

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Closing Date]

City of Sunnyvale  
456 W. Olive Avenue  
Sunnyvale, CA 94086

RE: WIFIA Term Sheet for the City of Sunnyvale Cleanwater Program Phase 2 (WIFIA  
Project No. [\_\_\_\_])

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) dated [October 10, 2019] (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 by Public Law 114-94, Public Law 114-322 and Public Law 115-270) (the “**Act**”), codified as 33 U.S.C. §§ 3901-3914, 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 on or after the date hereof (the “**WIFIA Loan Agreement**”) and the terms and conditions contained therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WIFIA Loan Agreement.

USEPA’s agreement to provide WIFIA credit assistance to the Project is based upon the Application and the supplemental information and documents, including the base case financial model, provided to USEPA. This Term Sheet is an agreement of USEPA only to the terms specified herein, which may be modified or supplemented by USEPA in its discretion at any time and from time to time during the course of its due diligence and credit approval process.

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.

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 “ <b>WIFIA Lender</b> ”).
BORROWER	The City of Sunnyvale, a municipal corporation and charter city organized and existing under the laws of the State of California (the “ <b>Borrower</b> ”).
PROJECT	<p>The Sunnyvale Cleanwater Program Phase 2, consisting of the rehabilitation of the City of Sunnyvale Water Pollution Control Plant’s existing secondary and tertiary treatment facilities, construction of new secondary treatment and solids handling facilities, and reconstruction of support facilities necessary to operate the plant, located in Sunnyvale, California (the “<b>Project</b>”).</p> <p>The Project will be part of the existing wastewater system of the Borrower, comprising all facilities for the collection, treatment, disposal or reuse of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, oxidation ponds, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification, reclamation or disposal of sewage, together with any necessary lands, rights, entitlements and other property useful in connection therewith, and all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the Borrower (the “<b>System</b>”).</p>
WIFIA LOAN AMOUNT	A maximum principal amount (sum of disbursements) not to exceed \$220,628,721; 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, (b) the total federal assistance for the Project, including but not limited to the maximum principal amount of the WIFIA Loan and all federal direct and indirect grants, shall not exceed eighty percent (80%) of Total Project Costs, and (c) such amount does not include any interest that may be capitalized in accordance with

	<p>the WIFIA Loan Agreement and added to the principal amount of the WIFIA Loan.</p>
<p>INTEREST RATE</p>	<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, currently located on the Internet at <a href="https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm">https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm</a>.</p> <p>Interest shall accrue and be computed on the basis of a 360-day year of twelve (12) thirty (30) day months.</p> <p>The WIFIA Loan shall also bear default interest at a rate of 200 basis points above the otherwise applicable interest rate, at such times and upon such terms as provided in the WIFIA Loan Agreement.</p>
<p>PAYMENT DATES</p>	<p>Principal of the WIFIA Loan shall be repaid in semi-annual installments on each April 1 and October 1, commencing on October 1, 2054.</p> <p>Interest shall be paid in arrears on April 1 and October 1 of each year, beginning on the Debt Service Payment Commencement Date.</p> <p>The Debt Service Payment Commencement Date 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>
<p>FINAL MATURITY DATE</p>	<p>The earlier of (a) [April 1, 2060] and (b) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.</p>

<p>PROJECTED SUBSTANTIAL COMPLETION DATE</p>	<p>[April 22, 2025].</p>
<p>DEDICATED SOURCE OF REPAYMENT</p>	<p>The dedicated source of repayment for the WIFIA Loan shall be all gross charges received for, and all other gross income and receipts derived by the Borrower from, the ownership and operation of the System or otherwise arising from the System (the “Gross Revenues”) minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period (the “Net Revenues”).</p>
<p>SECURITY AND LIEN PRIORITY</p>	<p>The WIFIA Loan shall be secured by the Pledged Collateral, consisting of all of the interests of the Borrower in (a) the Net Revenues, (b) all amounts set forth in the WIFIA Payment Account, including all amounts on deposit therein or credited thereto, and (c) all Net Revenues on deposit in the Wastewater Fund. For avoidance of doubt, all Net Revenues, including Parity Debt Set-Aside Amounts and Subordinate Debt Set-Aside Amounts, shall remain Pledged Collateral subject to the pledge and Lien of the WIFIA Loan Agreement until applied to the payment of obligations as and to the extent permitted under the WIFIA Loan Agreement. The debt obligation of the Borrower under the WIFIA Loan shall be evidenced through the issuance by the Borrower of the WIFIA Bond.</p> <p>The Borrower shall deposit all Gross Revenues in the Wastewater Fund promptly upon the receipt thereof, and shall apply amounts in the Wastewater Fund at the times and for the purposes, and in the priority, as follows:</p> <ul style="list-style-type: none"> <li>(i) <u>Operation and Maintenance Costs</u>. First, when and as the same become due and payable, to pay Operation and Maintenance Costs in amounts reasonably projected to be necessary for the payment of Operation and Maintenance Costs.</li> <li>(ii) <u>Parity Debt Payments</u>. Second, the following amounts (and if the amounts on deposit in the Wastewater Fund are at any time insufficient to enable the Borrower to make all of the transfers required in this subparagraph (ii), such transfers will be made on a pro rata basis, such that payment of the</li> </ul>

