

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

City of Hayward
777 B Street
Hayward, CA 94541

[Date]

RE: WIFIA Term Sheet for the City of Hayward, California – Water Pollution Control
Facility Improvements – Phase II (WIFIA ID - N23117CA)

Ladies and Gentlemen:

This WIFIA Term Sheet (this “**Term Sheet**”) constitutes (a) the approval of the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “**USEPA**”), of the application for credit assistance of the Borrower (as defined below) received July 10, 2024 (the “**Application**”) and (b) the agreement of USEPA to provide financing for the above-referenced project (as further described below, the “**Project**”) in the form of a secured loan (the “**WIFIA Loan**”), pursuant to the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended, and as may be further amended from time to time, the “**Act**”), classified at 33 U.S.C. §§ 3901-3915, subject in all respects to (i) the terms and conditions contained herein and (ii) the execution and delivery of the WIFIA loan agreement to be entered into with the Borrower on or after the date hereof (the “**WIFIA Loan Agreement**”) on the terms and conditions acceptable to the USEPA contained therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WIFIA Loan Agreement.

By executing this Term Sheet, the Borrower confirms its agreement to reimburse USEPA for any and all fees and expenses that USEPA incurs for legal counsel, financial advice, and other consultants in connection with the evaluation of the Project and the negotiation and preparation of the WIFIA Loan Agreement and related documents, whether or not such agreement is ultimately executed.

This Term Sheet 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 of California, if and to the extent such federal laws are not applicable. This Term Sheet, and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by the 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 but one and the same instrument. Electronic delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

INDICATIVE TERMS OF THE WIFIA LOAN

WIFIA LENDER	United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “ WIFIA Lender ”).
BORROWER	City of Hayward, a political subdivision of the State of California (the “ Borrower ”).
PROJECT	The project consists of (a) the construction of a 21,600-square-foot building that will house various operations associated with the Water Pollution Control Facility (WPCF), as well as (b) construction of the Phase II WPCF Improvements including new biological nutrient removal (BNR) process and other related improvements at the WPCF site.
WIFIA LOAN AMOUNT	A maximum principal amount (sum of disbursements and excluding capitalized interest) not to exceed \$244,139,000; provided that (a) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act, shall not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs, and (b) the total federal assistance for the Project, including but not limited to the maximum principal amount of the WIFIA Loan and all federal grants, shall not exceed eighty percent (80%) of Total Project Costs.
INTEREST RATE	<p>The WIFIA Loan shall bear interest at a fixed rate, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the WIFIA Loan) as published, on the execution date of the WIFIA Loan Agreement, in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities.</p> <p>The WIFIA Loan shall also bear default interest at a rate of 200 basis points (2.00%) above the otherwise applicable interest rate, at such times and upon such terms as provided in the WIFIA Loan Agreement.</p>
PAYMENT DATES	<p>Principal shall be repaid in annual installments on March 1 of each year, beginning on March 1, 2035.</p> <p>Interest shall be paid on March 1 and September 1 of each year, beginning on September 1, 2033.</p>

	<p>The debt service payment commencement date of the WIFIA Loan shall in no event be later than five (5) years after the Substantial Completion Date of the Project.</p> <p>Subject to the terms and conditions of the WIFIA Loan Agreement, no principal or interest shall be paid during the Capitalized Interest Period.</p>
FINAL MATURITY DATE	<p>The earliest of (a) March 1, 2063; (b) the date on which the maturity of the WIFIA Loan has been accelerated or subject to mandatory redemption or prepayment (as the case may be) (if applicable); and (c) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date, which is projected to be July 31, 2030.</p>
DEDICATED SOURCE OF REPAYMENT	<p>The dedicated source of repayment for the WIFIA Loan shall be the Net Revenues of the System.</p> <p>“Net Revenues” means, for any Borrower Fiscal Year, all Revenues received by the Borrower less the Operations and Maintenance Costs for such Borrower Fiscal Year.</p> <p>“Operations and Maintenance Costs” 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.</p> <p>“Revenues” means 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 derived by the Borrower from System ownership or operation, or otherwise</p>

