

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**WIFIA LOAN AGREEMENT**

**For Up to \$220,628,721**

**With**

**CITY OF SUNNYVALE**

**For the**

**SUNNYVALE CLEANWATER PROGRAM PHASE 2  
(WIFIA — N[\_\_\_\_\_]CA)**

**Dated as of [\_\_\_\_\_] , 2020**

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I DEFINITIONS AND INTERPRETATION .....</b>	<b>2</b>
Section 1. Definitions.....	2
Section 2. Interpretation.....	23
<b>ARTICLE II THE WIFIA LOAN.....</b>	<b>24</b>
Section 3. WIFIA Loan Amount.....	24
Section 4. Disbursement Conditions.....	24
Section 5. Term.....	25
Section 6. Interest Rate .....	25
Section 7. Security and Priority; Flow of Funds.....	26
Section 8. Payment of Principal and Interest .....	30
Section 9. Prepayment .....	32
Section 10. Fees and Expenses .....	34
<b>ARTICLE III CONDITIONS PRECEDENT .....</b>	<b>35</b>
Section 11. Conditions Precedent .....	35
<b>ARTICLE IV REPRESENTATIONS AND WARRANTIES .....</b>	<b>40</b>
Section 12. Representations and Warranties of Borrower .....	40
Section 13. Representations and Warranties of WIFIA Lender .....	46
<b>ARTICLE V COVENANTS .....</b>	<b>47</b>
Section 14. Affirmative Covenants.....	47
Section 15. Negative Covenants .....	56
Section 16. Reporting Requirements .....	60
<b>ARTICLE VI EVENTS OF DEFAULT .....</b>	<b>65</b>
Section 17. Events of Default and Remedies.....	65
<b>ARTICLE VII MISCELLANEOUS .....</b>	<b>68</b>
Section 18. Disclaimer of Warranty.....	68
Section 19. No Personal Recourse.....	69
Section 20. No Third Party Rights.....	69
Section 21. Borrower's Authorized Representative.....	69
Section 22. WIFIA Lender's Authorized Representative .....	69
Section 23. Servicer .....	69
Section 24. Amendments and Waivers .....	70
Section 25. Governing Law .....	70
Section 26. Severability .....	70
Section 27. Successors and Assigns.....	70
Section 28. Remedies Not Exclusive.....	70
Section 29. Delay or Omission Not Waiver.....	70
Section 30. Counterparts .....	70
Section 31. Notices .....	70
Section 32. Indemnification .....	71
Section 33. Sale of WIFIA Loan.....	72
Section 34. Effectiveness .....	72
Section 35. Termination.....	72
Section 36. Integration .....	73

**SCHEDULE I – Project Budget**

**SCHEDULE II – Construction Schedule**

**SCHEDULE III – Existing Indebtedness**

**SCHEDULE IV – WIFIA Payment Instructions**

**SCHEDULE 12(f) – Litigation**

**SCHEDULE 12(n) – Principal Project Contracts**

**SCHEDULE 12(p) – Environmental Matters**

**EXHIBIT A – Form of WIFIA Bond**

**EXHIBIT B – Anticipated WIFIA Loan Disbursement Schedule**

**EXHIBIT C – Form of Non-Debarment Certificate**

**EXHIBIT D – Requisition Procedures**

**EXHIBIT E – Form of Non-Lobbying Certificate**

**EXHIBIT F – WIFIA Debt Service**

**EXHIBIT G-1 – Opinions Required from Counsel to Borrower**

**EXHIBIT G-2 – Opinions Required from Bond Counsel**

**EXHIBIT H – Form of Closing Certificate**

**EXHIBIT I – Form of Certificate of Substantial Completion**

**EXHIBIT J – Form of Quarterly Report**

**EXHIBIT K – Form of Public Benefits Report**

## WIFIA LOAN AGREEMENT

**THIS WIFIA LOAN AGREEMENT** (this “**Agreement**”), dated as of [\_\_\_\_], 2020, is by and between the **CITY OF SUNNYVALE**, a municipal corporation and charter city organized and existing under the laws of the State of California (the “**State**”), with an address at 456 W. Olive Avenue, Sunnyvale CA 94086 (the “**Borrower**”), and the **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 “**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, 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 and by Section 4201 of America’s Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time, the “**Act**” or “**WIFIA**”), which is codified as 33 U.S.C. §§ 3901-3914;

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 \$220,628,721 (excluding interest that is capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for WIFIA financial assistance dated [October 10, 2019] (the “**Application**”);

WHEREAS, as of the date hereof, 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 under this Agreement through the purchase of the WIFIA Bond (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 Bond in accordance with the terms and provisions hereof and of the WIFIA Bond; 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.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. 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.

“**Act**” means the Act as defined in the recitals hereto.

“**Additional Debt**” means Additional Parity Debt and Additional Subordinate Debt.

“**Additional Parity Debt**” means any Parity Debt permitted under Section 15(a)(iii) (*Negative Covenants – Indebtedness — Additional Parity Debt*), which Parity Debt is issued or incurred after the Effective Date.

“**Additional Principal Project Contracts**” means (a) any contract, agreement, letter of intent, understanding or instrument listed in Part B of **Schedule 12(n)** (*Principal Project Contracts*) and (b) any other contract, agreement, letter of intent, understanding or instrument entered into by (or on behalf of) the Borrower after the Effective Date with respect to the Project, in the case of this clause (b), (i) pursuant to which the Borrower has payment obligations in excess of \$10,000,000 in the aggregate or (ii) the termination of which could reasonably be expected to have a Material Adverse Effect, but excluding, in the case of this clause (b), any (A) insurance policies or documents pertaining to the Borrower’s self-insurance program (as applicable), (B) Governmental Approvals and (C) agreements, documents and instruments (1) providing for, governing or evidencing any Permitted System Debt and any related Permitted Lien for such Permitted System Debt or (2) entered into to consummate any Permitted Investment.

“**Additional Revenues**” means, with respect to any issuance of Parity Debt:

(i) an allowance for Net Revenues from any additions to or improvements or extensions of the System to be made with the proceeds of such Parity Debt, and also for Net Revenues from any such additions, improvements or extensions which have been made from moneys from any source, but in any case which, during all or any part of such Borrower Fiscal Year or such 12-month period, were not in service, all in an amount equal to 90% of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first 36-month period in which each addition, improvement or extension is respectively to be in operation, all as shown in the written report of an Independent Accountant or Financial Consultant engaged by the Borrower; and

(ii) an allowance for earnings arising from any increase in the rates and charges made for service from the System which has become effective prior to the incurring of such additional indebtedness but which, during all or any part of such Borrower Fiscal Year or such 12-month period, was not in effect, in an amount equal to the amount by which the Net Revenues would have been increased if such increase in such rates and charges had been in effect during the whole of such Borrower Fiscal Year or such 12-month period.

**“Additional Subordinate Debt”** means any Subordinate Debt permitted under Section 15(a)(iv) (*Negative Covenants – Indebtedness — Additional Subordinate Debt*), which Subordinate Debt is issued or incurred after the Effective Date.

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

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

**“Anticipated WIFIA Loan Disbursement Schedule”** means the schedule set forth in **Exhibit B** (*Anticipated WIFIA Loan Disbursement 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(c) (*Disbursement Conditions*).

**“Anti-Corruption Laws”** means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

**“Anti-Money Laundering Laws”** means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

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

**“Assumed Debt Service”** means for any Borrower Fiscal Year the aggregate amount of principal and interest which would be payable on all Outstanding Subordinate Debt in the form of commercial paper, balloon indebtedness or bond anticipation notes, if each Excluded Principal Payment were amortized on a substantially level debt service basis for a term with a weighted average maturity not greater than [\_\_\_\_\_] % of the weighted average useful life of the assets financed by such Subordinate Debt, or such shorter amortization period elected by the Borrower in the Certificate of the Borrower delivered pursuant to Section 15(a)(iv) (*Negative Covenants — Indebtedness — Additional Subordinate Debt*) in connection with the issuance of such Subordinate Debt, commencing on the date of calculation of such Assumed Debt Service, and with interest at a fixed interest rate equal to the rate at which the Borrower could issue or incur the Additional Parity Debt or Additional Subordinate Debt anticipated to refund such Subordinate Debt as certified by the Borrower’s financial advisor or investment banker, which the Borrower has certified to the WIFIA Lender in the Certificate of the Borrower delivered pursuant to Section 15(a)(iv) (*Negative Covenants — Indebtedness — Additional Subordinate Debt*) in connection with the issuance of such Subordinate Debt, together with the certificate of the Borrower’s financial advisor or investment banker described above. Such certification shall constitute a representation and warranty by the Borrower to the WIFIA Lender upon which the WIFIA Lender may conclusively rely.

**“Bank Secrecy Act”** means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

**“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 (*Payment of Principal and Interest*) 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 Parity Debt, 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 Bondholders, funds on deposit in any of the System Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under the Parity Debt Documents for application to the prepayment or repayment of any principal amount of the Parity Debt other than in accordance with the provisions of this Agreement.

**“Base Case Financial Model”** means a financial model prepared by the Borrower forecasting the capital costs of the System (including the Project) and the rates, revenues, operating expenses and major maintenance requirements of the System for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Lender as of the Effective Date, which model shall be provided to the WIFIA Lender as a fully functional Microsoft Excel – based financial model or such other format requested by the WIFIA Lender.

**“Bond Counsel”** means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Borrower of nationally-recognized experience in the issuance or incurrence of obligations by governmental entities such as the Borrower.

**“Bond Law”** means Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code, enacted pursuant to the charter of the Borrower and Ordinance No. 2917-10, adopted April 6, 2010, as in effect on the Effective Date or as thereafter amended in accordance with its terms.

**“Bondholder”** means, when used with respect to the WIFIA Bond, the WIFIA Lender (and any subsequent registered holder of the WIFIA Bond) and, when used with respect to any other System Debt, the registered owner of such System Debt.

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

**“Borrower Fiscal Year”** means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar 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 Section 15(f) (*Negative Covenants – Borrower Fiscal Year*).

**“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 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 Sunnyvale, California.

**“Capitalized Interest Period”** means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period, subject to earlier termination as set forth in Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*).

**“Certificate of the Borrower”** means a certificate in writing signed by the Mayor, City Manager or Director of Finance of the Borrower, or any other officer of the Borrower duly authorized by the City Council for that purpose.

**“Charter”** means, collectively, the charter of the Borrower, as amended and the Sunnyvale Municipal Code, as amended.

**“City Council”** means the City Council of the Borrower.

**“Code”** means the Internal Revenue Code of 1986, or any successor tax code, as amended from time to time, and the applicable regulations proposed or promulgated thereunder.

**“Congress”** means the Congress of the United States of America.



**“Construction Period”** means the period from the Effective Date through the Substantial Completion Date.

**“Construction Period Servicing Fee”** has the meaning set forth in Section 10(a)(ii) (*Fees and Expenses – Fees*).

**“Construction Schedule”** means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II** (*Construction Schedule*), and (b) any updates thereto included in the periodic reports submitted to the WIFIA Lender pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) most recently approved by the WIFIA Lender.

**“Control”** means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms **“Controlling”** and **“Controlled by”** have meanings correlative to the foregoing.

**“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 Payment Commencement Date”** means the earliest to occur of either (a) [April 1, 2030]; or (b) if the Capitalized Interest Period ends pursuant to Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*) due to the occurrence of an Event of Default, the first Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Payment Date falling closest to, but not later than, the fifth anniversary of 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”** means an interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 200 basis points.

**“Development Default”** means (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 within eighteen (18) months following the Projected Substantial Completion Date.

**“Dollars”** and **“\$”** means the lawful currency of the United States of America.

**“Drawdown Debt”** means System Debt which is funded over a period of time, such that only the principal amount of funds actually drawn down by the Borrower and disbursed by the registered owner shall be considered for purposes of accruing interest and determining the Maximum Annual Debt Service.

**“Effective Date”** means the date of this Agreement.

**“Eligible Project Costs”** means amounts in the Project Budget approved by the WIFIA Lender, which 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), 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 Section 3905(8) of Title 33 of the United States Code), construction contingencies, and acquisition of equipment; or
- (d) capitalized interest (with respect to System Debt 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”** has the meaning provided in Section 1 of Exhibit D (*Requisition Procedures*).

**“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.

**“Environmental Laws”** has the meaning provided in Section 12(p) (*Representations and Warranties of Borrower – Environmental Matters*).

**“EPA”** means the United States Environmental Protection Agency.

**“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.

**“Excess Reserves”** has the meaning provided in Section 9(a)(ii) (*Prepayment — Mandatory Prepayment*).

**“Excess Reserves Mandatory Prepayment Notice”** has the meaning provided in Section 9(a)(ii) (*Prepayment — Mandatory Prepayment*).

**“Excluded Principal Payments”** means each payment of principal of Outstanding Subordinate Debt in the form of commercial paper, balloon indebtedness or bond anticipation notes, which the Borrower has certified to the WIFIA Lender in the Certificate of the Borrower delivered pursuant to Section 15(a)(iv) (*Negative Covenants — Indebtedness — Additional Subordinate Debt*) in connection with the issuance of such Subordinate Debt that the Borrower intends to pay with moneys that are not Gross Revenues, including the proceeds of Additional Parity Debt or Additional Subordinate Debt and the proceeds of any state or federal grants with respect to the System, notwithstanding the pledge and lien securing such Subordinate Debt. Such certification shall constitute a representation and warranty by the Borrower to the WIFIA Lender upon which the WIFIA Lender may conclusively rely; provided, however, that such certification shall in no way affect the subordinate lien on the Net Revenues securing such Subordinate Debt.

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

**“Existing Principal Project Contract”** means each contract of the Borrower set forth in Part A of **Schedule 12(n)** (*Principal Project Contracts*).

**“Federal Fiscal Year”** means the fiscal year of the 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 Securities”** means:

- (a) any direct general non-callable obligations of the United States of America, including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America; and
- (b) any obligations the timely payment of principal of and interest on which are fully guaranteed by the United States of America or which are secured by obligations described in the preceding clause (a).

**“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 Anticipated WIFIA Loan Disbursement Schedule; (c) the date on 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”** means the earlier of (a) [April 1, 2060]<sup>1</sup> (or such earlier date as is set forth in an updated **Exhibit F** (*WIFIA Debt Service*) pursuant to Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*)); and (b) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

**“Financial Consultant”** means any consultant or firm of such consultants appointed by the Borrower and who, or each of whom: (a) is judged by the Borrower to have experience in matters relating to the financing of wastewater systems; (b) is in fact independent and not under domination of the Borrower; (c) does not have any substantial interest, direct or indirect, with the Borrower; and (d) is not connected with the Borrower as an officer or employee of the Borrower, but who may be regularly retained to make reports to the Borrower.

**“Financial Statements”** has the meaning provided in Section 12(t) (*Representations and Warranties of Borrower – Financial Statements*).

**“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 United States of America.

**“Government”** means the United States of America and its departments and agencies.

**“Governmental Approvals”** means all authorizations, consents, approvals, waivers, exceptions, variances, filings, 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 United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

**“Gross Revenues”** means 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, determined in accordance with generally accepted accounting principles, including but not limited to investment earnings thereon, insurance proceeds, transfers from (but exclusive of any transfers to) the Revenue Stabilization Fund, and all moneys received by the Borrower from other public entities whose inhabitants are served by the System pursuant to contracts with the Borrower. *However*, “Gross Revenues” exclude (a) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the Borrower levied for the purpose of paying special assessment bonds or special tax obligations of the Borrower relating to the System, (b) any taxes levied for the sole purpose of providing for

<sup>1</sup>In no event later than the earlier to occur of (i) the 35<sup>th</sup> anniversary of the Projected Substantial Completion Date and (ii) the estimated expiration of the useful life of the Project, in each case as of the Effective Date, consistent with 33 U.S.C. § 3908(b)(5).

payment of principal and interest on any voter-approved indebtedness incurred by the Borrower, which would not otherwise be subject to levy but for the issuance of such indebtedness, (c) the proceeds of any state or federal grants with respect to the System, and (d) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Borrower.

**"Indemnatee"** 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.

**"Insolvency Laws"** means the United States 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 Payment Date"** means each April 1 and October 1, commencing on the Debt Service Payment Commencement Date.

**"Investment Grade Rating"** means a public rating no lower than 'BBB-', 'Baa3', or their respective equivalent, from a Nationally Recognized Rating Agency.

**"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.

**"Loan Amortization Schedule"** means the Loan Amortization Schedule reflected in the applicable column of **Exhibit F** (*WIFIA Debt Service*), as amended from time to time in accordance with Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

**"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 Gross 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 the WIFIA Loan Documents on the Pledged

Collateral in favor of the Secured Parties or (f) the WIFIA Lender's rights or remedies available under any WIFIA Loan Document.

**“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.

**“Nationally Recognized Rating Agency”** means any nationally recognized statistical rating organization 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”** means the [Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by EPA on [\_\_\_\_], 20[\_\_\_\_] in accordance with NEPA.

**“Net Loss Proceeds”** means Loss Proceeds after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties.

**“Net Revenues”** means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

**“Non-Debarment Certificate”** means a certificate, signed by the Borrower’s Authorized Representative, as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995), substantially in the form attached hereto as **Exhibit C** (*Form of Non-Debarment Certificate*).

**“Non-Lobbying Certificate”** means a certificate, signed by the Borrower’s Authorized Representative, with respect to the prohibition on the use of appropriated funds for lobbying pursuant to 49 C.F.R. § 20.100(b), substantially in the form attached hereto as **Exhibit E** (*Form of Non-Lobbying Certificate*).

**“OFAC”** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**“Operating Period Servicing Fee”** has the meaning set forth in Section 10(a)(iii) (*Fees and Expenses – Fees*).

**“Operation and Maintenance Costs”** means the reasonable and necessary costs paid or incurred by the Borrower for maintaining and operating the System, determined in accordance with generally accepted accounting principles, including but not limited to (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and (b) all administrative costs of the Borrower that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, and the necessary contribution to retirement of such employees, overhead, taxes (if any) and insurance.<sup>2</sup> However, “Operation and Maintenance Costs” do not include (i) administrative costs which the Borrower is required to pay hereunder, (ii) payments of debt service on bonds, notes, installment sale agreements or other obligations issued by the Borrower with respect to the System, (iii) depreciation, replacement and obsolescence charges or reserves therefor, and (iv) amortization of intangibles or other bookkeeping entries of a similar nature, and (v) costs and expenses which under generally accepted accounting principles are chargeable to a capital account.

<sup>2</sup> WIFIA Underwriting to confirm this definition is acceptable.



**“Ordinance”** means the Ordinance No. 2917-10, adopted by the City Council on April 6, 2010.

**“Organizational Documents”** means the Charter and the constitutional laws of the State that are the basis for the existence and authority of the Borrower, or by which the Borrower, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

**“Outstanding”** means, with respect to System Debt (other than the WIFIA Bond), System Debt that has not been cancelled or legally defeased or discharged pursuant to Section 14(r) (*Affirmative Covenants — Covenants Regarding Other System Debt*). With respect to the WIFIA Bond, it means the (i) entire amount available to be drawn under this Agreement (including amounts drawn and amounts that remain available to be drawn), plus (ii) capitalized interest that has been added to the principal balance of the WIFIA Bond, less (iii) any amount that has been irrevocably determined will not be drawn under this Agreement, less (iv) the aggregate principal amount of the WIFIA Bond that has been repaid.

**“Parity Debt”** means, collectively:

- (a) the WIFIA Loan;
- (b) the 2017 Bonds;
- (c) the 2016 State Installment Sale Agreement; and
- (d) all bonds, notes, loan agreements, installment sale agreements, leases or other obligations of the Borrower payable from and secured by a pledge of and lien upon any of the Net Revenues issued or incurred on a parity with any of the foregoing under Section 15(a)(iii) (*Negative Covenants – Indebtedness — Additional Parity Debt*).

**“Parity Debt Documents”** means, collectively (i) this Agreement and the WIFIA Bond, (ii) the 2017 Indenture; (iii) the 2016 State Installment Sale Agreement, and (iv) all leases, installment sale agreements, trust agreements, indentures of trust and other documents prescribing the terms and provisions applicable to any issue of Parity Debt or any securities which evidence Parity Debt.

**“Parity Debt Interest Payment Date”** means, with respect to any Parity Debt, any date on which an interest payment on the applicable bonds, or a payment of the interest component of the applicable installment sale agreement or capital lease agreement, is regularly scheduled to be paid to holders of the applicable Parity Debt.

**“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.

**“Parity Debt Set-Aside Amounts”** means any Net Revenues set aside in the applicable set-aside accounts within the Wastewater Fund for the applicable Parity Debt if and to the extent required by any Parity Debt Documents (other than this Agreement) in advance of payment for purposes of making payments of principal of and interest on Parity Debt (other than the WIFIA Bond), which amounts shall not exceed an amount equal to 1/6th of the amount of interest (or interest component of an installment payment or capital lease payment) payable on the next succeeding interest payment date for such Parity Debt and an amount equal to 1/12th of the amount of principal (or principal component of an installment payment or capital lease payment) payable on the next succeeding principal payment date for such Parity Debt, together with such additional amount that may be needed to cure a deficiency in a prior monthly set-aside; provided, however, that in each month intervening between the issuance date and the next succeeding interest payment date or principal payment date, respectively, for such Parity Debt, the amount of interest and the amount of principal, respectively, specified above shall be that amount which when multiplied by the number of deposits to the credit of the applicable set-aside accounts within the Wastewater Fund 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, for such Parity Debt.

**“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) (*Events of Default and Remedies – Payment Default*).

**“Payment Period”** means the six (6) month period beginning on [October 1, 2029] and ending on [March 31, 2030], and each succeeding six (6) month period thereafter; provided, that, that if the Debt Service Payment Commencement Date begins earlier than [April 1, 2030], the first Payment Period shall be the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

**“Permitted Investments”** means any of the following which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein:

- (a) Federal Securities;
- (b) Any direct or indirect obligations of an agency or department of the United States of America whose obligations represent the full faith and credit of the United States of America, or which are rated A or better by S&P.
- (c) Interest-bearing deposit accounts (including certificates of deposit) in federal or State chartered savings and loan associations or in federal or State of California banks, provided that: (i) the unsecured obligations of such commercial bank or savings and loan association are rated A or better by S&P; or (ii) such deposits are fully insured by the Federal Deposit Insurance Corporation.
- (d) Commercial paper rated in the highest short-term rating category by S&P.
- (e) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating in the highest rating category of S&P.
- (f) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, and having a rating in the highest rating category of S&P.
- (g) Obligations the interest on which is excludable from gross income pursuant to Section 103 of the Code and which are either (a) rated A or better by S&P, or (b) fully secured as to the payment of principal and interest by Federal Securities.
- (h) Bonds or notes issued by any state or municipality which are rated by S&P in one of the two highest rating categories assigned by S&P.

(i) Any investment agreement with, or guaranteed by, a financial institution the long-term unsecured obligations or the claims paying ability of which are rated A or better by S&P at the time of initial investment fully collateralized by securities defined in clause (a).

(j) The Local Agency Investment Fund of the State of California, created under Section 16429.1 of the California Government Code.

(k) The California Asset Management Program (CAMP).

**“Permitted Liens”** means:

- (a) Liens imposed pursuant to the WIFIA Loan Documents;
- (b) Liens imposed pursuant to the Parity Debt Documents;
- (c) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(j) (*Affirmative Covenants – Material Obligations*);
- (d) 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) (*Affirmative Covenants – Material Obligations*);
- (e) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;
- (f) deposits to secure the performance of bids, 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;
- (g) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 17(a)(vi) (*Events of Default and Remedies – Material Adverse Judgment*); and
- (h) 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.

**“Permitted System Debt”** means:

- (a) Existing Indebtedness;
- (b) the WIFIA Loan;

(c) Additional Parity Debt that satisfies the requirements of Section 15(a)(iii) (*Negative Covenants – Indebtedness — Additional Parity Debt*);

(d) Additional Subordinate Debt that satisfies the requirements of Section 15(a)(iv) (*Negative Covenants – Indebtedness — Additional Subordinate Debt*); and

(e) indebtedness incurred in respect of any swap or hedging transaction relating to Subordinate Debt permitted under this Agreement.

**“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.

**“Pledged Collateral”** means 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 this Agreement until applied to the payment of obligations as and to the extent permitted under Section 7(c) (*Security and Priority; Flow of Funds — Flow of Funds*).

**“Principal Payment Date”** means each April 1 and October 1, commencing on October 1, 2054.

**“Principal Project Contracts”** means the Existing Principal Project Contracts and the Additional Principal Project Contracts.

**“Principal Project Party”** means any Person (other than the Borrower) party to a Principal Project Contract.

**“Project”** means the Sunnyvale Cleanwater Program Phase 2, consisting of 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.

**“Project Accounts”** means the accounts established and held by the Borrower pursuant to any Parity Debt Documents or Subordinate Debt Documents to hold proceeds of Parity Debt or Subordinate Debt issued or incurred to finance costs incurred in connection with the Project.

**“Project Budget”** means the budget for the Project attached to this Agreement as **Schedule I** (*Project Budget*) 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.

**“Projected Substantial Completion Date”** means [April 22, 2025], as such date may be adjusted in accordance with Section 16(d) (*Reporting Requirements – Construction Reporting*).

**“Public Benefits Report”** has the meaning provided in Section 16(e) (*Reporting Requirements – Public Benefits Report*).

**“Rate Covenant”** has the meaning set forth in Section 14(a) (*Affirmative Covenants – Rate Covenant*), and collectively includes the covenants set forth in clauses (ii) and (iii) of such Section.

**“Related Documents”** means the Parity Debt Documents, the WIFIA Loan Documents and the Principal Project Contracts.

**“Requisition”** has the meaning provided in Section 4(a) (*Disbursement Conditions*).

**“Revenue Stabilization Fund”** means the fund established under Section 7(g) (*Security and Priority; Flow of Funds – Establishment of Revenue Stabilization Fund*).

**“S&P”** means Standard & Poor’s Corporation, of New York, New York, and its successors.

**“Sanctioned Country”** means, at any time, a country or territory which is itself the subject or target of any Sanctions.

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or controlled by any such Person or Persons.

**“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

**“Secured Obligations”** means the Parity Debt, the WIFIA Loan and the obligations of the Borrower under this Agreement and the WIFIA Bond and any other obligation secured by the Pledged Collateral.

**“Secured Parties”** means the WIFIA Lender and any other Bondholders of Parity Debt.

**“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 set forth in Section 10(a)(i) (*Fees and Expenses – Fees*).

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

**“Subordinate Debt”** means any System Debt that (a) is fully subordinated to the Borrower’s payment obligations under the Parity Debt, including the WIFIA Loan, and the Parity Debt Documents in priority of payment (as to both principal and interest), voting and priority of

security interest in the Net Revenues, including with respect to payment from revenues and reserves and payment upon default or acceleration of any such System Debt, and (b) upon issuance, will not adversely affect the then-applicable ratings of the Parity Debt, including the WIFIA Loan.

**“Subordinate Debt Documents”** means all leases, installment sale agreements, trust agreements, indentures of trust and other documents prescribing the terms and provisions applicable to any issue of Subordinate Debt or any securities which evidence Subordinate Debt.

**“Subordinate Debt Set-Aside Amounts”** means any Net Revenues set aside pursuant to the Subordinate Debt Documents in advance of payment for purposes of making payments of principal of and interest on Subordinate Debt.

**“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, that Substantial Completion has occurred.

**“System”** means 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.

**“System Accounts”** means all funds, accounts or subaccounts holding Gross Revenues, including the Wastewater Fund, and such additional funds, accounts or subaccounts that may be established in connection with the System for Gross Revenues.

**“System Debt”** means all bonds, notes, loan agreements, installment sale agreements, leases or other obligations of the Borrower payable from and secured by a pledge of and lien upon any of the Net Revenues, including the Parity Debt and the Subordinate Debt.

**“System Debt Documents”** means all leases, installment sale agreements, trust agreements, indentures of trust and other documents prescribing the terms and provisions applicable to any issue of System Debt or any securities which evidence System Debt, including all Parity Debt Documents and all Subordinate Debt Documents.

**“System Reserves”** 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).

**“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 and 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.

**“Tender Option Obligations”** means any Obligation which by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof to either the Borrower, a tender agent or a remarketing agent.

**“Total Project Costs”** means (a) the 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 (including costs of issuance); (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, any Parity Debt, or any Subordinate Debt, 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) during the Construction Period in respect of any indebtedness of the Borrower, in each case in connection with the Project (other than the WIFIA Loan); 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.

**“2016 State Installment Sale Agreement”** means the Installment Sale Agreement entitled “Headworks and Primary Treatment, Phase 1(A), Clean Water State Revolving Fund Project No. C06-8153-110, Agreement No. D16-01024,” in the original principal amount of \$127,068,522, dated as of December 9, 2016, between the Borrower and the State of California Water Resources Control Board.

**“2017 Bonds”** means the City of Sunnyvale Wastewater Revenue Refunding Bonds, Series 2017A and the City of Sunnyvale Taxable Wastewater Revenue Refunding Bonds, Series 2017A-T.

**“2017 Indenture”** means the Indenture of Trust, dated as of December 1, 2017, by and between the Borrower and U.S. Bank National Association, as trustee for the 2017 Bonds.

**“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, 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”** means the Base Case Financial Model, updated in accordance with Section 16(a) (*Reporting Requirements – Updated Financial Model*).

**“Variable Interest Rate”** means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the Subordinate Debt Document pursuant to which such Permitted Debt is incurred. Such Subordinate Debt Document shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect or (b) the time or times upon which any change in such variable interest rate shall become effective. For avoidance of doubt, pursuant to Section 15(a) (*Negative Covenants — Indebtedness*), the Borrower may only issue Variable Interest Rate Obligations as Subordinate Debt.

**“Variable Interest Rate Obligations”** means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity. For avoidance of doubt, pursuant to Section 15(a) (*Negative Covenants — Indebtedness*), the Borrower may only issue Variable Interest Rate Obligations as Subordinate Debt.

**“Wastewater Fund”** means the fund or funds which the Borrower has previously established for the receipt and deposit of Gross Revenues derived from the System.

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

**“WIFIA Bond”** means the bond delivered by the Borrower in substantially the form of **Exhibit A** (*Form of WIFIA Bond*).

**“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 any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on **Exhibit F** (*WIFIA Debt Service*) and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*).

**“WIFIA Interest Rate”** has the meaning provided in Section 6 (*Interest Rate*).

**“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 \$220,628,721 (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by the Borrower.

**“WIFIA Loan Balance”** means, for purposes of determining at any time the principal amount of the WIFIA Bond that interest accrues on, the sum of (i) the aggregate principal amount of the WIFIA Loan drawn by the Borrower plus (ii) capitalized interest added to the principal balance of the WIFIA Loan minus (iii) the aggregate principal amount of the WIFIA Loan repaid by the Borrower, as determined in accordance with Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

**“WIFIA Loan Documents”** means this Agreement, the WIFIA Bond, the Ordinance and the WIFIA Resolution.

**“WIFIA Payment Account”** means the account by that name established under Section 7(e) (*Security and Priority; Flow of Funds – Establishment of Accounts within Wastewater Fund*).

**“WIFIA Resolution”** means Resolution No. [\_\_\_\_], adopted by the City Council of the Borrower on [\_\_\_\_], 2020, authorizing the execution and delivery of this Agreement, the WIFIA Bond, and certain related actions by the Borrower in connection with the issuance of the WIFIA Loan.

## Section 2. Interpretation.

(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. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person's successors and permitted assigns.

(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 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, 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 Bond".

(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 Bond. Whenever there is a mandatory or optional prepayment of the WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the WIFIA Bond.

## **ARTICLE II THE WIFIA LOAN**

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed \$220,628,721 (excluding any interest that is capitalized in accordance with the terms hereof). WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*).

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. If the Borrower intends to utilize the WIFIA Loan proceeds to make

progress payments for Project construction work performed under the Principal Project Contracts, the Borrower shall demonstrate to the satisfaction of the WIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the WIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** (*Form of Requisition*) to **Exhibit D** (*Requisition Procedures*), along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the WIFIA Lender, all in accordance with the procedures of **Exhibit D** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*); provided, that no disbursements of WIFIA Loan proceeds shall be made after the Final Disbursement Date.

(b) The Borrower shall deliver copies of each Requisition to the WIFIA Lender on or before the first (1<sup>st</sup>) Business Day of each month for which a disbursement is requested. If the WIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15<sup>th</sup>) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15<sup>th</sup>) day is not a Business Day. Express WIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(c) At the time of any disbursement, the sum of all prior disbursements of WIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current Federal Fiscal Year set forth in the Anticipated WIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Subject to this Section 4, any scheduled disbursement (as reflected in the Anticipated WIFIA Loan Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall automatically roll forward to be available in the succeeding Federal Fiscal Year, having the effect of automatically updating the Anticipated WIFIA Loan Disbursement Schedule without need for the WIFIA Lender’s approval. The Borrower may also amend the Anticipated 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 Anticipated WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender’s approval thereof, which approval shall be granted in the WIFIA Lender’s sole discretion.

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 irrevocably paid in full in immediately available funds.

Section 6. Interest Rate. The interest rate with respect to the WIFIA Loan Balance (the “**WIFIA Interest Rate**”) shall be [ ] percent ([ ]%) per annum. Interest will accrue and be computed on the WIFIA Loan Balance (as well as on any past due interest) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; 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 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 and (ii) the WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. For the avoidance of doubt, interest on the WIFIA Loan (and the corresponding WIFIA Bond) shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as have been approved by WIFIA Lender) have been made available to the Borrower for use on the Project in accordance with Section 4 (*Disbursement Conditions*).

Section 7.     Security and Priority; Flow of Funds.

(a)     Pledge. 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, Liens on the Pledged Collateral in accordance with the provisions of the WIFIA Loan Documents and shall deliver to the WIFIA Lender, as the registered owner, the WIFIA Bond. The WIFIA Loan is secured by the Liens on the Pledged Collateral on a parity with the Parity Debt and senior to all Subordinate Debt.

(b)     Security and Priority. The WIFIA Bond is secured by a first pledge of all of the Net Revenues, on a parity with the pledge which secures all Outstanding Parity Debt. In addition, the WIFIA Bond shall be secured by a pledge of all of the moneys in the WIFIA Payment Account, including all amounts derived from the investment of such moneys. So long as the WIFIA Bond is Outstanding, the Net Revenues and such moneys may not be used for any other purpose; except that out of the Net Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by Section 7(c) (*Security and Priority; Flow of Funds – Flow of Funds*).

(c)     Flow of Funds. The Borrower has previously established the Wastewater Fund, which it will continue to hold and maintain for the purposes and uses set forth herein. The Borrower shall deposit all Gross Revenues in the Wastewater Fund promptly upon the receipt thereof, and shall apply amounts in the Wastewater Fund solely for the uses and purposes set forth herein and purposes set forth in the Parity Debt Documents; provided that if amounts in the Wastewater Fund are insufficient for such purposes on the date of any required transfer, such application shall be made toward payments with respect to Parity Debt on a pro rata basis. The Borrower shall withdraw amounts on deposit in the Wastewater Fund and apply such amounts at the times and for the purposes, and in the priority, as follows:

(i)     Operation and Maintenance Costs. 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.

(ii)    Parity Debt Payments. 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 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 this Agreement), to the applicable set-aside accounts within the Wastewater Fund for the applicable Parity Debt, an amount equal to the Parity Debt Set-Aside Amounts for such Parity Debt accruing during such month.

(iii) Other Payments Under Parity Debt Documents. 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.

(iv) Parity Debt Prepayment/Redemption. 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 Section 9(b) (*Prepayment — Optional Prepayment*) 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.

(v) Subordinate Debt Payments. 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 Subordinate Debt, and (C) to replenish any reserve funds, if any, for Subordinate Debt.

(vi) Remainder. 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 Section 7(d)(iii) (*Security and Priority; Flow of Funds — Application of Wastewater Fund Generally*). 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 Section 7(a) (*Security and Priority; Flow of Funds — Pledge*).

(d) Application of Wastewater Fund Generally.

(i) All Gross Revenues received shall be deposited into the Wastewater Fund when and as received and applied only as set forth above.

(ii) The Borrower shall not permit Gross Revenues or other assets of the System, or any funds in the Wastewater Fund or any other System 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, or capital improvements to, the System. The Borrower shall not use Gross Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 7 and shall not apply any portion of the Gross Revenues in contravention of this Agreement. The Borrower shall manage, conserve and apply amounts on deposit in the Wastewater Fund in such a manner that all deposits required to be made under Section 7(c) (*Security and Priority; Flow of Funds — Flow of Funds*) will be made at the times and in the amounts so required.

(iii) The Borrower shall manage, conserve and apply moneys in the Wastewater Fund in such a manner that all deposits required to be made under this Section 7 and under the Parity Debt 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 Wastewater Fund for any one or more of the following purposes: (A) the acquisition and construction of improvements to the System; (B) the redemption of any Parity Debt or other System

Debt, as the Borrower in its discretion may determine; or (C) any other lawful purpose of the Borrower relating to the System.

(e) Establishment of WIFIA Payment Account; Application of WIFIA Payment Account. The Borrower has previously established the Wastewater Fund on its books of account and records, which the Borrower shall continue to hold and maintain for the purposes and uses set forth herein. Within the Wastewater Fund the Borrower shall establish the WIFIA Payment Account, to be held by the Borrower in trust solely for the benefit of the WIFIA Lender, which fund the Borrower agrees and covenants to maintain and to hold separate and apart from other funds until the date the WIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds. On or before each Payment Date, moneys in the WIFIA Payment Account shall be applied to pay the WIFIA Debt Service due on such Payment Date.

(f) Deposits in the Event of Deficiency. If there shall be a deficiency at any time in Gross Revenues required to make the deposits required pursuant to clauses (i), (ii), (iii), (iv) or (v) of Section 7(c) (*Security and Priority; Flow of Funds – Flow of Funds*) above, the Borrower shall make the required deposits from available amounts in the Wastewater Fund, including the Parity Debt Set-Aside Amounts and the Subordinate Debt Set-Aside Amounts, with transfers going first to fund the requirements of clause (i) of Section 7(c) (*Security and Priority; Flow of Funds – Flow of Funds*) above, second to fund the requirements of clause (ii) of Section 7(c) (*Security and Priority; Flow of Funds – Flow of Funds*) above, third to fund the requirements of clause (iii) of Section 7(c) (*Security and Priority; Flow of Funds – Flow of Funds*) above, fourth to fund the requirements of clause (iv) of Section 7(c) (*Security and Priority; Flow of Funds – Flow of Funds*) above, and fifth to fund the requirements of clause (v) of Section 7(c) (*Security and Priority; Flow of Funds – Flow of Funds*) above.

(g) Establishment of Revenue Stabilization Fund. The Borrower has the right at any time to establish a Revenue Stabilization Fund to be held by it and administered in accordance with this Section 7, 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 Revenue Stabilization Fund, from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the WIFIA Bond, as the Borrower may determine. The Borrower may, but is not required to, withdraw amounts on deposit in the Revenue Stabilization Fund and deposit such amounts in the Wastewater Fund in any Borrower Fiscal Year for the purpose of paying the principal of and interest on the WIFIA Bond and any Outstanding Parity Debt coming due and payable in such Borrower Fiscal Year. Amounts so transferred from the Revenue Stabilization Fund to the Wastewater Fund shall constitute Gross Revenues for such Borrower Fiscal Year (except as otherwise provided herein), and shall be applied for the purposes of the Wastewater Fund. Amounts on deposit in the Revenue Stabilization Fund shall not be pledged to or otherwise secure the WIFIA Bond or any Parity Debt.

To the extent that the Borrower appropriates funds from Gross Revenues into the Revenue Stabilization Fund for the System, a deduction shall be made from Gross Revenues of the System in the Borrower Fiscal Year during which said transfer occurred for purposes of calculations to be made under Section 14(a) (*Affirmative Covenants — Rate Covenant*) and Section 15(a) (*Negative Covenants — Indebtedness*). To the extent that the Borrower appropriates



funds from the Revenue Stabilization Fund into the Wastewater Fund, the Borrower may count the funds so transferred as Gross Revenues in the Borrower Fiscal Year in which said transfer occurs, for purposes of calculations to be made under Section 14(a) (*Affirmative Covenants — Rate Covenant*) and Section 15(a) (*Negative Covenants — Indebtedness*).

All interest or other earnings on deposits in the Revenue Stabilization Fund shall 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 Revenue Stabilization Fund and apply such amounts for any other lawful purposes of the Borrower.

(h) Except (i) for Permitted Liens, or (ii) to the extent otherwise provided in Section 7(a) (*Security and Priority; Flow of Funds – Pledge*), the Pledged Collateral will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, of equal rank with or senior to the pledge of the Borrower created hereunder, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(i) The Borrower shall not use Gross Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 7 and shall not apply any portion of the Gross Revenues in contravention of this Agreement.

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service.

(i) On each Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay WIFIA Debt Service by making (i) semi-annual payments of interest, on each Interest Payment Date, (ii) semi-annual payments of principal, on each Principal Payment Date, and (iii) payments of any other amounts on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of the mandatory redemption or prepayment or the acceleration of the maturity of the WIFIA Loan or otherwise); provided, that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Payments of WIFIA Debt Service shall be made in the amounts and on the Payment Dates as set forth in **Exhibit F** (*WIFIA Debt Service*), as the same may be revised pursuant to Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*), and shall be calculated by the WIFIA Lender in such manner that each of such payments shall be approximately equal in amount, in order for the WIFIA Loan Balance to be reduced to \$0 on the Final Maturity Date.

(ii) Notwithstanding anything herein to the contrary, the WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the WIFIA Loan and corresponding WIFIA

Bond are subject to mandatory redemption or prepayment prior to maturity thereof or accelerated pursuant to Section 17 (*Events of Default and Remedies*)).

(b) Capitalized Interest Period. No payment of the principal of or interest on the WIFIA Loan is required to be made during the Capitalized Interest Period. Interest on amounts capitalized pursuant to this Section 8(b) shall commence on the date such interest is added to the principal balance of the WIFIA Loan (and corresponding WIFIA Bond) during the Capitalized Interest Period. On each April 1 and October 1 occurring during the Capitalized Interest Period and on the day immediately following the end of the Capitalized Interest Period, interest accrued on the WIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the WIFIA Loan Balance. 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, in which case the provisions of this Section 8(b) shall no longer apply and payments of principal and interest shall be currently due and payable in accordance with the terms hereof and interest shall no longer be capitalized. For purposes of this Section 8(b), an Event of Default under Section 17(a)(v) (*Events of Default and Remedies – Cross Default with Other Financing Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of principal of, interest on or redemption price of Parity Debt when due, regardless of whether the holders of the applicable Debt or the trustee for the applicable obligations, or any legal order, has waived, permitted deferral of, or forgiven any such payment.

(c) WIFIA Bond. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the Effective Date, the WIFIA Bond substantially in the form of **Exhibit A** (*Form of WIFIA Bond*), having a maximum principal amount (excluding capitalized interest) of \$220,628,721, bearing interest at the WIFIA Interest Rate and having principal and interest payable on the same dates set forth herein. Any payment in respect of the WIFIA Bond 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 the WIFIA Bond.

(d) Manner of Payment. Payments under this Agreement (and the WIFIA Bond, which payments shall not be duplicative) shall be made by wire transfer on or before each Payment Date in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions set forth in **Schedule IV** (*WIFIA Payment Instructions*), as may be modified in writing from time to time by the WIFIA Lender. The Borrower may make any such payment or portion thereof with funds then on deposit in the WIFIA Payment Account.

(e) Adjustments to Loan Amortization Schedule. (i) The WIFIA Loan Balance will be (A) increased on each occasion on which the WIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (B) increased on each occasion on which interest on the WIFIA Loan is capitalized pursuant to the provisions of Section 8(b)

(*Payment of Principal and Interest – Capitalized Interest Period*), by the amount of interest so capitalized; and (C) decreased upon each payment or prepayment of the WIFIA Loan Balance, by the amount of principal so paid. The WIFIA Lender may in its discretion at any time and 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, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(ii) The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** (*WIFIA Debt Service*) from time to time, in accordance with the principles set forth below in this Section 8(e), to reflect (i) any change to the WIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) 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 Loan Amortization Schedule as a result of changes in the WIFIA Loan Balance shall be applied to reduce future payments due on the WIFIA Bond either on a pro rata basis or in inverse order of maturity, at the option of the Borrower, other than prepayments which shall be applied in accordance with Section 9(d) (*Prepayment – General Prepayment Instructions*). Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) 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. The WIFIA Lender shall provide the Borrower with a copy of **Exhibit F** (*WIFIA Debt Service*) as revised, 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.

Section 9. Prepayment.

(a) Mandatory Prepayment.

(i) 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 in Section 17(a)(iv) (*Events of Default and Remedies – Acceleration of Parity Debt*) or the Event of Default in Section 17(a)(viii) (*Events of Default and Remedies – Invalidity of WIFIA Loan Documents*). Such mandatory prepayment shall include all accrued and unpaid interest on the amount to be prepaid to the date of prepayment, without prepayment premium, and shall further include payment of all other System Debt in respect of the WIFIA Loan, including fees and expenses, then due and payable. Upon the occurrence of a Bankruptcy Related Event, the Borrower shall promptly deliver to the WIFIA Lender a notice of such Bankruptcy Related Event; provided, that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred.

(ii) 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 “**Excess Reserves**”), 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 “**Excess Reserves Mandatory Prepayment Notice**”) 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) 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). Such mandatory prepayment shall include all accrued and unpaid interest on the amount to be prepaid to the date of prepayment, without prepayment premium, and shall further include payment of all other System Debt in respect of the WIFIA Loan, including fees and expenses, then due and payable.

(b) Optional Prepayments. 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; provided, however, 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, 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 shall further include payment of all other System Debt in respect of the WIFIA Loan, including fees and expenses, then due and payable. Each prepayment of the WIFIA Loan pursuant to this Section 9(b) shall be made on such Payment Date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for 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(b) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) Borrower’s Certificate. Each prepayment pursuant to this Section 9 shall be effected by a certificate signed by the Borrower’s Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(d) General Prepayment Instructions. Upon the WIFIA Lender’s receipt of confirmation that payment in full of the entire WIFIA Loan Balance and any unpaid interest, fees

and expenses with respect thereto has occurred as a result of a mandatory or optional prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or its representative at the principal office of the WIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender may make a notation on **Exhibit F** (*WIFIA Debt Service*) 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 **Exhibit F** (*WIFIA Debt Service*) 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. All such partial optional prepayments of principal shall be applied to reduce future payments due on the WIFIA Loan either on a pro rata basis or in inverse order of maturity, at the option of the Borrower. All such partial mandatory prepayments of principal from Excess Reserves shall be applied to reduce future payments due on the WIFIA Loan on a pro rata basis. 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) a servicing set-up fee equal to \$[15,610] (the "**Servicing Set-Up Fee**"), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan);

(ii) an annual construction period servicing fee equal to \$[15,610] (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 Construction Period (including 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 of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan), in a pro-rated amount equal to \$[3,900]; and

(iii) an annual operating period servicing fee equal to \$[7,810] (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 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 protection or preservation of any right or claim under, 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, waiver, or consent with respect to this Agreement or any other Related 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 Bond, 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 Bond in form and substance satisfactory to the WIFIA Lender.

(ii) The Borrower shall have delivered to the WIFIA Lender complete and fully executed copies of the WIFIA Resolution and the Ordinance, 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 documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled.

(iii) The Borrower shall have delivered to the WIFIA Lender complete and fully executed copies of each Existing Principal Project Contract, together with any amendments, waivers or modifications thereto, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect.

(iv) The Borrower shall have delivered to the WIFIA Lender (A) a copy of Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code, as in effect on the Effective Date, along with a certification in the Closing Certificate that its Organizational Documents (including Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code) are in full force and effect, and (B) other than the WIFIA Resolution, all further instruments and documents (including any resolutions, ordinances, and supplements) as are necessary for the Borrower to execute and deliver, and 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.

(v) 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 G-1** (*Opinions Required from Counsel to Borrower*) and Bond Counsel 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 G-2** (*Opinions Required from Bond Counsel*)).

(vi) The Borrower shall have delivered to the WIFIA Lender the Non-Debarment Certificate.

(vii) The Borrower shall have delivered to the WIFIA Lender the Non-Lobbying Certificate.

(viii) The Borrower shall have delivered to the WIFIA Lender a certificate, together with an incumbency certificate, signed by the Borrower's Authorized Representatives, substantially in the form attached hereto as **Exhibit H** (*Form of Closing Certificate*) (the "**Closing Certificate**") (A) designating the Borrower's Authorized Representative, (B) confirming such person's position and incumbency, and (C) certifying as to the satisfaction of the following conditions precedent:

(1) the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

(2) the Borrower has obtained all Governmental Approvals necessary (x) as of the Effective Date in connection with the Project and (y) to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and all such Governmental Approvals are final, non-

appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(3) as of the Effective Date, (x) 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 and (y) 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;

(4) the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project, and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such compliance;

(5) the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

(6) the Borrower has (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System number, and (C) registered with, and obtained confirmation of active registration status from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov));

(7) the Borrower has obtained a CUSIP number for the WIFIA Loan for purposes of monitoring through EMMA;

(8) the representations and warranties of the Borrower set forth in this Agreement and in each other Related 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

(9) except as otherwise disclosed by the Borrower, 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 [October 10, 2019].

(ix) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction, no more than thirty (30) days prior to the Effective Date, of the assignment by at least two (2) Nationally Recognized Rating Agencies of a public Investment Grade Rating to the Parity Debt then Outstanding and any Parity Debt proposed to be issued for



the Project (including the WIFIA Loan) and a public 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.

(x) The Borrower shall have delivered to the WIFIA Lender a Base Case Financial Model in form and substance acceptable to the WIFIA Lender, along with a certification in the Closing Certificate that such Base Case Financial Model (A) demonstrates that projected Gross Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date and Net Revenues not less than the amounts required by Section 15(a)(iii)(2) (*Negative Covenants Indebtedness — Additional Parity Debt*) and Section 15(a)(iv)(B) (*Negative Covenants Indebtedness — Additional Subordinate Debt*) for each Payment Period through the Final Maturity Date; (C) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender and (D) demonstrates that 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.

(xi) The Borrower shall have delivered to the WIFIA Lender (A) (1) certificates of insurance or (2) if the Borrower is self-insured, a certificate of the Borrower's risk management department pertaining to the Borrower's self-insurance program, in each case along with a certification in the Closing Certificate that such insurance certificate is true and correct and demonstrates compliance with the requirements of Section 14(f) (*Affirmative Covenants — Insurance*) and (B) at the WIFIA Lender's request, copies of such insurance policies and/or, if applicable, documents pertaining to the Borrower's self-insurance program and documents pertaining to the Borrower's self-insurance program.

(xii) No later than thirty (30) days prior to the Effective Date, the Borrower shall have delivered to the WIFIA Lender the Public Benefits Report.

(xiii) The Borrower shall have provided the WIFIA Lender records of any Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the WIFIA Lender.

(xiv) The Borrower shall have paid in full all invoices delivered by the WIFIA Lender to the Borrower as of the Effective Date 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.

(xv) The WIFIA Payment Account shall have been established by the Borrower in the Wastewater Fund.

(xvi) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the WIFIA Lender, all in form and substance satisfactory to the WIFIA Lender.

(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 WIFIA Loan proceeds 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 provided to the WIFIA Lender evidence satisfactory to the WIFIA Lender that (A) the aggregate amount of all disbursements of the WIFIA Loan (including the requested disbursement but excluding any interest that is capitalized in accordance with the terms hereof) shall not exceed (1) \$220,628,721, (2) the amount of Eligible Project Costs paid or incurred by the Borrower, and (3) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule; (B) the Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs; and (C) 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.

(ii) The Borrower shall have provided an Updated Financial Model in compliance with the requirements of Section 16(a) (*Reporting Requirements – Updated Financial Model*).

(iii) The Borrower shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*) (including satisfactory Eligible Project Costs Documentation relating to such Requisition), and the WIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition. The Borrower's Authorized Representative shall also certify in such Requisition that:

(1) all Governmental Approvals necessary as of the time of such disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect (and are not subject to any notice of violation, breach or revocation);

(2) each of the insurance policies obtained by the Borrower and by any applicable Principal Project Party in satisfaction of the conditions in Section 14(f) (*Affirmative Covenants – Insurance*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider;

(3) at the time of, and immediately after giving effect to, any disbursement of WIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder shall have occurred and be continuing and (B) no event of default or default that, with the giving of notice or the passage of time or both, would constitute an event of default, in each case, under any other Related Document, shall have occurred and be continuing. No Material Adverse Effect, or any event or condition that could reasonably

be expected to result in a Material Adverse Effect, shall have occurred since [October 10, 2019];

(4) 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 without limitation 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; and

(5) the representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be 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 shall be true and correct as of such earlier date).

(iv) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender copies of any WIFIA Loan Documents (including any amendment, modification or supplement thereto) entered into after the Effective Date, along with a certification in the Requisition that each such document is complete, fully executed and in full force and effect.

(v) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have provided copies of any Principal Project Contracts (including any amendment, waiver, modification or supplement thereto) entered into after the Effective Date, along with a certification in the Requisition that each such document is complete, fully executed and in full force and effect.

(vi) 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 received from the WIFIA Lender as of the date of disbursement of the WIFIA Loan and 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.

#### **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) (*Representations and Warranties of Borrower – Officers' Authorization*), Section 12(k) (*Representations and Warranties of Borrower – Credit Ratings*), and the first sentence of Section 12(n) (*Representations and Warranties of*

*Borrower – Principal Project 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 municipal corporation and charter city duly organized and validly existing under its Organizational Documents and the laws of the State, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver this Agreement and the WIFIA Bond, 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 Bond, and the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related 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 Related 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 Related Documents to which the Borrower is a party, the consummation of the transactions contemplated by the Related Documents, and the fulfillment of or compliance with the terms and conditions of all of the Related Documents, will not (i) conflict with the Borrower's Organizational Documents or the WIFIA Resolution, (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 prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by any Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of any of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can

reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. 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 (including the Project) or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the System (including the Project), the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending or, threatened against or affecting any of the Principal Project Parties, except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Gross Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Updated Financial Model, to the extent any Updated Financial Model has been approved by the WIFIA Lender). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. (i) Section 9109(d)(17) of the California Commercial Code and Section 5451 of the California Government Code permit the WIFIA Loan Documents and the Bond Law to establish, and (ii) the Borrower has taken all necessary action to pledge, assign, and grant, in each case in favor of the WIFIA Lender, legal, valid, binding and enforceable Liens on the Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to and in accordance with the WIFIA Loan Documents, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Pledged Collateral except for the Permitted Liens arising by operation of law, and are not *pari passu* with any obligations other than the Parity Debt. The Borrower is not in breach of any covenants set forth in Section 14(b) (*Affirmative Covenants – Securing Liens*) or in the WIFIA Loan Documents with respect to the matters described in Section 14(b) (*Affirmative Covenants – Securing Liens*). As of the Effective Date and as of each other date this representation and warranty is made, (i) all action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Pledged Collateral in favor of the Secured Parties to the extent contemplated by the WIFIA Loan Documents, and (ii) 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. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Pledged Collateral granted pursuant to the WIFIA Loan Documents is governed by Article 9 of the UCC.

(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) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 11(a)(vi) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related 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).

(j) Compliance with Laws.

(i) 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 without limitation 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).

(ii) To ensure such compliance, the Borrower has included in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (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) (including without limitation with respect to the Davis-Bacon Act requirements).

(iii) No notices of violation of any applicable law have been issued, entered or received by the Borrower or, to the Borrower's knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(iv) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party, is (A) a Sanctioned Person or (B) in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (1) any applicable Anti-Money Laundering Laws; (2) any applicable Sanctions; (3) any applicable Anti-Corruption Laws; or (4) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal. There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or any Principal Project Party, with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws. No use of proceeds

of the WIFIA Loan or any other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(k) Credit Ratings. The WIFIA Loan and the Parity Debt then Outstanding have received a public Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, written evidence of such ratings has been provided to the WIFIA Lender prior to the Effective Date, and no such rating has 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 Related Document (excluding Principal Project Contracts), has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Principal Project Contracts. Attached as **Schedule 12(n)** (*Principal Project Contracts*) is a list of the Existing Principal Project Contracts and all Additional Principal Project Contracts that are expected to be entered into. With respect to each Principal Project Contract executed as of any date on which this representation and warranty is made, (x) it is in full force and effect, (y) all conditions precedent to the obligations of the respective parties under each such Principal Project Contract have been satisfied and (z) the Borrower has delivered to the WIFIA Lender a fully executed, complete and correct copy of each such Principal Project Contract, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract. The Borrower is not in breach of any material term in or in default under any of such Principal Project Contracts, and to the knowledge of the Borrower no party to any of such agreements or contracts is in breach of any material term therein or in default thereunder.

(o) 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 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 not misleading as of the date made or furnished.

(p) Environmental Matters. Each of the Borrower and, to the Borrower's knowledge, each Principal Project Party, is in compliance with all laws applicable to the System (including the Project) relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage,

transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the System (including the Project) (collectively, the “**Environmental Laws**”). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower or any other Borrower Related Party with any such Environmental Law or Governmental Approval. The Borrower has provided to the WIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower’s or the Project’s compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Project and relate to Environmental Laws.

(q) Sufficient Rights. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the System (including the Project), in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the System (including the Project). As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower sufficient to enable the Borrower to own, construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party.

(r) Insurance. The Borrower is in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents 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 and the Borrower has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower’s self-insurance program is actuarially sound.

(s) No 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 Gross Revenues, or the properties or assets in relation to the Project.

(t) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the WIFIA Lender pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition 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. Except as reflected in such Financial Statements, there are no liabilities



or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

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

(v) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

(w) 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 Base Case Financial Model and 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.

(x) 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 Related 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(o) (*Affirmative Covenants – Immunity*).

(y) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(z) No Federal Debt. 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).

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 Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related 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 Related 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 Bond and the obligations of the Borrower under this Agreement are irrevocably paid in full in immediately available funds, unless the WIFIA Lender waives compliance in writing:

(a) Rate Covenant.

(i) Covenant Regarding Gross 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 (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 allowances for contingencies and error in the estimates, to pay the following amounts in the following order:

(A) all Operation and Maintenance Costs estimated by the Borrower to become due and payable in such Borrower Fiscal Year;

(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;

(C) all amounts, if any, required to restore the balances in any reserve funds established for Outstanding Parity Debt to their respective required levels;

(D) all payments coming due and payable during the Borrower Fiscal Year and required for compliance with the Parity Debt Documents; and

(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.

(ii) Covenant Regarding Net Revenues: Parity Debt. In addition to the covenant set forth in the preceding clause (i) of this Section 14(a), 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 Section 14(a)(ii) are subject to the adjustments made for any transfers made from the Revenue Stabilization Fund under Section 7(g) (*Security and Priority; Flow of Funds – Establishment of Revenue Stabilization Fund*). 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 14(a)(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 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.

(iii) Covenant Regarding Net Revenues: Subordinate Debt. In addition to the covenant set forth in the preceding clauses (i) and (ii) of this Section 14(a), 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 Section 14(a)(iii) are subject to the adjustments made for any transfers made from the Revenue Stabilization Fund under Section 7(g) (*Security and Priority; Flow of Funds – Establishment of Revenue Stabilization Fund*). 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 14(a)(iii), 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.

(iv) Rolling Covenant Regarding Net Revenues: Parity Debt. In addition to the covenant set forth in the preceding clauses (i), (ii) and (iii) of this Section 14(a), commencing with the Borrower Fiscal Year ending June 30, 2050, 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 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 14(a)(iv) shall not include any transfers made from the Revenue Stabilization Fund under Section 7(g) (*Security and Priority; Flow of Funds – Establishment of Revenue Stabilization Fund*). 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 14(a)(iv), 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 “**Rate Covenant**”).

(v) If the forecast furnished by the Borrower in the most recent Updated Financial Model delivered by the Borrower pursuant to Section 16(a) (*Reporting Requirements – Updated Financial Model*) demonstrates that projected Net Revenues may be inadequate to satisfy the Rate Covenant for any Borrower Fiscal Year until the Final Maturity Date, or if the Borrower fails to satisfy the Rate Covenant for the most recently ended Borrower Fiscal Year, the Borrower shall (A) within thirty (30) days after request by the WIFIA Lender, engage the 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 the Net Revenues so as to satisfy the Rate Covenant, (B) 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 (C) either, within thirty (30) days, (1) implement the Technical and Rate Consultant’s recommendation or (2) undertake an alternative course of action after demonstrating to the WIFIA Lender’s satisfaction that an alternative plan will generate an equivalent or greater increase to the Net Revenues so as to satisfy the 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 Liens 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, and the Borrower shall at all times maintain the Pledged Collateral free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the WIFIA Loan Documents, other than as permitted by this Agreement, 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 Liens 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 for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related 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, the

Governmental Approvals in connection with the Project, and the highest standards of the Borrower's industry.

(ii) The Borrower shall ensure that each Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to the Borrower and shall ensure that any letter of credit provided pursuant to any Principal Project Contract meets the requirements therefor set forth in such Principal Project Contract.

(iii) 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 (i) operate and maintain the System (including, but not limited to, the Project) (A) in a reasonable and prudent manner and (B) substantially in accordance with the Updated Financial Model most recently approved by the WIFIA Lender (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the System (including the Project) and (ii) maintain the System (including the Project) in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related 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.

(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 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. All policies of insurance required to be maintained herein shall, to the extent reasonably obtainable, provide that the WIFIA Lender shall be given thirty (30) days written notice of any intended cancellation thereof or reduction of coverage provided thereby. The Borrower shall cause each Principal Project Party to obtain and maintain builders risk and casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

(ii) The Borrower shall (by self-insuring or maintaining with responsible insurers or by a combination thereof) provide for workers' compensation insurance for Borrower's workers and insurance against public liability and property damage to the System (including the Project) to the extent reasonably necessary to protect the Borrower and the WIFIA Lender.

(iii) The Borrower shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any Principal

Project Party), other than workers' compensation insurance, to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.

(iv) Promptly upon request by the WIFIA Lender, the Borrower shall deliver to the WIFIA Lender copies of any underlying insurance policies obtained by or on behalf of the Borrower in respect of the Project. All such policies shall be available at all reasonable times for inspection by the WIFIA Lender, its agents and representatives.

(v) The Borrower shall comply with the insurance requirements of all other Parity Debt Documents and shall deliver to the WIFIA Lender within thirty (30) days after receipt thereof any certifications or opinions provided to the Borrower pursuant to the such other Parity Debt Documents with respect to the Borrower's program of insurance or self-insurance.

(g) Maintain Legal Structure. The Borrower shall maintain its existence as a municipal corporation and charter city organized and existing under its Organizational Documents.

(h) System Accounts; Permitted Investments.

(i) The Borrower shall maintain the Wastewater Fund in accordance with the terms hereof and the Parity Debt Documents. All Gross Revenues received shall be deposited into the Wastewater Fund when and as received in trust for the benefit of the holders of the System Debt, subject to the application of Gross Revenues to Operation and Maintenance Costs of the System.

(ii) Amounts on deposit in the WIFIA Payment Account shall be held uninvested or invested in Permitted Investments. Such 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 WIFIA Payment Account to be applied towards the purpose for which the WIFIA Payment Account has been established.

(iii) Amounts on deposit in the System Accounts (other than the WIFIA Payment Account) shall be held uninvested or invested in investments in which the Borrower may invest its funds, as listed in Section 53601 of the California Government Code, in compliance with the Borrower's investment policy then in effect. Such 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 without limitation 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).

(ii) To ensure such compliance, the Borrower shall include in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (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) (including without limitation with respect to the Davis-Bacon Act requirements).

(j) Material Obligations. The Borrower shall pay its material obligations 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 Gross Revenues 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 such properties or any part thereof or on the Gross 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) Application of Excess Reserves. 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 Excess Reserves that equals or exceeds \$1,000,000, the Borrower shall prepay a portion of the WIFIA Loan Balance in an amount equal to such Excess Reserves pursuant to Section 9(a)(ii) (*Prepayment — Mandatory Prepayment*).

(l) SAM Registration. The Borrower shall (i) obtain and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) prior to the Effective Date and provide such registration information to the WIFIA Lender and (ii) within sixty (60) days prior to each anniversary of the Effective Date until the Final Disbursement Date, provide to the WIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration.

(m) DUNS Number. The Borrower shall (i) obtain and maintain from Dun & Bradstreet (or a successor entity) a Data Universal Numbering System Number (a “**DUNS Number**”) prior to the Effective Date and provide such number to the WIFIA Lender and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the WIFIA Lender evidence of the continuing effectiveness of such DUNS Number, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Lender under this Agreement have been irrevocably paid in full in immediately available funds.

(n) 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 Net Loss Proceeds in respect of such Event of Loss to repair, reconstruct, and/or replace the portion of the System in respect of which the applicable Loss Proceeds were received. The Borrower shall begin such repair, reconstruction or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such repair, reconstruction or replacement as expeditiously as possible, and shall pay out of such Loss Proceeds all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and the System shall be free and clear of all claims and Liens. If such Net Loss Proceeds exceed the costs of such repair, reconstruction or replacement, then the excess Net Loss Proceeds shall be deposited in the Wastewater Fund and be available for other proper uses of funds deposited in the Wastewater Fund. If such Net Loss Proceeds are insufficient to enable the Borrower to restore or replace the damaged portions of the System, the Borrower shall provide additional funds for that purpose.

(o) 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 the WIFIA Bond, this Agreement or any other WIFIA Loan Document.

(p) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (i) Gross Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (ii) Project-related costs, WIFIA Loan requisitions submitted, WIFIA Loan proceeds received, payments made by the Borrower with regard 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 for 2020 and annually thereafter, except 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.

(q) 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 and inspect any portion of the Project, 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(q) 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(q) at any time when an Event of Default shall have occurred and be continuing.

(ii) The Borrower shall maintain and retain all files relating to the Project and the WIFIA Loan until five (5) years after the later of the date on which (i) all rights and duties under this Agreement and under the WIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) 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.

(r) Covenants Regarding Other System Debt.

(i) Proceeds. The Borrower shall establish and maintain Project Accounts within the Wastewater Fund into which all proceeds of Parity Debt (other than the WIFIA Bond) or Subordinate Debt except for capitalized interest and required reserves, shall be deposited and held until expended to pay costs, or to reimburse the Borrower for costs paid by the Borrower, of the acquisition, construction and installation of capital improvements to the System for which such Parity Debt or Subordinate Debt was incurred or issued. The Borrower shall maintain accurate records showing all disbursements from such Project Accounts.

(ii) System Debt Documents. Each System Debt Document entered into by the Borrower after the date hereof with respect to System Debt shall contain a flow of funds substantively the same as the flow of funds set forth in Section 7(c) (*Security and Priority; Flow of Funds — Flow of Funds*).

(iii) Parity Debt Set-Aside Amounts. If any Parity Debt Documents (other than this Agreement) provides for the set-aside of Net Revenues in advance of payment for purposes of making payments of principal of and interest on Parity Debt (other than the WIFIA Bond), such Parity Debt Documents shall provide that such amounts shall be deposited no more often than monthly and held only in set-aside accounts within the

Wastewater Fund and any such set-aside amount shall not exceed the amount permitted in the definition of “Parity Debt Set-Aside Amounts”.

(iv) Subordinate Debt Documents. No Subordinate Debt Document may provide for payment of 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 more often than monthly nor provide for transfer out of the Wastewater Fund more than five (5) days prior to the date any such payment is due.

(v) Defeasance of Other System Debt. If Parity Debt (other than the WIFIA Bond) or Subordinate Debt are deemed discharged by either: (i) depositing with an escrow agent or other fiduciary, in trust, at or before the final stated maturity date, money which is fully sufficient to pay and discharge the applicable principal amount due, including all principal and interest and prepayment premium, (if any) at or before their respective due dates; or (ii) depositing with an escrow agent or other fiduciary, in trust, noncallable Federal Securities in such amount as an independent certified public accountant shall determine in writing will, together with the interest to accrue thereon and without reinvestment, be fully sufficient to pay and discharge the applicable principal amount due, including all principal and interest and prepayment premium, (if any), at or before their respective due dates, and under the applicable Parity Debt Documents or Subordinate Debt Documents all obligations of the Borrower with respect to the Parity Debt or Subordinate Debt referred to above are released and discharged, such discharged Parity Debt or Subordinate Debt shall be deemed no longer Outstanding for all purposes of this Agreement. Any defeasance of Parity Debt (other than the WIFIA Bond) or Subordinate Debt not satisfying the requirements of clause (i) or (ii) of the preceding sentence shall be deemed to remain Outstanding for all purposes of this Agreement.

(vi) Voting Rights. The Parity Debt Documents shall provide that (i) no amendment to any Parity Debt Document that requires Bondholder consent from all or a specified percentage of the Bondholders of a particular Parity Debt instrument shall be adopted without the consent or direction, as applicable, by less than a majority in aggregate principal amount of Bondholders of all Parity Debt in the aggregate, and (ii) no action or inaction that may be directed to be taken by the applicable trustee except upon the direction of all or a specified percentage of the Bondholders of a particular Parity Debt instrument, shall be taken without the consent or direction, as applicable, by less than a majority in aggregate principal amount of Bondholders of all Parity Debt in the aggregate. For purposes of this paragraph, 2017 Bonds shall be disregarded, unless and until the 2017 Indenture pursuant to which such bonds are issued is amended to reflect and conform to the terms of this paragraph.

(vii) Replacement Trustee. If notwithstanding the foregoing paragraph, the Bondholders of the 2017 Bonds consent to an amendment of the applicable Parity Debt Documents relating to the 2017 Bonds, or direct the 2017 Bonds trustee to take or refrain from taking action, in a manner that conflicts with the consents (or lack thereof) or directions of the Bondholders of Parity Debt other than the 2017 Bonds, the Borrower shall appoint a replacement trustee with respect to either the 2017 Bonds or the other Parity

Debt, so that each trustee can independently represent its respective Bondholders of Parity Debt.

Section 15. Negative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds, unless the WIFIA Lender waives compliance in writing:

(a) Indebtedness.

(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; provided, 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.

(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.

(iii) Additional Parity Debt. 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:

(1) 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.

(2) 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 Service, taking into account the proposed issuance of Additional Parity Debt.

(3) 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.

(4) Such Additional Parity Debt shall not require payments or transfers (whether of principal or interest or otherwise) more often than once a month.

(5) Such Additional Parity Debt shall be issued pursuant to a Parity Debt Document that complies with the requirements of Section 14(r) (*Affirmative Covenants — Covenants Regarding Other System Debt*).

(6) 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 Section 15(a)(iii) have been satisfied.

(iv) Additional Subordinate Debt. 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:

(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) 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 110% of the amount of Maximum Annual Debt Service, taking into account the proposed issuance of Additional Subordinate Debt.

(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.

(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 Section 14(r) (*Affirmative Covenants — Covenants Regarding Other System Debt*) and no such Subordinate Debt Document shall contain a right to accelerate without the consent of the holders of Parity Debt.

(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 Section 15(a)(iv) have been satisfied.

(v) Superior and Subordinate 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 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.

(vi) Upon the incurrence of Permitted System Debt described in clauses (c), (d) and (e) of the definition thereof, 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 15(a) and satisfies the applicable requirements under the definitions of "Permitted System Debt" and "Additional Parity Debt" or "Additional Subordinate Debt" as applicable.

(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.

(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.

(ix) The Borrower may not create, incur or suffer to exist any System Debt as Variable Interest Rate Obligations, except as Subordinate Debt.

(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 Liens on the Pledged Collateral or any dedicated source of repayment of the WIFIA Loan or any other Parity Debt (the proceeds of which are applied to fund Total Project Costs), in each case granted pursuant to this Agreement, (iii) amend, modify, replace or supplement any Related Document or permit a waiver of any provision thereof in a manner that could reasonably be expected to result in a Material Adverse Effect, or (iv) terminate, assign or replace any Related Document (other than the replacement of any Principal Project Contract permitted under Section 17(a)(xi) (*Events of Default and Remedies – Default Under Principal Project Contracts*)) in a manner that 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 Gross Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to

encumber the Borrower's rights or privileges under any Principal Project Contract, unless pursuant to the Parity Debt Documents in favor of all Secured Parties.

(d) Restricted Payments and Transfers. 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.

(e) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the System, a substantial portion of the assets included in the System, or its rights and obligations under any Principal Project Contract, in each case 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) Borrower Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the WIFIA Lender.

(g) 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 mandated by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the Net Revenues or other elements of the Pledged Collateral or (B) the availability of the Net Revenues for the payment and security of the obligations of the Borrower under this Agreement; and (ii) the Borrower provides to the WIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the WIFIA Lender. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

(h) No Defeasance. Notwithstanding anything to the contrary in any WIFIA Loan Document or document related thereto, the WIFIA Loan and the WIFIA Bond shall not be subject to defeasance and no amounts in respect of the WIFIA Loan and the WIFIA Bond shall be considered or deemed to have been paid until the WIFIA Lender shall have received irrevocable payment in immediately available funds in accordance with the requirements for payment set forth in the WIFIA Bond and this Agreement.

(i) Hedging. The Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction with respect to Parity Debt. The Borrower shall not enter into any swap or hedging transaction with respect to or payable from Gross Revenues for any speculative purpose. The Borrower shall not create, incur, assume or permit to exist any Lien on the Net Revenues as may from time to time be deposited therein securing payment of any obligations to the swap or hedging transaction counterparties by the Borrower except on a parity

with or on a basis subordinate in all respects to the pledge of and lien thereon securing the Subordinate Debt with respect to which such swap or hedging transaction is entered into.

Section 16. Reporting Requirements.

(a) Updated Financial Model.

(i) The Borrower shall provide to the WIFIA Lender not later than ninety (90) days after the beginning of each Borrower Fiscal Year, an updated Base Case Financial Model reflecting the then-current and projected conditions.

(ii) The Updated Financial Model shall demonstrate to the satisfaction of the WIFIA Lender that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the Project over its useful life, and shall include: (A) the Borrower's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected operation and maintenance costs of the System; (B) evidence of compliance with the Rate Covenant for the most recent Borrower Fiscal Year and the projected Rate Covenant coverages through the Final Maturity Date and Net Revenues not less than the amounts required by Section 15(a)(iii)((2) (*Negative Covenants Indebtedness — Additional Parity Debt*) and Section 15(a)(iv)(B) (*Negative Covenants Indebtedness — Additional Subordinate Debt*) during the most recent Borrower Fiscal Year; (C) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model and (D) a certificate signed by the Borrower's Authorized Representative, certifying that (1) the Updated Financial Model, including the assumptions and supporting documentation, as of its date, is accurate and reasonable to the best of the Borrower's knowledge and belief, (2) the annual projected Net Revenues will be sufficient to meet the Loan Amortization Schedule and to satisfy the Rate Covenant through the Final Maturity Date, and (3) the Borrower is in compliance with its obligations in respect of the Rate Covenant pursuant to Section 14(a) (*Affirmative Covenants – Rate Covenant*).

(iii) The Borrower represents and warrants that the Updated Financial Model reflects the Borrower's reasonable expectations, using assumptions that the Borrower believes to be reasonable, of the System's expected operations, including capital costs, capital spending schedule, rates and revenues or charges (if applicable), Gross Revenues, operating and maintenance expenses, major maintenance costs, financing structure and other scheduling, cost and financing elements required to be included in the Base Case Financial Model. The Updated Financial Model shall independently model the Project (as well as the System) addressing each of the foregoing as it may apply to the Project.

(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:

(i) 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 for such Borrower Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an Independent Accountant 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 Accountant certifying such statements and disclosed therein); and

(ii) together with each delivery of such annual audited financial statements, a certificate signed by the chief executive officer or chief financial officer of the Borrower or the Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the annual period covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the Borrower has taken or intends to take in respect thereof;

provided, however, that the failure of the Borrower to deliver to the WIFIA Lender the annual audited financial statements required under this Section 16(b) 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 annual audited financial statements within ninety (90) days after the end of such period.

(c) Final Design Specifications. The Borrower shall deliver to the WIFIA Lender, no later than thirty (30) days prior to any notice to proceed, the final designs, plans and specifications relating to the development and construction of the Project.

(d) Construction Reporting. 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. During the period through Substantial Completion of the Project, the Borrower shall furnish to the WIFIA Lender, on a quarterly basis, a report on the status of the Project, substantially in the form of **Exhibit J** (*Form of Quarterly Report*). The report shall be executed by the Borrower's Authorized Representative and, for any quarter, shall be delivered to the WIFIA Lender within thirty (30) days following 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 later than the Projected Substantial Completion Date, the Borrower shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the System (if any), and that the new date could not reasonably be expected to result in a Material Adverse Effect.



(e) Public Benefits Report. The Borrower shall deliver to the WIFIA Lender a report, in the form of **Exhibit K** (*Form of Public Benefits Report*) (the “**Public Benefits Report**”), (i) no later than thirty (30) days prior to the Effective Date, (ii) within ninety (90) days following the Substantial Completion Date and (iii) within ninety (90) days following the fifth (5<sup>th</sup>) anniversary of the Substantial Completion Date. The Borrower agrees that information described under this Section 16(e) may be made publicly available by the WIFIA Lender at its discretion.

(f) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the WIFIA Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than ten percent (10%), which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the System. The Borrower’s notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the WIFIA Lender’s security or the Borrower’s ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(g) Operations and Maintenance. The WIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project’s operations and, as the WIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation and maintenance of the Project. 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 requested by the WIFIA Lender. The WIFIA Lender has the right, in its sole discretion, to retain such consultants or advisors, to carry out the provisions of this Section 16(g). On or prior to the Substantial Completion Date, the Borrower shall deliver to the WIFIA Lender an operations and maintenance manual with respect to the Project, in form and substance reasonably acceptable to the WIFIA Lender.

(h) Notices.

(i) The Borrower shall, within fifteen (15) days 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:

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

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

(C) 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, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim

against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower with award amounts in excess of \$5,000,000, either individually or in the aggregate, payable (in whole or in part) from Gross Revenues;

(D) 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;

(E) Environmental Notices: any material notice of violation or material change in finding under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(F) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of (1) any proposed material amendments to any Related Documents at least thirty (30) days prior to the effective date thereof and (2) copies of fully executed amendments of any Related Document within ten (10) days following execution thereof; provided, that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(G) 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 can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

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

(I) Ratings Changes: any change in the rating assigned to the Parity Debt, the WIFIA Loan, or any Subordinate Debt, 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 can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(J) 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;

(K) Additional Principal Project Contracts: copies of any executed Additional Principal Project Contracts (together with any related contracts, side letters or other understandings);

(L) 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 System Debt (including any Additional Debt); provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(M) Postings on EMMA: the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement with respect to any Outstanding System Debt relating to annual financial information and operating data and the reporting of significant events; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant document on EMMA; and

(N) 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 System Debt, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project.