principal of and interest on any Parity Debt shall be made without preference or priority):

- (A) on the first Business Day of each month, to the WIFIA Payment Account, an amount equal to 1/6th of the amount of interest payable as part of the WIFIA Debt Service on the next succeeding Interest Payment Date and an amount equal to 1/12th of the amount of principal payable as part of the WIFIA Debt Service on the next succeeding Principal Payment Date, plus an amount equal to any transfer shortfalls that remain unfunded from prior months; provided, however, that in each month intervening between the Effective Date and the next succeeding Interest Payment Date or Principal Payment Date, respectively, the amount of interest or the amount of principal, respectively, specified above shall be that amount which when multiplied by the number of deposits to the credit of the WIFIA Payment Account required to be made during such respective periods will equal the amounts required to be paid on such next succeeding Interest Payment Date and next succeeding Principal Payment Date, respectively;
- (B) not later than the third Business Day preceding each interest payment date or principal payment date for any other Parity Debt (other than the WIFIA Loan), to the trustee for such Parity Debt for deposit into the debt service fund for such Parity Debt or, for Parity Debt without a trustee, directly to the lender or holder of such Parity Debt, an amount, which together with other available amounts then on deposit in the debt service fund for such Parity Debt, is at least equal to the aggregate principal of (including sinking payments) and interest coming due and payable on such Parity Debt on such interest payment date or principal payment date; and
- (C) on the first Business Day of each month, if and to the extent required by any Parity Debt Documents (other than the WIFIA Loan Agreement), to the applicable set-aside accounts within the Wastewater Fund for the applicable Parity Debt, an amount equal to the Parity