	<p>arising from the System, including but not limited to all receipts derived from the investment of funds held by the Borrower under the WIFIA Loan Agreement, 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.</p> <p>“System” means 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 at the City.</p>
<p>SECURITY AND LIEN PRIORITY</p>	<p>The WIFIA Loan shall be secured by a senior Lien on and pledge of the Net Revenues, including in the Revenue Account and the sub-accounts therein, including all Net Revenues on deposit therein or credited thereto. Such Lien shall be on parity with the Senior Obligations, including the System's outstanding SRF Loan, and senior to the Subordinated Obligations. 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 the WIFIA Loan Agreement only to the WIFIA Lender and any subsequent holder of the WIFIA Note.</p>
<p>RATE COVENANT</p>	<p>As set forth in further detail in the WIFIA Loan Agreement, the Borrower shall, subject to the remainder of this paragraph, fix, charge and collect rates, fees, and charges for the System, which will be at least sufficient to yield, during each Borrower Fiscal Year, Net Revenues equal to at least one hundred ten percent (110%) of the Debt Service payable during such Borrower Fiscal Year with respect to all Senior Obligations and equal to at least one hundred percent (100%) of the Debt Service payable during such Borrower Fiscal Year with respect to all Outstanding Obligations.</p> <p>For the purposes of the rate covenant, Net Revenues may include Sewer Rate Stabilization Fund transfers, if any, provided the Net Revenues excluding such transfers are at</p>

	<p>least 100% of the Debt Service payable during the relevant Borrower Fiscal Year with respect to all Outstanding Obligations.</p>
<p>ADDITIONAL INDEBTEDNESS</p>	<p>As set forth in further detail in the WIFIA Loan Agreement, the Borrower shall not issue or incur any Additional Senior Obligation unless the conditions described below and in Section 15(a) of the WIFIA Loan Agreement are satisfied:</p> <ul style="list-style-type: none"> a) Net Revenues for the period of 12 consecutive months within the 18 months immediately preceding the issuance of the proposed Additional Senior Obligation were at least equal to one hundred ten percent (110%) of the Debt Service on all Outstanding Senior Obligations in the Borrower Fiscal Year immediately succeeding the Borrower Fiscal Year in which the Additional Senior Obligation is issued or incurred; and b) (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 issuance of the Additional Senior Obligation, will be at least equal to one hundred ten percent (110%) of the Debt Service in such Borrower Fiscal Year(s) for all Outstanding Senior Obligations, including the Additional Senior Obligation proposed to be issued. For purposes of clause (b)(ii), (A) if all or a portion of the interest on any Senior Obligations is being or will be capitalized from the proceeds of then Outstanding Senior Obligations or from the Additional Senior Obligations proposed to be issued, the five Borrower Fiscal Year period will commence with the first Borrower Fiscal Year beginning on or 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 <i>estimated to be fixed and prescribed</i> 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 (iii) Net Revenues may include

	<p>Sewer Rate Stabilization Fund transfers, if any, provided the Net Revenues, excluding the amounts of such transfers, equals at least 100% of the Debt Service payable during such Borrower Fiscal Year with respect to all Outstanding Obligations.</p> <p>Additionally, the Borrower may not create, incur or suffer to exist (i) any obligations (a) the payments with respect to which are senior or prior in right to the payment by the Borrower of the WIFIA Loan and the other Senior Obligations or (b) 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 (ii) any obligations, 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.</p> <p>Borrower may issue or incur obligations for any purpose in connection with the System as long as such obligations are payable on a basis fully subordinate and junior to the payment of the Senior Obligations. If the principal amount of any such obligations is accelerated, their principal cannot be paid unless the Senior Obligations have been indefeasibly paid in full. For the avoidance of doubt, any such additional obligations shall be subordinate to the Senior Obligations in all respects.</p>
<p>RESTRICTED PAYMENTS AND TRANSFERS</p>	<p>The Borrower shall not permit System Revenues or other assets of the System, or any 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 or as otherwise permitted in the WIFIA Loan Agreement.</p> <p>The WIFIA Loan Agreement will provide that, so long as no Event of Default has occurred and is continuing, the Borrower, after providing for payment of Debt Service on Senior Obligations and replenishing any Debt Service reserve funds for Senior Obligations, may use and apply moneys in the Revenue Account for (i) the payment of any subordinate or unsecured obligations, (ii) the acquisition and construction of improvements to the System, (iii) the prepayment of any other obligations of the Borrower relating to the System, or (iv) any other lawful purposes of the Borrower, including deposits into the Sewer Rate Stabilization Fund.</p>

DEVELOPMENT DEFAULT DATE	July 31, 2032.
WIFIA LOAN DOCUMENTATION	The WIFIA Loan shall be subject to the preparation, execution and delivery of the WIFIA Loan Agreement, the WIFIA Note, and any other loan documentation required by the WIFIA Lender in connection therewith, in each case acceptable to the WIFIA Lender and the Borrower, which will contain certain conditions precedent, representations and warranties, affirmative and negative covenants, events of default, and other provisions as agreed between the WIFIA Lender and the Borrower.

[Signature pages follow]

If the foregoing terms are acceptable, please countersign this letter in the space indicated below.

Sincerely,

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

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

ACKNOWLEDGED AND AGREED:

CITY OF HAYWARD,
by its authorized representative

By: _____
Name:
Title: