repayment of the WIFIA Loan or any other Obligations (the proceeds of which are applied to fund Total Project Costs), (iii) amend, modify, replace or supplement any Related Document or permit a waiver of any provision thereof in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to result in a Material Adverse Effect, or (iv) terminate, assign or replace any Related Document in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Project, the Pledged Collateral, the Revenues, or the Borrower's respective rights in any of the foregoing and the Pledged Collateral will be free and clear of any Lien that is of equal rank with or senior to the pledge of the Borrower created under this Agreement for the benefit of the WIFIA Lender.

(d) Restricted Payments and Transfers. The Borrower shall not permit Revenues or other assets of the System, or any funds in any accounts held pursuant to this Agreement or in any other fund or account held by or on behalf of the Borrower, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of the System.

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

(f) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge into another Person unless (i) such reorganization, merger or consolidation is with or into another entity established by State law and such reorganization, merger or consolidation is permitted by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the Revenues or other elements of the Pledged Collateral or (B) the availability of the Revenues for the payment and security of the obligations of the Borrower under this Agreement; and (ii) the Borrower provides to the WIFIA Lender notice of such reorganization, consolidation or merger in accordance with **Part E of Schedule V** (*Reporting Requirements*) and such other information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

(g) Hedging. The Borrower shall not enter into any swap or hedging transaction, including any such transaction that is speculative or creates extraordinary leverage or risk, without the prior written consent of the WIFIA Lender.

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

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

Section 17. Events of Default and Remedies.

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

(i) Payment Default. The Borrower shall fail to pay when due any part of the principal amount of or interest on the WIFIA Loan (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 8 (*Repayment*)), and such failure continues for five (5) days after the date payment thereof is required under this Agreement or the WIFIA Note or on the Final Maturity Date (each such failure, a “**Payment Default**”).

(ii) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur.

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

(iv) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; (B) any WIFIA Loan Document ceases (other than as expressly permitted thereunder) to grant a valid and binding security interest on any material portion of the Pledged Collateral other than as a result of actions or a failure to act by, and within the control of, the WIFIA Lender, or any other holder of Obligations secured by the Pledged Collateral, and with the priority purported to be created thereby; or (C) any event occurs that results in the impairment in the validity, enforceability, perfection or priority of the WIFIA Lender's security interest in the Pledged Collateral.

(v) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Note or any other WIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Lender of written notice thereof or (B) the Borrower's knowledge of such failure; provided, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable; provided, however, that with respect to a failure to comply with the Rate Covenant, the cure period shall be one hundred eighty (180) days as described above.

(vi) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the WIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made; provided, that no Event of Default shall be deemed to have occurred under this Section 17(a)(vi) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(g) (*Security Interests*), Section 12(h) (*No Debarment*), Section 12(i) (*No Lobbying*), or Section 12(j) (*Compliance with Laws*), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured and (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days

after the earlier of the date on which the Borrower first became aware (or reasonably should have become aware) or was notified by the WIFIA Lender of such misrepresentation.

(vii) Enforcement of Other Financing Documents. The holder(s) of Obligations under a Related Document exercises remedies permitted thereunder for an event of default that has occurred and is continuing (and has not been cured or waived by the expiration of any applicable grace period), in respect of the performance of any covenant, agreement or obligation of the Borrower under such Related Document.

(viii) Material Adverse Judgment. Any final, non-appealable judgment related to the Pledged Collateral that results in the impairment of (A) the Borrower's ability to comply with any of its payment obligations under the WIFIA Note or this Agreement or (B) the existence, priority or perfection (if applicable) of the WIFIA Lender's security interest in the Pledged Collateral.

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

(b) Upon the occurrence of any Bankruptcy Related Event, all obligations of the WIFIA Lender hereunder with respect to the Disbursement of any undisbursed amounts of the WIFIA Loan shall automatically be deemed terminated.

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

(i) the WIFIA Lender may suspend or terminate all of its obligations hereunder with respect to the Disbursement of any undisbursed amounts of the WIFIA Loan;

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

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

(iv) the WIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the WIFIA Lender and notify other departments and agencies of such default; and

(v) the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the WIFIA Note or the other WIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the Pledged Collateral those moneys adjudged or decreed to be payable, and the WIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code (as if applicable to the Lien of the WIFIA Loan), and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the

Borrower under this Agreement, the WIFIA Note or the other WIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Note or the other WIFIA Loan Documents.

(d) The WIFIA Lender may, solely with respect to those events of default under the Related Documents that permit acceleration thereunder, declare the unpaid principal amount of the WIFIA Note to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the WIFIA Note or the other WIFIA Loan Documents, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) No action taken pursuant to this Section 17 shall relieve the Borrower from its obligations pursuant to this Agreement, the WIFIA Note or the other WIFIA Loan Documents, all of which shall survive any such action.

ARTICLE VII MISCELLANEOUS

Section 18. Disclaimer of Warranty. The WIFIA Lender makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Lender be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the System (including the Project) or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 19. No Personal Recourse. No official, employee or agent of the WIFIA Lender or the Borrower or any Person executing this Agreement or any of the other WIFIA Loan Documents shall be personally liable on this Agreement or such other WIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 20. No Third-Party Rights. The parties hereby agree that this Agreement creates no third-party rights against the Borrower or the Federal Government, including the WIFIA Lender, solely by virtue of the WIFIA Loan, and that no other creditor of the Borrower shall have any right against the WIFIA Lender with respect to the WIFIA Loan made pursuant to this Agreement.

Section 21. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the WIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

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

Section 23. Servicer. The WIFIA Lender may from time to time designate another entity or entities to perform, or assist the WIFIA Lender in performing, the duties of the Servicer or specified duties of the WIFIA Lender under this Agreement and the WIFIA Note. The WIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Lender shall have delegated to such Servicer. The WIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the WIFIA Note. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 24. Amendments, Waivers and Termination. No amendment, modification, termination, or waiver of any provision of any WIFIA Loan Document shall in any event be effective without the prior written consent of each of the parties hereto. Notwithstanding the foregoing sentence, if the first Disbursement of the WIFIA Loan has not occurred on or prior to the Final Disbursement Date, the WIFIA Lender or the Borrower may terminate this Agreement upon no less than ten (10) Business Days' prior written notice to the other party. Once terminated, this Agreement may not be reinstated.

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

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

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

Section 28. Remedies Not Exclusive. No remedy conferred herein or in the WIFIA Note or reserved to the WIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the WIFIA Note or now or hereafter existing at law or in equity or by statute.

Section 29. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided hereunder or under the WIFIA Note upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or under the WIFIA Note or by law to the WIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Lender.

Section 30. Counterparts and Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic Signatures are effective and enforceable. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable; provided, however, that following the electronic delivery of the executed WIFIA Note for loan closing purposes, Borrower shall deliver by courier the originally executed WIFIA Note to the WIFIA Lender at:

Environmental Protection Agency
Ronald Reagan Building
Office of Chief Financial Officer
Attn: Mr. Stacey Church, Room #81192
1300 Pennsylvania, NW
Washington, DC 20004
Phone: (202) 564-4837

Section 31. Notices.

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

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

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

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

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

(d) Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party), and (y) if given by email or other electronic method, when such email is delivered to the email address specified in this Section 31 or submitted to the electronic medium as directed by the receiving party, in each case with the sender's receipt of an acknowledgement from the intended recipient (such as by a "read receipt," return email, or other written acknowledgement) (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. (Eastern Time) on a Business Day will be deemed to be effective on the next Business Day.

Section 32. Indemnification. The Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender, the Servicer (if any), and any official, employee, agent, advisor or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement, any Construction Contract, or any other Related Document, (b) the WIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the WIFIA

Lender shall assert, and each of the Borrower and the WIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any Construction Contract, or any other Related Document, the other transactions contemplated hereby and thereby, the WIFIA Loan or the use of the proceeds thereof, provided, that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 32 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 shall survive the payment or prepayment in full or transfer of the WIFIA Loan, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 33. Sale of WIFIA Loan. The WIFIA Lender shall not sell the WIFIA Loan or the WIFIA Note at any time prior to the later of (a) the Substantial Completion Date and (b) other than with respect to a sale or transfer to another governmental entity within the Federal Government, the Final Disbursement Date. After such date, the WIFIA Lender may sell the WIFIA Loan and the WIFIA Note to another Person or reoffer the WIFIA Loan and the WIFIA Note into the capital markets only in accordance with the provisions of this Section 33 and applicable law. Such sale or reoffering shall be on such terms as the WIFIA Lender shall deem advisable. However, in making such sale or reoffering the WIFIA Lender shall not change the terms and conditions of the WIFIA Loan or the WIFIA Note without the prior written consent of the Borrower in accordance with Section 24 (*Amendments and Waivers*). Prior to any sale or reoffering of the WIFIA Loan and the WIFIA Note, the WIFIA Lender shall provide reasonable written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering. The provision of any notice pursuant to this Section 33 shall neither (x) obligate the WIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell the WIFIA Loan and the WIFIA Note.

Section 34. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 35. Release of Lien. Upon the indefeasible payment in full by the Borrower of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto, the WIFIA Lender shall cancel and discharge the Lien on the Pledged Collateral and surrender the WIFIA Note to the Borrower in accordance with Section 9(b) (*General Prepayment Instructions*).

Section 36. Survival. The indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(o) (*Affirmative Covenants - Access; Records*) and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such Sections, as well as the waiver of any sovereign immunity, to the extent the Borrower has such immunity, pursuant to Section 12(u) (*Sovereign Immunity*) and Section 14(m) (*Affirmative Covenants - Immunity*).

Section 37. Integration. This Agreement, together with the other WIFIA Loan Documents, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

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

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

CITY OF HAYWARD, CALIFORNIA,
by its authorized representative

By: _____

Name:

Title:

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

By: _____
Name: Lee M. Zeldin
Title: Administrator

SCHEDULE I

WIFIA LOAN SPECIFIC TERMS

No.	Item	WIFIA Loan Specific Term
<i>PART A. Key Borrower Metrics</i>		
1.	Effective Date	[April 15], 2025
2.	Borrower	City of Hayward, a Legal Entity organized and existing under the State.
3.	Legal Entity	A charter city and municipal corporation.
4.	State	California
5.	Borrower FEIN	94-60000346
6.	Borrower DUNS Number	040010175
7.	Initial Borrower Fiscal Year	The fiscal year of the Borrower commencing on July 1 of any given calendar year and ending on June 30 of the immediately succeeding calendar year.
8.	Application Receipt Date	July 10, 2024
9.	WIFIA CUSIP Number	421200HX7 , as the CUSIP number for the WIFIA Loan for purposes of monitoring through EMMA.
10.	System	All wastewater collection, pumping, transport, treatment, storage, and disposal facilities, including land and easements thereof, owned, controlled or operated by the Borrower, and all other properties, structures, or works hereafter acquired and constructed by the Borrower and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed. For the avoidance of doubt, the System excludes the recycled water improvements owned, controlled or operated by the Borrower.
11.	Revenues	All gross income and revenue received or receivable by the Borrower from the ownership or operation of the System, or otherwise arising from the System during any Borrower Fiscal Year, including all rates, fees, and charges (including connection fees and charges) as received by the Borrower for the services of the System. It includes all other income and revenue howsoever

No.	Item	WIFIA Loan Specific Term
		derived by the Borrower from System ownership or operation, or otherwise arising from the System, including but not limited to all receipts derived from the investment of funds held by the Borrower under this Agreement, any WIFIA Loan Documents or in connection with any Additional Obligation, transfers from (but exclusive of any transfers from the applicable Borrower Fiscal Year's income and revenue to) the Sewer Rate Stabilization Fund, and all moneys received by the Borrower from other public entities whose inhabitants are served pursuant to contracts with the Borrower.
12.	Trustee	Not Applicable.
13.	Trustee Location	Not Applicable.
14.	Borrower UEI	J7X4BD1ZTAJ7

No.	Item	WIFIA Loan Specific Term
<i>PART B. Key Project Metrics</i>		
15.	Project	The project is the Water Resource Recovery Facility Improvements – Phase II, located at the Project Location, and consists of (a) the construction of a 21,600-square-foot building that will house various operations associated with the Water Resource Recovery Facility, as well as (b) the construction of the Phase II Water Resource Recovery Facility Improvements including a new biological nutrient removal process and other improvements at the Water Resource Recovery Facility site, as described in further detail in Part D of Schedule II (Project Details) .
16.	Project Location	Hayward, California
17.	Projected Substantial Completion Date	July 31, 2030, as such date may be adjusted in accordance with Part C of Schedule V (Reporting Requirements) .
18.	Development Default Date	July 31, 2032.
19.	NEPA Determination	[Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by EPA on [___], 20[___] in accordance with NEPA.
20.	[Reserved]	
<i>PART C. Key Loan Metrics</i>		
21.	Maximum Principal Amount	Principal amount up to \$244,139,000 (excluding interest that is capitalized in accordance with this Agreement).
22.	WIFIA Interest Rate	[•]% per annum.
23.	Default Rate	Interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 200 basis points.
24.	Interest Payment Date	Each March 1 and September 1, beginning on the Debt Service Payment Commencement Date.
25.	Capitalized Interest Period	The period from (and including) the first Disbursement to (but excluding) the date that is six (6) months prior to the first Payment Date, subject to earlier termination as

No.	Item	WIFIA Loan Specific Term
		set forth in Section 8(a)(iii) (<i>Payment of WIFIA Debt Service</i>).
26.	Interest Only Period	The period commencing from (and including) the Debt Service Payment Commencement Date and ending on September 1, 2034 (or on such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in cash).
27.	Principal Payment Date	Each March 1, beginning on March 1, 2035.
28.	Final Maturity Date	The earliest of (a) March 1, 2063, (b) the date on which the maturity of the WIFIA Loan and corresponding WIFIA Note have been accelerated; and (c) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.
29.	[Reserved]	
<i>PART D. Key Security Metrics</i>		
30.	Lien priority	Senior lien.
31.	Springing lien	Not Applicable.
32.	Dedicated revenue source	Net Revenues.
33.	Pledged Collateral	The WIFIA Loan shall be secured by all of the interests of the Borrower in (a) the Net Revenues, including in the Revenue Account and the sub-accounts therein, including all Net Revenues on deposit therein or credited thereto, and (b) all amounts set forth in the WIFIA Debt Service Account and the sub-accounts therein, including all amounts on deposit therein or credited thereto.
34.	System Accounts	The Revenue Account, the WIFIA Debt Service Account and the Sewer Rate Stabilization Fund.
35.	Revenue Account	The fund or account established and held by the Borrower for the deposit of Revenues. Such fund or account may be designated in any manner deemed advisable by the Borrower, and may be maintained in

No.	Item	WIFIA Loan Specific Term
		one or more funds or accounts. The Revenue Account is the same fund as the Wastewater Fund described under the 2025 Indenture, and the Enterprise Fund under the SRF Loan Agreement, and is described as the Sewer Fund in the Borrower's financial statements.
36.	WIFIA Debt Service Account	The debt service account established solely for the benefit of the WIFIA Lender pursuant to this Agreement.
37.	WIFIA Debt Service Reserve Account	Not Applicable.
38.	WIFIA Debt Service Reserve Requirement	Not Applicable.
39.	Rate Covenant	The rate covenant is set forth as Annex A to this Schedule I.
40.	Additional Bonds Test	The requirements and conditions are set forth as Annex B to this Schedule I.
41.	Flow of Funds	The requirements and conditions are set forth as Annex C to this Schedule I.
42.	Sewer Rate Stabilization Fund	The requirements and conditions are set forth as Annex D to this Schedule I.
<i>PART E. Other Key WIFIA Loan Documents</i>		
43.	WIFIA Note	The note issued and delivered by the Borrower in substantially the form of Exhibit A (Form of WIFIA Note).
44.	Indenture	Not Applicable.
45.	WIFIA Supplemental Indenture.	Not Applicable.
46.	WIFIA Term Sheet	WIFIA term sheet, dated as of [the Effective Date], between the Borrower and the WIFIA Lender.
47.	[Reserved]	
<i>PART F. Fees</i>		

No.	Item	WIFIA Loan Specific Term
48.	Servicing Set-Up Fee	A servicing set-up fee equal to \$19,060.
49.	Construction Period Servicing Fee	An annual construction period servicing fee equal to \$19,060.
50.	Initial Construction Period Servicing Fee	The initial Construction Period Servicing Fee in a pro-rated amount equal to \$7,940.
51.	Operating Period Servicing Fee	An annual operating period servicing fee equal to \$9,530.
<i>PART G. Borrower Related Notices</i>		
52.	Borrower notice details	City of Hayward 777 B Street Hayward, CA 94541 Attention: Alex Ameri Email: Alex.Ameri@hayward-ca.gov
53.	Trustee notice details	Not Applicable.

Annex A to Schedule I

RATE COVENANT

(a) Covenant Regarding Revenues. The Borrower will fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the System during each Borrower Fiscal Year which are at least sufficient, after making allowances for contingencies and error in the estimates, to pay the following amounts in the following order:

(i) all Operation and Maintenance Expenses estimated by the Borrower to become due and payable in the Borrower Fiscal Year;

(ii) the Debt Service on all outstanding Obligations as they become due and payable during the Borrower Fiscal Year, without preference or priority;

(iii) all amounts, if any, required to restore the balance in any reserve funds established for the Obligations to their required levels; and

(iv) all payments required to meet any other obligations of the Borrower which are charges, liens, encumbrances upon, or which are otherwise payable from, the Revenues or the Net Revenues during such Borrower Fiscal Year.

(b) Covenant Regarding Net Revenues. In addition to the covenant set forth in the preceding clause (a) above, the Borrower will fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the System during each Borrower Fiscal Year which are sufficient to yield Net Revenues which are at least equal to the sum of (i) 110% of the amount described in the preceding clause (a)(ii) for such Borrower Fiscal Year and (ii) 100% of (A) the amount described in the preceding clause (a)(ii) and (B) Debt Service on all Subordinated Obligations due and payable during such Borrower Fiscal Year.

For the purposes of this clause (b), the Net Revenues may include transfers from the Sewer Rate Stabilization Fund to the Revenue Account for such Borrower Fiscal Year, if any, provided that the Net Revenues excluding such transfers are at least equal to the sum of (i) the amount described in the preceding clause (a)(ii) for such Borrower Fiscal Year and (ii) Debt Service on all Subordinated Obligations due and payable during such Borrower Fiscal Year.

(c) Covenant to Consult. If the Borrower fails to satisfy the Rate Covenant for the most recently ended Borrower Fiscal Year, the Borrower will (1) within thirty (30) days after a request by the WIFIA Lender, engage a Technical and Rate Consultant to review and analyze the operations of the System and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase Net Revenues so as to satisfy the Rate Covenant, (2) cause the Technical and Rate Consultant to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (3) within sixty (60) days following the issuance of the Technical and Rate Consultant's report, either (y) implement the Technical and Rate Consultant's recommendations or (z) undertake an alternative course of action after demonstrating to the WIFIA Lender's satisfaction that such alternative course of action will generate an equivalent or greater increase to Net Revenues so as to satisfy the Rate

Covenant; *provided, however*, [that with respect to a failure to comply with the Rate Covenant, the cure period shall be one hundred eighty (180) days as described in Section 17(a)(v) (“Events of Default and Remedies”) of the WIFIA Loan Agreement] and also provided that the failure of Borrower to satisfy the Rate Covenant at the end of a Borrower’s Fiscal Year shall not constitute a default or an Event of Default so long as the Borrower has complied with this provision.

Annex B to Schedule I

ADDITIONAL BONDS TEST

The Borrower may issue Additional Senior Obligations from time to time in such principal amount as it determines, subject to the following conditions precedent:

(a) No Event of Default (or no event with respect to which notice has been given and which, once all notice of grace periods have passed, would constitute an Event of Default) has occurred and is continuing.

(b) Net Revenues for the period of 12 consecutive months within the 18 months immediately preceding the issuance of the proposed Additional Senior Obligations based on the Borrower's audited financial statement(s) for such period or a certificate of an Independent Accountant employed by the Borrower, were at least equal to 110% of the Debt Service due and payable on the Outstanding Senior Obligations (including the WIFIA Loan) in the Borrower Fiscal Year immediately succeeding the Borrower Fiscal Year in which the Additional Senior Obligation is issued or incurred.

(c) (i) Estimated Net Revenues for the Borrower Fiscal Year in which the proposed Additional Senior Obligation is issued, and (ii) projected Net Revenues for the five Borrower Fiscal Years immediately following the Borrower Fiscal Year in which the Additional Senior Obligation is issued, will be at least equal to 110% of the Debt Service in such Borrower Fiscal Year(s) for all Outstanding Senior Obligations (including the proposed Additional Senior Obligation to be issued and the WIFIA Loan). For purposes of clause (c)(ii), (A) if all or a portion of the interest due in such five Borrower Fiscal Years on any Outstanding Senior Obligations (including the proposed Additional Senior Obligation to be issued and the WIFIA Loan) is being or will be capitalized from the proceeds of such Outstanding Senior Obligations (including the proposed Additional Senior Obligation to be issued and the WIFIA Loan), the five Borrower Fiscal Year period will commence with the first Borrower Fiscal Year beginning after the last capitalized interest payment, (B) projected Net Revenues for each Borrower Fiscal Year in the five Borrower Fiscal Year period may include Revenues arising from increases in the rates and charges estimated to be fixed and prescribed or received for the services of the System and which are economically feasible and reasonably considered necessary based on projected operations for such Borrower Fiscal Year, and (C) Net Revenues for a Borrower Fiscal Year may be increased by transfers from the Sewer Rate Stabilization Fund to the Revenue Account, provided that Net Revenues excluding such transfers are at least equal to the sum of the Debt Service in such Borrower Fiscal Year for all Outstanding Senior Obligations (including the proposed Additional Senior Obligation and the WIFIA Loan).

(d) The issuance of such Additional Senior Obligations shall comply with all conditions to the issuance thereof as set forth in the applicable provisions of the Senior Obligation Documents.

(e) The Borrower shall deliver to the WIFIA Lender a certificate of the Borrower in form and substance satisfactory to the WIFIA Lender certifying, and an opinion of bond counsel

stating, that the conditions precedent to the issuance of such Additional Senior Obligations set forth in the foregoing subsections (a), (b) and (c) have been satisfied.

Additional Senior Obligations and Additional Subordinated Obligations

The Borrower shall not issue or incur any additional bonds or other obligations having any priority in payment of principal or interest out of the Revenues or the Net Revenues over the WIFIA Loan.

Nothing herein limits or affects the ability of the City to issue or incur Subordinated Obligations.

Annex C to Schedule I

FLOW OF FUNDS

(a) Deposits into the Revenue Account. The Borrower has previously established the Revenue Account, which it will continue to hold and maintain for the purposes and uses set forth in this Agreement. The Borrower shall deposit all Revenues in the Revenue Account promptly upon the receipt thereof, and shall apply amounts in the Revenue Account solely for the uses and purposes set forth herein and in the Senior Obligation Documents.

(b) Payment of Operation and Maintenance Expenses. The Borrower may at any time use and apply moneys in the Revenue Account for the payment of the Operation and Maintenance Expenses of the System (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Expenses the payment of which is not immediately required).

(c) Deposits into the WIFIA Debt Service Account; Application of Moneys in the WIFIA Debt Service Account. On or before the 3rd Business Day preceding each Interest Payment Date, so long as any part of the WIFIA Loan remains Outstanding under this Agreement, the Borrower shall withdraw from the Revenue Account and pay to the WIFIA Lender for deposit into the WIFIA Debt Service Account an amount which, together with other available amounts then on deposit in the WIFIA Debt Service Account, is at least equal to the aggregate amount of principal of and interest coming due and payable on the WIFIA Loan on such Interest Payment Date.

Payment of the debt service on the WIFIA Loan and the principal of and interest on any other Senior Obligations will be made without preference or priority. If the amount of Net Revenues on deposit in the Revenue Account are any time insufficient to enable the Borrower to pay when due the debt service on the WIFIA Loan and the principal of and interest on any other Senior Obligations, such payments will be made on a pro rata basis.

The Borrower shall apply amounts in the WIFIA Debt Service Account solely for the purpose of (i) paying the interest on the WIFIA Loan when due and payable and (ii) paying the principal of the WIFIA Loan at the maturity thereof. Upon the payment in full by the Borrower of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto, the Borrower may transfer any moneys remaining in the WIFIA Debt Service Account to the Borrower for deposit into the Revenue Account.

(d) Management of the Revenue Account; Other Uses of Moneys in the Revenue Account. The Borrower shall manage, conserve and apply moneys in the Revenue Account in such a manner that all deposits required to be made under this Agreement and under the Senior Obligation Documents will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default has occurred and is continuing, the Borrower may at any time use and apply moneys in the Revenue Account for any one or more of the following purposes:

(i) the acquisition and construction of extensions and betterments to the System;

(ii) the redemption or prepayment of any of the Senior Obligations (including the WIFIA Loan) which are then subject to redemption or prepayment or the purchase thereof from time to time in the open market, at prices and in such manner, either at public or private sale, or otherwise, as the Borrower in its discretion may determine; or

(iii) any other lawful purpose of the Borrower relating to the System, including deposits into the Sewer Rate Stabilization Fund.

Annex D to Schedule I

SEWER RATE STABILIZATION FUND

The Borrower has the right (but not the obligation) at any time to establish a fund to be held by it and administered in accordance with this Annex, for the purpose of stabilizing the rates and charges imposed by the Borrower with respect to the System. From time to time the Borrower may deposit amounts in the Sewer Rate Stabilization Fund, from any source of legally available funds, as the Borrower may determine, provided that deposits for each Borrower Fiscal Year may be made until (but not after) one hundred eighty (180) days following the end of such Borrower Fiscal Year.

The Borrower may, but is not required to, withdraw amounts on deposit in the Sewer Rate Stabilization Fund and deposit such amounts in the Revenue Account in any Borrower Fiscal Year, such withdrawals for a Borrower Fiscal Year to be made until (but not after) one hundred eighty (180) days after the end of such Borrower Fiscal Year. Amounts so transferred from the Sewer Rate Stabilization Fund to the Revenue Account during the time specified in the previous sentence constitute Revenues for that Borrower Fiscal Year (except to the extent provided in Annex A or Annex B to Schedule I hereto), and will be applied for the purposes of the Revenue Account. Amounts on deposit in the Sewer Rate Stabilization Fund are not pledged to and do not secure the WIFIA Loan or any issue of Senior Obligations. All interest or other earnings on deposits in the Sewer Rate Stabilization Fund will be retained therein or, at the option of the Borrower, be applied for any other lawful purposes. The Borrower has the right at any time to withdraw any or all amounts on deposit in the Sewer Rate Stabilization Fund and apply such amounts for any other lawful purposes of the Borrower.

SCHEDULE II
PROJECT DETAILS

PART A. Project Budget.

SOURCES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
WIFIA Loan	\$244,139,000	49%
2025 Bonds (Estimated par plus bond premium)	\$128,190,000	26%
2027 Bonds	\$98,342,282	20%
Future City Cash Contributions toward Project	\$25,000,000	5%
Previously Incurred Eligible Costs (Not Reimbursed to City)	\$2,572,532	1%
Total Sources of Funds*	\$498,243,814	100%
USES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
Construction	\$358,539,703	72%
Design	\$23,525,758	5%
Planning (Previously Incurred)	\$746,809	0%
Other Capital Costs	\$28,002,810	6%
Contingency	\$78,878,735	16%
Capitalized Interest (Matching Bonds)	\$5,000,000	1%
Financing Costs	\$3,550,000	1%
Total Uses of Funds*	\$498,243,814	100%
Total Eligible Project Costs*	\$498,243,814	100%
Total Project Costs	\$498,243,814	100%

*Totals may not sum due to rounding

PART B. Construction Schedule.

Projected Substantial Completion Date: July 31, 2030

PROJECT ELEMENT	DESIGN COMPLETION	CONSTRUCTION START	CONSTRUCTION END
WRRF Administration Building Project	December 6, 2024	May 5, 2025	June 4, 2027
WRRF Improvements – Phase II Project	June 11, 2025	May 9, 2026	July 31, 2030

PART C. Existing Construction Contracts.

Contract Name	Effective Date	Amount	Parties	Description
[None]				

PART D. Project Description.

The Project is located in Hayward, California and consists of (a) the construction of a 21,600-square-foot building that will house various operations associated with the Water Resource Recovery Facility, as well as (b) construction of the Phase II Water Resource Recovery Facility Improvements including a new biological nutrient removal process, 3 million gallon EQ basin, and other improvements at the Water Resource Recovery Facility site.

SCHEDULE III
BORROWER DISCLOSURES

PART A. Existing Indebtedness.

1. Senior Obligations

1.	Installment Sale Agreement and Grant, dated as of July 27, 2006, between the Borrower and the California State Water Resources Control Board	\$13,637,504.50
2.	Indenture of Trust, between the Borrower and The Bank of New York Mellon Trust Company, N.A., as the Trustee, dated as of March 1, 2025	\$124,885,000.00

2. Subordinated Obligations

1.	That certain Loan Agreement, by and between the California Energy Resources Conservation and Development Commission and City of Hayward, dated as of July 20, 2010	\$317,136.33
2.	That certain Loan Agreement, by and between the California Energy Resources Conservation and Development Commission and City of Hayward, dated as of November 30, 2018	\$1,653,831.91

PART B. Litigation Disclosure.

None.

No.	Parties	Date Initiated	Description / Status	Venue

PART C. Environmental Matter Disclosure.

None.

SCHEDULE IV

REQUISITION PROCEDURES

This **Schedule IV** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for any Disbursement of the WIFIA Loan. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Lender contained in this Schedule IV are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Lender under the WIFIA Loan Documents, and (ii) nothing contained in this Schedule IV shall be construed to limit the rights of the WIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under this Agreement during the term hereof.

PART A. General Requirements.

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

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

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

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

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

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

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

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

PART B. WIFIA Lender Review Process.

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

(b) If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the Borrower of such approval and of the amount so approved. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount. If the amount requested for Disbursement in the Requisition exceeds the undisbursed balance of the WIFIA Loan, the Disbursement request will be treated as if submitted in the amount of such balance, and the WIFIA Lender will so notify the Borrower.

(c) The WIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent request for Disbursement if: (i) a Default or an Event of Default shall have occurred and then be continuing or (ii) the Borrower (1) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable law, in connection with the transactions contemplated hereby; (2) prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by the Borrower with applicable law pertaining to the Project or with the terms and conditions of any WIFIA Loan Document; (3) fails to observe or comply with any applicable law, or any term or condition of any WIFIA Loan Document; (4) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent to Disbursements*) of this Agreement; or (5) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Lender at the times and in the manner specified by this Agreement; provided, that in such case of sub-clause (5) above, the WIFIA Lender may, in its sole discretion, approve a partial Disbursement in respect of any amounts for which adequate Eligible Project Costs Documentation has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts. The WIFIA Lender will notify the Borrower of any withholding and the reasons therefor.

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

SCHEDULE V
REPORTING REQUIREMENTS

PART A. Updated Financial Model/Plan.

(a) The Borrower shall provide to the WIFIA Lender, not later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, an Updated Financial Model/Plan; provided that failure of the Borrower to deliver to the WIFIA Lender an Updated Financial Model/Plan required under this Part A during the period that is one hundred eighty (180) days after the end of the applicable Borrower Fiscal Year shall not constitute a Default or an Event of Default so long as the Borrower provides such Updated Financial Model/Plan within ninety (90) days after the end of such one hundred eighty (180)-day period. The Updated Financial Model/Plan shall reflect the Borrower's reasonable expectations and assumptions, and include: (a) the Borrower's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected Revenues and projected Operations and Maintenance Expenses for a reasonable projection period consistent with the Borrower's operating and financial planning and demonstrating that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining, and repairing the Project; (b) evidence of compliance with the Rate Covenant for the most recent Borrower Fiscal Year for which the Borrower's Financial Statements are available and the projected Rate Covenant compliance through the Forecast Period; and (c) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model/Plan.

PART B. Annual Financial Statements.

The Borrower shall deliver to the WIFIA Lender, as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year (provided that the failure of the Borrower to furnish the documents required by this Part B within such one hundred eighty (180)-day period shall not constitute a Default or an Event of Default hereunder so long as the Borrower furnishes to the WIFIA Lender such documents within ninety (90) days after the end of such one hundred eighty (180)-day period; provided further that the parties agree that delivering the documents required by this Part B within such additional ninety (90)-day period shall not, in and of itself, constitute a default, an event of acceleration, a termination event, or a modification of terms with respect to this Agreement), a copy of the audited income statement and balance sheet of the Borrower as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower therefor, (a) setting forth in each case in comparative form the figures for the previous fiscal year, (b) certified without qualification or exception, or qualification accepted in writing by the WIFIA Lender as to the scope of the audit, by an independent public accounting firm selected by the Borrower and (c) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

PART C. Construction Monitoring.

(a) The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation or other information as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information.

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

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

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

(e) Modifications. If the Project constitutes a combination of sub-projects and the Borrower reasonably determines that it is necessary or desirable to (a) replace one or more existing sub-projects with one or more new sub-projects or (b) remove one or more existing sub-projects, then the Borrower shall submit a written request to the WIFIA Lender, setting out an explanation for the request, an updated Project description, budget and schedule, and such additional information as may be requested by the WIFIA Lender. Any replacement or removal of a sub-project hereunder shall be consistent with the terms and conditions of this Agreement, in compliance with all applicable laws, and subject to the WIFIA Lender's approval (which approval shall be granted in the WIFIA Lender's sole discretion).

PART D. Public Benefits Report.

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

PART E. Notices.

(a) The Borrower shall, within fifteen (15) days (or such other time as may be specified below) after the Borrower learns of the occurrence, give the WIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

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

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

(iii) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, that could reasonably be expected to have a Material Adverse Effect, and (2) any final, non-appealable judgment related to the Pledged Collateral that could reasonably be expected to result in the impairment of (A) the Borrower's ability to comply with any of its payment obligations under the WIFIA Note or this Agreement or (B) the existence, priority or perfection (if applicable) of the WIFIA Lender's Lien on and security interest in the Pledged Collateral;

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

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

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

(vii) Related Document Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Related Document; provided, that such notice may be accomplished through notice given to the WIFIA Lender in accordance with this Agreement of the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant provision of this Agreement;

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

(ix) Ratings Changes: any change in the rating assigned to the WIFIA Loan or any Obligations, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies; provided, that such notice may be accomplished through notice given to the WIFIA Lender in accordance with this Agreement of the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant provision of this Agreement;

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

(xi) Issuance of Obligations: copies of any final issuing instrument (together with any continuing disclosure documents, ordinances, official statement, certifications or cash flow projections in connection therewith), prepared in connection with the incurrence of any Permitted Debt (including any Additional Obligations), together with a confirmation by the Borrower that such additional indebtedness satisfies the applicable requirements under the definition of “Permitted Debt”; provided, that such notice may be accomplished through notice given to the WIFIA Lender in accordance with this Agreement of the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant provision of this Agreement;

(xii) Postings on EMMA: the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement or similar

document with respect to any Outstanding Obligations relating to annual financial information and operating data and the reporting of significant events; provided, that such notice may be accomplished through notice given to the WIFIA Lender in accordance with this Agreement of the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant provision of this Agreement;

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

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

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

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

(b) The Borrower shall, at any time while the WIFIA Loan remains Outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the System, the Project or the Revenues as the WIFIA Lender may from time-to-time reasonably request. The Borrower agrees that the delivery of any documents or information under and pursuant to this Agreement shall not be construed as compliance with, or affect in any manner, any obligations of the Borrower under any other contracts, agreements, decrees, Governmental Approvals, or other documents with the Federal Government (other than the WIFIA Loan Documents).

SCHEDULE VI

WIFIA LOAN AMORTIZATION SCHEDULE

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

EXHIBIT A

FORM OF WIFIA NOTE

CITY OF HAYWARD

WATER RESOURCE RECOVERY CONTROL FACILITY IMPROVEMENTS PHASE II PROJECT

(WIFIA ID – N23117CA)

WIFIA NOTE

Interest Rate	Final Maturity Date	Dated Date	WIFIA CUSIP
[•]%, subject to the Default Rate (as defined and in accordance with the WIFIA Loan Agreement)	March 1, 2063, subject to adjustment as set forth in the WIFIA Loan Agreement	[April 15], 2025	421200HX7
Registered Owner	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency		
Maximum Principal Amount	\$244,139,000 (excluding capitalized interest, if any)		

The City of Hayward, a charter city and municipal corporation under the laws of the State of California (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the “**WIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all Disbursements made by the WIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the WIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in that certain WIFIA Loan Agreement, dated as of the date hereof, between the WIFIA Lender and the Borrower (the “**WIFIA Loan Agreement**”). All capitalized

terms used in this WIFIA Note and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

The WIFIA Debt Service shall be payable in the amounts, manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule in accordance with the WIFIA Loan Agreement (which WIFIA Loan Amortization Schedule may be revised from time to time in accordance with the WIFIA Loan Agreement), until paid in full (which Loan Amortization Schedule, as so modified, is incorporated in and is a part of this WIFIA Note). The WIFIA Lender is hereby authorized to modify the WIFIA Loan Amortization Schedule from time to time to reflect the amount of each Disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder and otherwise in accordance with the terms of the WIFIA Loan Agreement. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on the WIFIA Loan Amortization Schedule shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

Payments hereon are to be made in accordance with Section 8(b) (*Manner of Payment*) and Section 31 (*Notices*) of the WIFIA Loan Agreement as the same become due. Principal of and interest on this WIFIA Note shall be made in Dollars and in immediately available funds (without counterclaim, offset or deduction). Any payment in respect of the WIFIA Note shall be treated as a payment in respect of the WIFIA Loan and any prepayment of principal in respect of the WIFIA Loan shall be treated as a redemption in respect of this WIFIA Note. If the Final Maturity Date is adjusted in accordance with the WIFIA Loan Agreement, the due date of this WIFIA Note shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the WIFIA Lender, and such amendment shall in no way amend, modify or affect the other provisions of this WIFIA Note without the prior written agreement of the WIFIA Lender. Any such amendment shall be reflected in a revised WIFIA Loan Amortization Schedule.