	<p>Debt Set-Aside Amounts for such Parity Debt accruing during such month.</p> <p>(iii) <u>Other Payments Under Parity Debt Documents.</u> Third, to pay any other payments required to comply with the provisions of the Parity Debt Documents, including, without limitation, any replenishment of reserve funds, if any, for Parity Debt.</p> <p>(iv) <u>Parity Debt Prepayment/Redemption.</u> Fourth, if the Borrower elects to optionally prepay the WIFIA Loan, the Borrower shall transfer to the WIFIA Lender the amount required to be paid by the Borrower under the WIFIA Loan Agreement to effect such optional prepayment, excluding interest which is payable from the WIFIA Payment Account and if the Borrower elects to redeem or prepay Outstanding Parity Debt under the applicable Parity Debt Documents, the Borrower shall transfer to the applicable trustee for deposit into the applicable redemption fund for such Parity Debt or, for Parity Debt without a trustee, directly to the lender or holder of such Parity Debt, an amount at least equal to the redemption price of such Parity Debt, excluding accrued interest, which is payable from the applicable debt service fund for such Parity Debt.</p> <p>(v) <u>Subordinate Debt Payments.</u> Fifth, as required by the applicable Subordinate Debt Documents to (A) pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising) the Subordinate Debt and if amounts in the Wastewater Fund are insufficient for such purposes, such application shall be made toward payments with respect to Subordinate Debt on a pro rata basis, (B) if the Borrower elects to optionally redeem Outstanding Subordinate Debt under the applicable Subordinate Debt Documents, the Borrower shall transfer to the applicable trustee for deposit into the applicable redemption fund for such Subordinate Debt or, for Subordinate Debt without a trustee, directly to the lender or holder of such Subordinate Debt, an amount at least equal to the redemption price of the Subordinate Debt, excluding accrued interest, which is payable from the applicable debt service fund for such</p>
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	<p>Subordinate Debt, and (C) to replenish any reserve funds, if any, for Subordinate Debt.</p> <p>(vi) <u>Remainder</u>. Sixth, any remainder of the Gross Revenues shall be retained in the Wastewater Fund, and, so long as all of the required payments described in clauses (i) through (v) above have been made by the Borrower, available to be used for any other lawful purpose of the Borrower relating to the System, subject to the requirements of the WIFIA Loan Agreement. For avoidance of doubt, any remainder of the Gross Revenues not required to make any of the payments required above or expended by the Borrower at any time for any purpose permitted by law relating to the System as set forth above shall remain Net Revenues and remain subject to the pledge and lien provided in the WIFIA Loan Agreement.</p>
<p>PREPAYMENT</p>	<p>The Borrower shall prepay one hundred percent (100%) of the WIFIA Loan Balance in full in immediately available funds upon the occurrence of a Bankruptcy Related Event, the Event of Default relating to acceleration of Parity Debt or the Event of Default relating to invalidity of WIFIA Loan Documents.</p> <p>Commencing with the Borrower Fiscal Year ending June 30, 2035, if the audited financial statements of the System for a Borrower Fiscal Year shows a year-end balance of System Reserves that exceeds twice the amount of Operation and Maintenance Costs during that Borrower Fiscal Year (any such excess is referred to as the “<b>Excess Reserves</b>”), the Borrower shall prepay a portion of the WIFIA Loan Balance in an amount equal to such Excess Reserves, provided that no prepayment will be required if the amount of Excess Reserves is less than \$1,000,000. If the amount of Excess Reserves equals or exceeds \$1,000,000, not later than thirty (30) days following completion of the System’s audited financial statements for the applicable Borrower Fiscal Year the Borrower shall deliver a notice of Excess Reserves to the WIFIA Lender (the “<b>Excess Reserves Mandatory Prepayment Notice</b>”) stating the amount of the Excess Reserves and the date of the mandatory prepayment (as determined in accordance with the following sentence). The Borrower shall prepay an amount of the WIFIA Loan Balance equal to the amount of the Excess Reserves in immediately available funds on the next Payment Date that is at least ten (10)</p>

	<p>days following the date the Excess Reserves Mandatory Prepayment Notice was given (or, if the Borrower fails to deliver such notice, ten (10) days following the date by which the notice was required to have been given), and otherwise in accordance with the WIFIA Loan Agreement.</p> <p>As used above, “<b>System Reserves</b>” means, with respect to any Borrower Fiscal Year, the Borrower’s unrestricted and available Borrower Fiscal Year-end cash and cash equivalents, equivalent to the amount so designated as “Current Assets: Deposits and Investments Held by City” on the Borrower’s Statement of Net Position Proprietary Funds: Wastewater Management (the “Wastewater System Statement of Net Position”). For purposes of this definition, references to line items in the Wastewater System Statement of Net Position refer to those in the audited financial statements of the Borrower for the Borrower Fiscal Year ended June 30, 2019, and for any subsequent Borrower Fiscal Year shall include such line items as reflect substantially the cash and cash equivalents that would have been included in the corresponding line items (whether or not the same terminology is used).</p> <p>The Borrower may prepay the WIFIA Loan in whole at any time or in part on any Payment Date (but in the case of a partial prepayment the Borrower is limited to one prepayment annually) and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; <u>provided, however</u>, that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof, from time to time, without penalty or premium, and otherwise in accordance with the WIFIA Loan Agreement.</p>
RATE COVENANT	<p>(i) <u>Covenant Regarding Gross Revenues.</u> 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 (together with other funds transferred from the Revenue Stabilization Fund or other funds which are lawfully available to the Borrower for payment of any of the following amounts during such Borrower Fiscal Year) are at least sufficient, after making</p>

	<p>allowances for contingencies and error in the estimates, to pay the following amounts in the following order:</p> <ul style="list-style-type: none"><li>(A) all Operation and Maintenance Costs estimated by the Borrower to become due and payable in such Borrower Fiscal Year;</li><li>(B) the principal of and interest on all Outstanding Parity Debt as they become due and payable during such Borrower Fiscal Year, without preference or priority;</li><li>(C) all amounts, if any, required to restore the balances in any reserve funds established for Outstanding Parity Debt to their respective required levels;</li><li>(D) all payments coming due and payable during the Borrower Fiscal Year and required for compliance with the Parity Debt Documents; and</li><li>(E) all payments required to meet any other obligations of the Borrower which are charges, liens, encumbrances upon or payable from the Gross Revenues or Net Revenues during the Borrower Fiscal Year.</li></ul> <p>(ii) <u>Covenant Regarding Net Revenues: Parity Debt.</u> In addition to the covenant set forth in the preceding clause (i) of this section, 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, taking into account allowances for contingencies, are sufficient to yield estimated Net Revenues which are at least equal to 120% of the aggregate amount of principal of and interest on all Outstanding Parity Debt coming due and payable during such Borrower Fiscal Year. The provisions of this clause (ii) are subject to the adjustments made for any transfers made from the Revenue Stabilization Fund under the WIFIA Loan Agreement. Notwithstanding the foregoing provisions, if the actual collection of Net Revenues based on such rates, fees and charges is insufficient to yield Net Revenues which meet the requirements of this clause (ii), such event shall not constitute an Event of Default unless it has continued uncured for a period of at least 12 months. For purposes of determining the amount of principal to be considered for</p>
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	<p>purposes of this computation, with respect to Parity Debt that is a Drawdown Debt, the foregoing amount shall be calculated based only on amounts that have actually been drawn down by the Borrower and disbursed by the lender or registered owner, minus any amounts that have been repaid by the Borrower.</p> <p>(iii) <u>Covenant Regarding Net Revenues: Subordinate Debt.</u> In addition to the covenant set forth in the preceding clauses (i) and (ii) of this section, 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, taking into account allowances for contingencies, are sufficient to yield estimated Net Revenues which are at least equal to 110% of the aggregate amount of principal of and interest on all Outstanding Parity Debt and Subordinate Debt coming due and payable during such Borrower Fiscal Year (with disbursements of the proceeds of the WIFIA Loan or any other Parity Debt or any Subordinate Debt treated as Outstanding in the amount disbursed for purposes of this covenant). The provisions of this clause (iii) are subject to the adjustments made for any transfers made from the Revenue Stabilization Fund under the WIFIA Loan Agreement. Notwithstanding the foregoing provisions, if the actual collection of Net Revenues based on such rates, fees and charges is insufficient to yield Net Revenues which meet the requirements of this section, such event shall not constitute an Event of Default unless it has continued uncured for a period of at least 12 months. For purposes of determining the amount of principal to be considered for purposes of this computation, with respect to Drawdown Debt, the foregoing amount shall be calculated based only on amounts that have actually been drawn down by the Borrower and disbursed by the lender or registered owner, minus any amounts that have been repaid by the Borrower.</p> <p>(iv) <u>Rolling Covenant Regarding Net Revenues: Parity Debt.</u> In addition to the covenant set forth in the preceding clauses (i), (ii) and (iii) of this section, commencing with the Borrower Fiscal Year ending June 30, 2050, the Borrower will fix, prescribe, revise and collect rates, fees</p>
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	<p>and charges for the services and facilities furnished by the System during each Borrower Fiscal Year which[, taking into account allowances for contingencies,]<sup>1</sup> are sufficient to yield estimated Net Revenues which are at least equal to 100% of the average aggregate amount of principal of and interest on all Outstanding Parity Debt coming due and payable during such Borrower Fiscal Year and the immediately following four (4) Borrower Fiscal Years (with disbursements of the proceeds of the WIFIA Loan or any other Parity Debt or any Subordinate Debt treated as Outstanding in the amount disbursed for purposes of this covenant). The provisions of this section shall not include any transfers made from the Revenue Stabilization Fund under the flow of funds provision of the WIFIA Loan Agreement. Notwithstanding the foregoing provisions, if the actual collection of Net Revenues based on such rates, fees and charges is insufficient to yield Net Revenues which meet the requirements of this section, such event shall not constitute an Event of Default unless it has continued uncured for a period of at least 12 months. For purposes of determining the amount of principal to be considered for purposes of this computation, with respect to Drawdown Debt, the foregoing amount shall be calculated based only on amounts that have actually been drawn down by the Borrower and disbursed by the lender or registered owner, minus any amounts that have been repaid by the Borrower. The covenants set forth in clauses (ii) and (iii) above and this clause (iv) are collectively referred to as the “<b>Rate Covenant</b>”).</p>
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<sup>1</sup> Should this be in this rolling rate covenant?

<p>ADDITIONAL INDEBTEDNESS</p>	<p>(i) Except for Permitted System Debt, the Borrower shall not without the prior written consent of the WIFIA Lender issue or incur indebtedness of any kind; <u>provided</u>, that the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Pledged Collateral, including Permitted System Debt, without the prior written consent of the WIFIA Lender, while an Event of Default has occurred and is continuing.</p> <p>(ii) The Borrower may not create, incur or suffer to exist (A) any System Debt the payments of which are senior or prior in right to the payment by the Borrower of the Parity Debt, or (B) any debt of the Project that is secured by a Lien on any assets or property of the Borrower other than the Pledged Collateral;</p> <p>(iii) <u>Additional Parity Debt</u>. The Borrower may issue Additional Parity Debt from time to time in such principal amount as it determines (with drawdown Parity Debt (including the WIFIA Loan) treated as a separate issuance in the amount of each disbursement or drawdown proceeds for purposes of this covenant), subject to the following conditions precedent:</p> <p>(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.</p> <p>(B) The amount of such Net Revenues, calculated in accordance with generally accepted accounting principles, as shown by the books of the Borrower for the latest Borrower Fiscal Year or as shown by the books of the Borrower for any more recent 12-month period selected by the Borrower, in either case verified by a certificate or opinion of an Independent Accountant, plus (at the option of the Borrower) the Additional Revenues, are at least equal to 120% of the amount of Parity Debt Maximum Annual Debt</p>
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	<p>Service,<sup>2</sup> taking into account the proposed issuance of Additional Parity Debt.</p> <p>(C) The issuance of such Additional Parity Debt shall comply with all conditions to the issuance thereof as set forth in the applicable provisions of the Parity Debt Documents.</p> <p>(D) Such Additional Parity Debt shall not require payments or transfers (whether of principal or interest or otherwise) more often than once a month.</p> <p>(E) Such Additional Parity Debt shall be issued pursuant to a Parity Debt Document that complies with the requirements of the WIFIA Loan Agreement.</p> <p>(F) The Borrower shall deliver to the WIFIA Lender a Certificate of the Borrower certifying, and an opinion of Bond Counsel stating, that the conditions precedent to the issuance of such Additional Parity Debt set forth in this clause (iii) have been satisfied.</p> <p>(iv) <u>Additional Subordinate Debt</u>. The Borrower may issue Additional Subordinate Debt from time to time in such principal amount as it determines (with drawdown Subordinate Debt treated as a separate issuance in the amount of each disbursement or drawdown proceeds for purposes of this covenant), subject to the following conditions precedent:</p> <p>(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.</p> <p>(B) The amount of such Net Revenues, calculated in accordance with generally accepted accounting principles, as shown by the books of the Borrower for the latest Borrower Fiscal Year or as shown by the books of the Borrower for any more recent 12-month</p>
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<sup>2</sup> See Attachment A for the definition thereof.

	<p>period selected by the Borrower, in either case verified by a certificate or opinion of an Independent Accountant, plus (at the option of the Borrower) the Additional Revenues, are at least equal to 110% of the amount of Maximum Annual Debt Service,<sup>3</sup> taking into account the proposed issuance of Additional Subordinate Debt.</p> <p>(C) The issuance of such Additional Subordinate Debt shall comply with all conditions to the issuance thereof as set forth in the applicable provisions of the Subordinate Debt Documents.</p> <p>(D) Such Additional Subordinate Debt shall be issued pursuant to a Subordinate Debt Document that expressly makes the pledge of and lien upon the Net Revenues securing such Additional Subordinate Debt junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder and which Subordinate Debt Document otherwise complies with the requirements of the WIFIA Loan Agreement and no such Subordinate Debt Document shall contain a right to accelerate without the consent of the holders of Parity Debt.</p> <p>(E) The Borrower shall deliver to the WIFIA Lender a Certificate of the Borrower certifying, and an opinion of Bond Counsel stating, that the conditions precedent to the issuance of such Additional Subordinate Debt set forth in this clause (iv) have been satisfied.</p> <p>(v) <u>Superior and Subordinate Obligations.</u> 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 Gross Revenues or the Net Revenues over the Parity Debt. Nothing herein limits or affects the ability of the Borrower to issue or incur (a) Additional Parity Debt or (b) obligations which are either unsecured or which are Additional Subordinate Debt.</p>
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<sup>3</sup> See Attachment A for the definition thereof.