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

Payment of the obligations of the Borrower under this WIFIA Note is secured pursuant to the WIFIA Loan Agreement and the Pledged Collateral described therein. The Lien on Net Revenues securing this WIFIA Note for the benefit of the WIFIA Lender is (i) on a parity in right of payment and right of security to the Lien on Net Revenues securing the Senior Obligations and (b) senior in right of payment and right of security to the Lien on Net Revenues securing the Subordinated Obligations.

This WIFIA Note may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Loan Agreement; provided, however, such prepayments shall be in

principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), without penalty or premium, and otherwise in accordance with the WIFIA Loan Agreement.

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

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this WIFIA Note have happened, exist and have been performed as so required. This WIFIA Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable, and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, the City of Hayward has caused this WIFIA Note to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

CITY OF HAYWARD,
by its authorized representative

(SEAL)

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title:

(FORM OF ASSIGNMENT)

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

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

the within WIFIA Note and all rights thereunder.

Dated: _____

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

EXHIBIT B

FORM OF CLOSING CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [•], 2025 (the “**WIFIA Loan Agreement**”), by and among the City of Hayward (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement.

In connection with Section 11(a) (*Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, the undersigned, as the Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 11(a)(v) of the WIFIA Loan Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the WIFIA Loan Documents to which the Borrower is or will be a party, and who have been appointed as a Borrower’s Authorized Representative in accordance with Section 21 (*Borrower’s Authorized Representative*) of the WIFIA Loan Agreement;
- (b) pursuant to Section 11(a)(ii) of the WIFIA Loan Agreement, the Borrower has delivered to the WIFIA Lender copies of each Related Document with respect to the issuance or incurrence of any obligations all or a portion of the proceeds of which are or will be applied to fund all or any portion of Total Project Costs, in each case that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such other Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled;
- (c) pursuant to Section 11(a)(v)(A) of the WIFIA Loan Agreement, (i) the maximum principal amount of the WIFIA Loan (excluding any capitalized interest), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs; (ii) the aggregate amount of Eligible Project Costs previously incurred prior to the Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs; and (iii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any capitalized interest), does not exceed eighty percent (80%) of Total Project Costs;
- (d) pursuant to Section 11(a)(v)(B) of the WIFIA Loan Agreement, the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

- (e) pursuant to Section 11(a)(v)(C) of the WIFIA Loan Agreement, the Borrower has (i) obtained a FEIN, as evidenced by the Borrower's W-9 which is attached hereto as Annex B-1, and a DUNS Number or UEI, in each case as set forth on Part A of Schedule I (*WIFIA Loan Specific Terms*) to the WIFIA Loan Agreement, and (ii) registered with, and obtained confirmation of active SAM registration status, which confirmation is attached hereto as Annex B-2;
- (f) pursuant to Section 11(a)(v)(D) of the WIFIA Loan Agreement, the Borrower has obtained the WIFIA CUSIP Number, as set forth on Part A of Schedule I (*WIFIA Loan Specific Terms*) to the WIFIA Loan Agreement, and which confirmation is attached hereto as Annex C;
- (g) pursuant to Section 11(a)(v)(E) of the WIFIA Loan Agreement, the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;
- (h) pursuant to Section 11(a)(v)(F) of the WIFIA Loan Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the date of the Application; and
- (i) pursuant to Section 11(a)(vi) of the WIFIA Loan Agreement, the rating set forth in the letter delivered to the WIFIA Lender pursuant to such Section 11(a)(vii) has not been reduced, withdrawn or suspended as of the Effective Date.

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

CITY OF HAYWARD,
by its authorized representative

By: _____
Name:
Title:

ANNEX A TO EXHIBIT B

INCUMBENCY CERTIFICATE

The undersigned certifies][y] that [he/she/they] [is/are] the [Secretary] of the City of Hayward, a charter city and municipal corporation organized and existing under the State of California, (the “**Borrower**”), and as such [he/she/they] [is/are]authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names and titles are their true and genuine signatures. [He/she/they] further certify[ies][y] that each of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents as the Borrower’s Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[Ana Alvarez]	[City Manager_____]	_____
[Dustin Claussen]	[Assistant City Manager]	_____
[Regina Youngblood]	[Assistant City Manager/Finance]	_____
[Alex Ameri]	[Public Works Director]	_____
[Christina Crosby]	[Deputy Finance Director]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this [_____] day of [____], 20[____].

CITY OF HAYWARD,
by its authorized representative

By: _____
Name:
Title:

ANNEX B-1 TO EXHIBIT B

BORROWER'S W-9

[to be attached]

ANNEX B-2 TO EXHIBIT B
CONFIRMATION OF ACTIVE SAM REGISTRATION STATUS

[to be attached]

**ANNEX C TO EXHIBIT B
WIFIA CUSIP NUMBER CONFIRMATION**

[to be attached]

EXHIBIT C

FORM OF PUBLIC BENEFITS REPORT

Pursuant to [Section 11(a)(vii) and] Part D of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement (as defined below), the City of Hayward (the “**Borrower**”) is providing this Public Benefits Report in connection with the Water Resource Recovery Facility Improvements Phase II Project (WIFIA ID – N23117CA). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, dated [•], 2025 (the “**WIFIA Loan Agreement**”), between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator.

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

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

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

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

Yes

If yes, additional description: [__]

No

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

[__].

EXHIBIT D

FORM OF REQUISITION

VIA EMAIL

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

Re: Water Resource Recovery Facility Improvements Phase II Project (WIFIA ID – N23117CA)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) and Schedule IV (*Requisition Procedures*) of the WIFIA Loan Agreement, dated as of [•], 2025 (the “**WIFIA Loan Agreement**”), by and between the City of Hayward (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the Borrower hereby requests a Disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

In connection with this Requisition, the undersigned, as the Borrower’s Authorized Representative, hereby represents and certifies the following:

1.	Project name	Water Resource Recovery Facility Improvements Phase II Project
2.	Borrower name	City of Hayward
3.	WIFIA Loan ID	N23117CA
4.	Borrower DUNS Number / UEI	040010175 / J7X4BD1ZTAJ7
5.	Borrower FEIN number	94-60000346
6.	Requisition number	[__]
7.	Requested Disbursement amount	[\$__]
8.	Requested date of Disbursement (the “Disbursement Date”)¹	[__]
9.	Total amounts previously disbursed under the WIFIA Loan Agreement	[\$__]

¹ **Note to form:** Note this should be the actual disbursement date on which the Borrower requests to receive the funds, not the date that this Requisition form is submitted to the WIFIA Lender.