	<p>(vi) Upon the incurrence of Permitted System Debt consisting of Additional Parity Debt that satisfies the requirements of clause (iii) above; Additional Subordinate Debt that satisfies the requirements of clause (iv) above; and indebtedness incurred in respect of any swap or hedging transaction relating to Subordinate Debt permitted under the WIFIA Loan Agreement, the Borrower shall provide to the WIFIA Lender a certificate signed by the Borrower's Authorized Representative, (A) specifying the closing date with respect to such proposed indebtedness and (B) confirming that such proposed indebtedness is authorized pursuant to this section and satisfies the applicable requirements under the definitions of "Permitted System Debt" and "Additional Parity Debt" or "Additional Subordinate Debt" as applicable.</p> <p>(vii) The Borrower may not create, incur or suffer to exist any System Debt as Tender Option Obligations, except as Subordinate Debt. To the extent any Permitted System Debt consists of Tender Option Obligations, the Borrower must maintain a credit or liquidity facility that will pay any amounts payable by the Borrower in respect of such Tender Option Obligations.</p> <p>(viii) The Borrower may not create, incur or suffer to exist any System Debt in the form of commercial paper, balloon indebtedness or bond anticipation notes, except as Subordinate Debt.</p> <p>(ix) The Borrower may not create, incur or suffer to exist any System Debt as Variable Interest Rate Obligations, except as Subordinate Debt.</p>
<p><b>RESTRICTED PAYMENTS AND TRANSFERS</b></p>	<p>The Borrower shall not permit Gross Revenues or other assets of the System, or any funds in any accounts held under the WIFIA Loan Documents 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.</p>

<p>WIFIA LOAN DOCUMENTATION</p>	<p>The WIFIA Loan shall be subject to the preparation, execution and delivery of the WIFIA Loan Agreement 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 are typical of WIFIA loan agreements.</p>
<p>GOVERNING LAW</p>	<p>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.</p>
<p>COUNTERPARTS</p>	<p>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. 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 delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.</p>

*[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: Andrew R. Wheeler  
Title: Administrator

ACKNOWLEDGED AND AGREED:

**CITY OF SUNNYVALE,**  
by its authorized representative

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to City of Sunnyvale – Sunnyvale Cleanwater Program Phase 2 – WIFIA Term Sheet]*

## Attachment A

### Definitions

The definitions of the terms Maximum Annual Debt Service and Parity Debt Maximum Annual Debt Service in the WIFIA Loan Agreement will read as follows:

**“Maximum Annual Debt Service”** means, as of the date of any calculation, the maximum sum obtained for the current or any future Borrower Fiscal Year so long as the WIFIA Bond remains Outstanding by totaling the following amounts for such Borrower Fiscal Year:

(a) the aggregate amount of principal of and interest on the WIFIA Loan coming due and payable in such Borrower Fiscal Year (with disbursements of the proceeds of the WIFIA Loan treated as Outstanding in the amount disbursed, minus any amounts that have been repaid by the Borrower, for purposes of this definition);

(b) the principal amount of all Outstanding System Debt (other than the WIFIA Loan), if any, coming due and payable by their terms in such Borrower Fiscal Year, including the principal of any such System Debt coming due and payable by operation of mandatory sinking fund redemption; and

(c) the amount of interest which would be due during such Borrower Fiscal Year on the aggregate principal amount of all Outstanding System Debt (other than the WIFIA Loan) which would be Outstanding in such Borrower Fiscal Year if such System Debt is retired as scheduled;

provided, that, for purposes of the calculation of Maximum Annual Debt Service with respect to Outstanding Parity Debt, in determining the principal amount due in each Borrower Fiscal Year on the WIFIA Loan, it shall be assumed that the principal of the WIFIA Loan will be amortized in a manner resulting in approximately equal annual installments of the then outstanding WIFIA Loan Balance on such date of calculation over the Remaining Assumed Amortization Period. As used above, “Remaining Assumed Amortization Period” shall mean the period commencing on the earlier of (x) April 1, 2035 and (y) such date of calculation, and ending on the Final Maturity Date;

provided further, that, for purposes of the calculation of Maximum Annual Debt Service with respect to Outstanding Subordinate Debt, the following shall apply:

(i) Excluded Principal Payments (and the interest related thereto provided such interest is being paid from the same source as the Excluded Principal Payments) for any Outstanding Subordinate Debt in the form of commercial paper, balloon indebtedness or bond anticipation notes shall be excluded from such calculation and Assumed Debt Service for such Subordinate Debt shall be included in such calculation;