10.	Wire or ACH transfer instructions (please specify method)	[___]
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11. As of the date hereof, and immediately after giving effect to the Disbursement of WIFIA Loan proceeds requested under this Requisition, (a) no Default or Event of Default and no event of default under any other Related Document shall have occurred and be continuing and (b) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document, shall have occurred and be continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since the Effective Date.
13. The aggregate amount of all Disbursements (including the requested Disbursement amount under this Requisition but excluding any interest that is capitalized in accordance with the WIFIA Loan Agreement) does not exceed the lesser of (a) the maximum principal amount of the WIFIA Loan or (b) the amount of Eligible Project Costs paid or incurred by the Borrower.
14. The Eligible Project Costs for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of (a) WIFIA Loan proceeds or (b) any other source of funding for the Project as identified in the Project Budget.
15. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender.
16. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date).
17. The Borrower has delivered all required deliverables under and in compliance with the requirements of Schedule V (*Reporting Requirements*), except as has been otherwise agreed by the WIFIA Lender.²
18. The amount hereby being requested for Disbursement is with respect to Eligible Project Costs for which [all][a portion][none] of the Eligible Project Costs Documentation was

² **Note to form:** The most recent quarterly progress report should set out a summary of the progress of construction of the Project, as well as a general description of the work done for which the funds being requisitioned are being applied and a summary of any material changes/risks.

previously submitted to and approved by the WIFIA Lender in accordance with Schedule IV (*Requisition Procedures*) and Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement. The [following table below][attached excel sheet] sets out a summary of any Eligible Project Costs that have not otherwise been previously submitted to the WIFIA Lender for approval, and supporting Eligible Project Costs Documentation in respect of such new Eligible Project Costs is attached hereto.³

								WIFIA USE ONLY	
Vendor or Contractor Name ⁴	Invoice Number ⁵	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ⁶	Activity Type ⁷	Description of Activity ⁸	Approved Amount	Notes

The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. §1001, to the extent the Federal Government deems appropriate.

Date: _____

CITY OF HAYWARD,
by its authorized representative

By: _____

Name:

Title: _____

³ **Note to form:** See Schedules IV, V and Exhibit E of the WIFIA Loan Agreement for additional details on EPC Documentation.

⁴ **Note to form:** If seeking reimbursement for internal costs, enter “Internally financed activities.”

⁵ **Note to form:** Vendor’s number indicated on the invoice sent to the Borrower.

⁶ **Note to form:** If the amount requested for reimbursement by the WIFIA Lender is less than the total amount of the invoice, include an explanation for the difference.

⁷ **Note to form:** Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the “Description of Activity” column.

⁸ **Note to form:** Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

EXHIBIT E

FORM OF CERTIFICATION OF ELIGIBLE PROJECT COSTS DOCUMENTATION

VIA EMAIL

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

Re: Water Resource Recovery Facility Improvements Phase II Project (WIFIA ID – N23117CA)

Ladies and Gentlemen:

Pursuant to Part C of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, dated as of [•], 2025 (the “**WIFIA Loan Agreement**”), by and between the City of Hayward (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the Borrower hereby presents this certificate in connection with the Borrower’s delivery of Eligible Project Costs Documentation to the WIFIA Lender. Capitalized terms used but not defined herein have the meanings set forth in the WIFIA Loan Agreement.

The undersigned does hereby represent and certify the following:

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

							WIFIA USE ONLY	
Vendor or Contractor Name ¹	Invoice Number ²	Invoice Date	Payment Date	Invoice Amount	Activity Type ³	Description of Activity ⁴	Approved Amount	Notes

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

Date: _____

CITY OF HAYWARD,⁶

By: _____

Name:

Title: _____

¹ **Note to form:** If the expectation is to seek reimbursement for internal costs, enter “Internally financed activities.”

² **Note to form:** Vendor’s number indicated on the invoice sent to the Borrower.

³ **Note to form:** Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest on other Project Obligations during construction, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the “Description of Activity” column.

⁴ **Note to form:** Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the documentation.

⁵ **Note to form:** See Schedules IV and V of the WIFIA Loan Agreement for additional details on EPC Documentation.

⁶ **Note to form:** To be executed by the Borrower’s Authorized Representative.

EXHIBIT F

FORM OF CONSTRUCTION MONITORING REPORT

VIA EMAIL

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

Re: Water Resource Recovery Facility Improvements Phase II Project (WIFIA ID – N23117CA)

This Construction Monitoring Report for the period of [*insert relevant quarterly period*] (the “**Quarterly Period**”) is provided pursuant to Part D of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, dated as of [•], 2025 (the “**WIFIA Loan Agreement**”), by and between the City of Hayward (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”). Unless otherwise defined herein, all capitalized terms in this Construction Monitoring Report have the meanings assigned to those terms in the WIFIA Loan Agreement.

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

--

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

--

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

--

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

Note any problems encountered or anticipated during the construction of the Project during the Quarterly Period that (1) impedes Project completion within the scope, costs, and schedule outlined in the WIFIA Loan Agreement or (2) relates to unforeseen complications in connection with the construction of the Project. This may include commissioning/start-up issues, constructability issues for the Project as planned, adverse impacts to Project surroundings, changes in or issues with meeting environmental or federal compliance requirements, and unanticipated or abnormal permit approval timelines. Include an assessment of the impact and any current plans to address the problems.

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

Date: _____

CITY OF HAYWARD

By: _____

Name: _____

Title: _____

APPENDIX A ¹

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

Table Definitions:

Project Component – Project name or ID as tracked by the Borrower

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

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

Location (program of projects only) – physical project boundaries

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

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

Bid Advertisement Date – the date the bid was advertised

Contract Award date – the date the contract was awarded

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

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

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

Original Contract Amount – the original contract award amount

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

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

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

¹ **Note to form:** Appendix A summarizes all project components that will be bid in the next quarter, are currently under construction, or have completed construction. It should be a cumulative list of projects that is updated each quarter. A Microsoft Excel spreadsheet with similar table format is acceptable.

EXHIBIT G

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

VIA EMAIL

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

Project: Water Resource Recovery Facility Improvements Phase II Project (WIFIA ID – N23117CA)

Dear Director:

This Notice is provided pursuant to Part E of Schedule V (*Reporting Requirements*) of that certain WIFIA Loan Agreement (the “**WIFIA Loan Agreement**”), dated as of [•], 2025, by and between the City of Hayward (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through its Administrator (the “**WIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this certificate have the meanings assigned to those terms in the WIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Lender that:

- (a) the Project has satisfied each of the requirements for Substantial Completion set forth in the Construction Contracts;
- (b) Substantial Completion has been declared under each of the relevant Construction Contracts and copies of the notices of Substantial Completion under such agreements are attached to this certification;
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved and the Substantial Completion Date is [____]; and
- (d) The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

CITY OF HAYWARD,
by its authorized representative

By: _____
Name:

Title:

EXHIBIT H-1

OPINIONS REQUIRED FROM GENERAL COUNSEL TO BORROWER

[Date]

City of Hayward
Hayward, California

United States Environmental Protection Agency,
an agency of the United States of America,
acting by and through the Administrator of the Environmental Protection Agency
Washington, DC

Jones Hall, A Professional Law Corporation
San Francisco, California

Re: Opinion of the City Attorney as to the WIFIA Loan Agreement, dated as of ____, 2025,
by and between the City of Hayward and the United States Environmental Protection Agency

Ladies and Gentlemen:

I am the City Attorney of the City of Hayward (the “Borrower”) and in that capacity I have examined certain actions taken by the Borrower with respect to the execution and delivery by the Borrower of the WIFIA Loan Agreement, dated as of ____, 2025, by and between the Borrower and the United States Environmental Protection Agency (“WIFIA Loan Agreement”) and the WIFIA Note pursuant to Sections 3, 5 and 7 of Article XI of the California Constitution, Section 200 of the Charter of the City, Ordinance No. 24-05, enacting the City of Hayward Water and Wastewater Enterprise Revenue Bond Law, constituting Chapter 8, Article 22 of the Hayward Municipal Code (the “Bond Law”), and Resolution No. ____ adopted by the City Council of the Borrower on _____, 2025 (the “Authorizing Resolution”). In that connection, I have also examined such law, the Authorizing Resolution and executed copies of the WIFIA Loan Agreement and the WIFIA Note. Capitalized terms used herein but not defined herein have the meanings given them in the WIFIA Loan Agreement.