(ii) in determining the principal amount due in each Borrower Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such Outstanding Subordinate Debt, including any mandatory sinking account payments or any scheduled redemption or payment of Outstanding Subordinate Debt on the basis of accreted value, and for such purpose, the redemption payment or payment of accreted value shall be deemed a principal payment and interest that is compounded and paid as accreted value shall be deemed due on the scheduled redemption or payment date of Outstanding Subordinate Debt issued as capital appreciation obligations;

(iii) if any Outstanding Subordinate Debt bears, or if any Outstanding Subordinate Debt proposed to be issued will bear, interest at a variable interest rate for which a swap or hedging transaction is not in place and the interest on which is excluded or expected to be excluded from gross income for federal income tax purposes, the interest rate on such Outstanding Subordinate Debt for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Swap Index for the five years preceding such date of calculation;

(iv) if any Outstanding Subordinate Debt bears, or if any Outstanding Subordinate Debt proposed to be issued will bear, interest at a variable interest rate for which a swap or hedging transaction is not in place and the interest on which is included or expected to be included in gross income for federal income tax purposes, the interest rate on such Outstanding Subordinate Debt shall be calculated at an interest rate equal to 100% of the average One Month USD LIBOR Rate during the five years preceding such date of calculation;

(v) with respect to any Outstanding Subordinate Debt bearing interest, or expected to bear interest, at a variable interest rate for which a swap or hedging transaction is in place providing for a fixed rate of interest to maturity or for a specific term with respect to such Outstanding Subordinate Debt, the interest rate on such Outstanding Subordinate Debt shall be assumed to be the synthetic fixed interest rate specified in such swap or hedging transaction for such term; provided that if, pursuant to a certificate of the Borrower, the sum of (A) interest payable on such Outstanding Subordinate Debt, plus (B) amounts payable by the Borrower under such swap or hedging transaction, less (C) amounts receivable by the Borrower under such swap or hedging transaction, is expected to be greater than the interest payable on the Outstanding Subordinate Debt to which such swap or hedging transaction relates (i.e., if such swap or hedging transaction is an "off-market" swap or hedging transaction), then, in such instance, such excess amounts payable by the Borrower under such swap or hedging transaction shall be included in the calculation of Maximum Annual Debt Service; and

(vi) if any Outstanding Subordinate Debt features an option, on the part of the owners or an obligation under the terms of such Outstanding Subordinate Debt, to tender all or a portion of Outstanding Subordinate Debt to the Borrower or other fiduciary or agent, and requires that such Outstanding Subordinate Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due in any Borrower Fiscal Year on such Outstanding Subordinate Debt, the options or obligations of the owners of such Outstanding Subordinate Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity.

**“Parity Debt Maximum Annual Debt Service”** means, as of the date of any calculation, the maximum sum obtained for the current or any future Borrower Fiscal Year so long as the WIFIA Bond remains Outstanding by totaling the following amounts for such Borrower Fiscal Year:

(a) the aggregate amount of principal of and interest on the WIFIA Loan coming due and payable in such Borrower Fiscal Year (with disbursements of the proceeds of the WIFIA Loan treated as Outstanding in the amount disbursed, minus any amounts that have been repaid by the Borrower, for purposes of this definition);

(b) the principal amount of all Outstanding Parity Debt (other than the WIFIA Loan), if any, coming due and payable by their terms in such Borrower Fiscal Year, including the principal of any such Parity Debt coming due and payable by operation of mandatory sinking fund redemption; and

(c) the amount of interest which would be due during such Borrower Fiscal Year on the aggregate principal amount of all Outstanding Parity Debt (other than the WIFIA Loan) which would be Outstanding in such Borrower Fiscal Year if such Parity Debt is retired as scheduled;

provided, that, for purposes of the calculation of Maximum Annual Debt Service with respect to Outstanding Parity Debt, in determining the principal amount due in each Borrower Fiscal Year on the WIFIA Loan, it shall be assumed that the principal of the WIFIA Loan will be amortized in a manner resulting in approximately equal annual installments of the then outstanding WIFIA Loan Balance on such date of calculation over the Remaining Assumed Amortization Period. As used above, “Remaining Assumed Amortization Period” shall mean the period commencing on the earlier of (x) April 1, 2035 and (y) such date of calculation, and ending on the Final Maturity Date.