Based upon the foregoing, I am of the opinion, as of the date hereof, that:

(a) the Borrower is a municipal corporation and charter city duly organized, existing, and in good standing under the Constitution, the laws of the State of California and the Charter of the Borrower;

(b) the Authorizing Resolution was duly adopted by the City Council of the Borrower at a regular meeting which was called and held under law and with all public notice required by law and at which a quorum was present and acting throughout, and the Authorizing Resolution is in full force and effect as of the date hereof and has not been modified, amended, rescinded or repealed since its date of adoption;

(c) the execution and delivery by the Borrower of the WIFIA Loan Agreement and the issuance by the Borrower of the WIFIA Note were approved by the City Council of the Borrower pursuant to the Authorizing Resolution, and the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the WIFIA Loan Agreement and the WIFIA Note;

(d) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the WIFIA Loan Agreement and the WIFIA Note, have been duly authorized by all necessary organizational or regulatory action;

(e) the Borrower has duly executed and delivered the WIFIA Loan Agreement and the WIFIA Note and each of the WIFIA Loan Agreement and the WIFIA Note is in full force and effect and constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms;

(f) no authorization, consent, or other approval of, or registration, declaration or other filing with any Governmental Authority is required on the part of the Borrower for its execution and delivery of, and its performance under, the WIFIA Loan Agreement and the WIFIA Note other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;

(g) the execution and delivery by the Borrower of, and compliance with the provisions of, the WIFIA Loan Agreement and the WIFIA Note do not (i) violate the Bond Law, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to me to which the Borrower is a party, or to the best of my knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject;

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

(i) to my knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the System (including the Project) that are pending; and

(j) the Borrower is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Loan Agreement or the WIFIA Note.

The rights and obligations under the WIFIA Loan Agreement and the WIFIA Note are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

I have only served as City Attorney to the Borrower in connection with the WIFIA Loan Agreement and the WIFIA Note and have not represented and am not representing any other party in connection with the WIFIA Loan Agreement and the WIFIA Note. The opinions set forth above are given solely for your benefit in connection with the WIFIA Loan Agreement and the WIFIA Note and may not be relied upon, used, circulated, quoted or referred to, nor any copies hereof be delivered to, any other person without my prior written approval, except that (1) you may furnish

a copy of this letter for information (but not reliance) (a) to your auditors and professional advisors, (b) pursuant to lawful order or legal process of any court or governmental agency, (c) to governmental regulatory agencies having jurisdiction over you, (d) in connection with any legal action to which you are a party arising out of your participation in the transactions contemplated under the WIFIA Loan Agreement and the WIFIA Note and (e) to your permitted assignees in connection with an assignment (or proposed assignment) of your rights under the WIFIA Loan Agreement and the WIFIA Note to such assignees, and such assignees may rely on this opinion letter as if it were addressed and had been delivered to them on the date hereof, unless statements in this opinion letter would be affected by the status of such assignees; and (2) this opinion letter may be included in any transcript of proceedings prepared in connection with the execution and delivery of the WIFIA Loan Agreement and the WIFIA Note.

EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL TO BORROWER

[Date]

City of Hayward
Hayward, California

United States Environmental Protection Agency,
an agency of the United States of America,
acting by and through the Administrator of the Environmental Protection Agency
Washington, DC

Re: Opinion of Special Counsel to the City of Hayward, California, as to the WIFIA Loan Agreement, dated as of ____, 2025, by and between the City of Hayward and the United States Environmental Protection Agency

Ladies and Gentlemen:

We have acted as special counsel to the City of Hayward (the “Borrower”) in connection with the execution and delivery of the WIFIA Loan Agreement, dated as of ____, 2025, by and between the Borrower and the United States Environmental Protection Agency (“WIFIA Loan Agreement”) and the WIFIA Note pursuant to Sections 3, 5 and 7 of Article XI of the California Constitution, Section 200 of the Charter of the City, Ordinance No. 24-05, enacting the City of Hayward Water and Wastewater Enterprise Revenue Bond Law, constituting Chapter 8, Article 22 of the Hayward Municipal Code (the “Bond Law”), and Resolution No. ____ adopted by the City Council of the Borrower on _____, 2025 (the “Authorizing Resolution”). Capitalized terms used herein but not defined herein have the meanings given them in the WIFIA Loan Agreement.

In such capacity, we have examined such law and such certified proceedings, certifications, opinions (including the opinion of the City Attorney of the Borrower, dated the date hereof) and other documents as we have deemed necessary to render the opinions set forth below.

Regarding questions of fact material to our opinions, we have relied on representations of the Borrower contained in the WIFIA Loan Agreement, and on the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

(a) the Borrower is a municipal corporation and charter city duly organized, existing, and in good standing under the Constitution, the laws of the State of California and the Charter of the Borrower ;

(b) the Borrower has the right and power under the laws of the State, including the Bond Law, to execute and deliver the WIFIA Loan Agreement and the WIFIA Note;

(c) each of the WIFIA Loan Agreement and the WIFIA Note has been duly approved by the Borrower, and each constitutes a valid and binding obligation of the Borrower, enforceable upon the Borrower in accordance with its terms;

(d) the WIFIA Loan Agreement creates a valid lien on the WIFIA Debt Service Account including all amounts on deposit therein or credited thereto for the security of the Borrower's obligation to repay the WIFIA Loan that is valid and binding in accordance with the terms of the WIFIA Loan Agreement, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act;

(e) the WIFIA Loan Agreement creates a valid lien on the Net Revenues for the security of the Borrower's obligation to repay the WIFIA Loan that is (i) valid and binding in accordance with the terms of the WIFIA Loan Agreement, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act, (ii) ranks on a pari passu basis with the lien on the Net Revenues securing the SRF Loan and the 2025 Bonds, and (iii) ranks on a senior basis in right of payment and right of security to the Subordinated Obligations listed in Part A.2 of Schedule III of the WIFIA Loan Agreement and any other Subordinated Obligations that may be issued;

(f) the WIFIA Note evidences the Borrower's obligation to repay the WIFIA Loan;

(g) all actions by the Borrower that are required for the application of Net Revenues as required under the WIFIA Loan Agreement have been duly and lawfully made.

The rights and obligations under the WIFIA Loan Agreement and the WIFIA Note are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

The opinions set forth above are given as of the date hereof, and we assume no obligation to revise or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. Moreover, our opinions are not a guarantee of a particular result, and are not binding on the any court; rather, our opinions represent our legal judgment based upon our review of existing law that we deem relevant to such opinions, and any assumptions expressed herein, and in reliance upon the representations, and covenants referenced above.

The opinions set forth above are given solely for your benefit in connection with the WIFIA Loan Agreement and the WIFIA Note and may not be relied upon, used, circulated, quoted or referred to, nor any copies hereof be delivered to, any other person without our prior written approval, except that (1) you may furnish a copy of this letter for information (but not reliance) (a) to your auditors and professional advisors, (b) pursuant to lawful order or legal process of any court or governmental agency, (c) to governmental regulatory agencies having jurisdiction over you, (d) in connection with any legal action to which you are a party arising out of your participation in the transactions contemplated under the WIFIA Loan Agreement and the WIFIA Note and (e) to your permitted assignees in connection with an assignment (or proposed assignment) of your rights under the WIFIA Loan Agreement and the WIFIA Note to such assignees, and such assignees may rely on this opinion letter as if it were addressed and had been

delivered to them on the date hereof, unless statements in this opinion letter would be affected by the status of such assignees; and (2) this opinion letter may be included in any transcript of proceedings prepared in connection with the execution and delivery of the WIFIA Loan Agreement and the WIFIA Note.

Our engagement with respect to this matter has terminated as of the date hereof.