(ii) Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (A) (*Substantial Completion*), (F) (*Amendments*) or (I) (*Ratings Changes*) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the WIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto. The Borrower shall also provide the WIFIA Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters described in clause (i) above.

(i) Excess Reserves Mandatory Prepayment Notice. 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 Excess Reserves that 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 an Excess Reserves Mandatory Prepayment Notice stating the amount of the Excess Reserves and the date of the mandatory prepayment (as determined in accordance with Section 9(a)(ii) (*Prepayment — Mandatory Prepayment*)).

(j) Requested Information. 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 Gross Revenues as the WIFIA Lender may from time to time reasonably request.

## ARTICLE VI EVENTS OF DEFAULT

### Section 17. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to (i) 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 (*Payment of Principal and Interest*)), and such failure continues for a period of five (5) days, or (ii) make any mandatory prepayment required pursuant to the provisions of Section 9 (*Prepayment*), in each case when and as the payment thereof shall be required under this Agreement or the WIFIA Bond or on the Final Maturity Date (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Bond or any other WIFIA Loan Document (other than in the case of any Payment Default, any Development Default or any failure to comply with the Rate Covenant), and such failure shall not be cured within sixty (60) 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, however, that if such failure is capable of cure but cannot reasonably be cured within such sixty (60) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 17(a)(ii), and such sixty (60) day cure period shall be extended by up to one hundred twenty (120) additional days, if and so long as (x) within such sixty (60) 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.

(iii) 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 (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided, that no Event of Default shall be deemed to have occurred under this Section 17(a)(iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(g) (*Representations and Warranties of Borrower – Security Interests*), (Section 12(h) (*Representations and Warranties of Borrower – No Debarment*), Section 12(j) (*Representations and Warranties of Borrower – Compliance with Laws*), or Section 12(y) (*Representation and Warranties of Borrower – Patriot Act*), (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 from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation.

(iv) Acceleration of Parity Debt. Any acceleration shall occur of the maturity of any Parity Debt, or any such Parity Debt shall not be paid in full upon the final maturity thereof.

(v) Cross Default with Other Financing Documents. Any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under the Related Documents (other than the Principal Project Contracts), and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the Related Documents (other than the Principal Project Contracts) (as the case may be) with respect to such default, and the Borrower shall have failed to cure such default or to obtain an effective written waiver thereof in accordance with the terms thereof.

(vi) Material Adverse Judgment. Any final, non-appealable judgment related to the Pledged Collateral, the Gross Revenues, the System or the Project shall be entered against the Borrower which has a Material Adverse Effect.

(vii) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the Borrower.

(viii) 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 any Borrower Related Party 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 be effective or 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 any Secured Party, and with the priority purported to be created thereby; or (C) any event occurs that results in the material impairment in the perfection or priority of the WIFIA Lender's security interest in the Pledged Collateral or in the value of such Pledged Collateral.

(ix) Failure to Satisfy Rate Covenant. The Borrower fails to satisfy the Rate Covenant for two (2) consecutive Borrower Fiscal Years.

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

(xi) Default Under Principal Project Contracts. The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract or any Principal Project Contract shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure

such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this Section 17(a)(xi) if, in the case of any termination of a Principal Project Contract, the Borrower replaces such Principal Project Contract with a replacement agreement (A) entered into with another counterparty that (1) is of similar or greater creditworthiness (including credit support), technical capability and relevant experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the WIFIA Lender), (2) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, and (3) is not, at the time of such replacement, in violation of any applicable laws; (B) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the WIFIA Lender) and (C) effective as of the date of termination of the Principal Project Contract being replaced.

(xii) Cessation of System Operations. Following the Substantial Completion Date, operation of the System shall cease for a continuous period of not less than one hundred eighty (180) days unless (A) such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated) or (B) the Borrower shall either be self-insured in an amount sufficient to cover, or shall have in force an insurance policy or policies under which the Borrower is entitled to recover amounts sufficient to pay (and may use such amounts to pay), debt service for all Parity Debt (including WIFIA Debt Service) and costs and expenses of the Borrower during such cessation of operations.

(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 and the WIFIA Loan (and the related WIFIA Bond) shall be subject to mandatory prepayment as set forth in Section 10 (*Prepayment – Mandatory Prepayment Upon a Bankruptcy Related Event*).

(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;

(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 to notify other departments and agencies of such default;

(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 Bond 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 property of the Borrower the 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, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement, the WIFIA Bond 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 Bond or the other WIFIA Loan Documents; and/or

(vi) as and to the extent set forth in Section 17(d) (*Events of Default and Remedies — Acceleration of Parity Debt*), the unpaid principal amount of the WIFIA Bond shall automatically 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 Bond or the other WIFIA Loan Documents, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

(d) Acceleration of Parity Debt. Upon the occurrence of any Event of Default (other than the Event of Default set forth in Section 17(a)(vii) (*Events of Default and Remedies — Occurrence of a Bankruptcy Related Event*)) under the applicable Parity Debt Documents, the holders of 51% or more in aggregate principal amount of the Parity Debt then Outstanding may declare the principal of all Parity Debt then Outstanding (including the WIFIA Bond and the WIFIA Loan Balance), together with all interest accrued thereon and any other amounts payable under the Parity Debt Documents (including all fees, costs, expenses, indemnities and other amounts payable to the WIFIA Lender under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents), to be immediately due and payable, 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 Bond 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, the Government, or the WIFIA Lender, solely by virtue of the WIFIA Loan, and the Borrower agrees to indemnify and hold the WIFIA Lender, the Servicer (if any), the Administrator, and the Government harmless, to the extent permitted by law and in accordance with Section 32 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the WIFIA Loan, and that no third party 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 the 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 Bond. 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 Bond. 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 and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

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 nor any interest 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 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 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 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 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. 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 delivery of an executed counterpart of a signature page of this Agreement or 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.

Section 31. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Lender: Environmental Protection Agency  
WJC-W 6201A  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460  
Attention: WIFIA Director  
Email: WIFIA\_Portfolio@epa.gov

If to Borrower: City of Sunnyvale  
650 W. Olive Avenue  
Sunnyvale, CA 94088-3707  
Attention: [ ]  
Email: [ ]

Unless otherwise instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email to the email address noted above for the WIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the WIFIA Lender's Authorized Representative, with respect to notices to the WIFIA Lender or the Servicer. 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, when such email is delivered to the address specified in this Section 31 (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 and any official, employee, agent 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 the WIFIA Bond, this Agreement or any of the other Related Documents, (b) the WIFIA Loan and the WIFIA Bond 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 nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an

Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnatee 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 Indemnatee. Any Indemnatee 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 Indemnatee 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 Indemnatee. 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 Indemnatee 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 of the other Related Documents, 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 Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee 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 Bond, 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 at any time prior to the Substantial Completion Date. After such date, the WIFIA Lender may sell the WIFIA Loan to another entity or reoffer the WIFIA Loan into the capital markets only in accordance with the provisions of this Section 33. 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 without the prior written consent of the Borrower in accordance with Section 24 (*Amendments and Waivers*). The WIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of the WIFIA Loan, written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 33 shall not (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.

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

Section 35. Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the Borrower of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto; provided, however, that the indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(q) (*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.

Section 36. Integration. This Agreement 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.

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 SUNNYVALE,**  
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: Andrew R. Wheeler

Title: Administrator

**SCHEDULE I**  
**PROJECT BUDGET<sup>3</sup>**

<b>SOURCES OF FUNDS</b>	<b>AMOUNT (\$ USD)</b>	<b>PERCENTAGE (%)</b>
WIFIA Loan	\$220,628,721	49.0%
Revenue Bonds	161,631,547	35.9
Cash	68,000,000	15.1
<b>Total Sources of Funds</b>	<b>\$450,260,269</b>	<b>100.0%</b>
<b>USES OF FUNDS</b>	<b>AMOUNT (\$ USD)</b>	<b>PERCENTAGE (%)</b>
Construction	\$327,055,056	72.6%
Design and Permitting	34,757,907	7.7
Planning	987,658	0.2
Contingency	[included in Construction]	
Other: Contractor's Contingency	32,705,506	7.3
Other: Program Management	16,996,286	3.8
Other: Construction Management	17,103,009	3.8
Other: City Management	2,443,287	0.5
Other: Non-Federal Interest and Financing Costs	18,211,560	4.1
<b>Total Uses of Funds</b>	<b>\$450,260,269</b>	<b>100.0%</b>
<b>Total Eligible Project Costs</b>	<b>\$450,260,269</b>	<b>100.0%</b>
<b>Total Project Costs</b>	<b>\$450,260,269</b>	<b>100.0%</b>

<sup>3</sup> WIFIA Underwriting and Transaction Attorney should confirm with WIFIA Engineering to confirm that the reasonably anticipated Eligible Project Costs are reasonable and acceptable for purposes of determining the amount of the WIFIA Loan and for loan sizing.

**SCHEDULE II**  
**CONSTRUCTION SCHEDULE**

*[To be provided by Borrower]*<sup>4</sup>

<sup>4</sup> The schedule should clearly specify the projected substantial completion date, which should match up with the WLA's definition of "Projected Substantial Completion Date" and also be reflected accordingly in the Base Case Financial Model. Schedule should be confirmed with WIFIA Engineering that it is reasonable and in line with WIFIA's understanding.



**SCHEDULE III**  
**EXISTING INDEBTEDNESS<sup>5</sup>**

**A. Parity Debt**

		6
<b>1.</b>	Installment Sale Agreement entitled “Headworks and Primary Treatment, Phase 1(A), Clean Water State Revolving Fund Project No. C06-8153-110, Agreement No. D16-01024,” in the original principal amount of \$127,068,522, dated as of December 9, 2016, between the Borrower and the State of California Water Resources Control Board	\$127,068,522
<b>2.</b>	City of Sunnyvale Wastewater Revenue Refunding Bonds, Series 2017A and City of Sunnyvale Taxable Wastewater Revenue Refunding Bonds, Series 2017A-T issued pursuant to the Indenture of Trust, between the City of Sunnyvale and U.S. Bank National Association, as trustee	\$14,035,000, 2017A \$6,490,000, 2017A-T
<b>3.</b>		
<b>4.</b>		
<b>5.</b>		

**B. Subordinate Debt**

		7
<b>1.</b>		
<b>2.</b>		
<b>3.</b>		
<b>4.</b>		
<b>5.</b>		

<sup>5</sup> To be completed by Borrower.

<sup>6</sup> As of Effective Date

<sup>7</sup> As of Effective Date

## SCHEDULE IV

### WIFIA PAYMENT INSTRUCTIONS

#### Acceptable Methods for WIFIA Payments to EPA

##### Option 1 PAY.GOV

Use of Pay.gov to make payments to EPA is the preferred electronic payment method. In Pay.gov, users can track their payments to EPA and schedule recurring or automatic payments. Although it is not mandatory to register for a user id to access and use Pay.Gov, registration is recommended to have access to all Pay.gov system functionality.

1. Access the Pay.gov system by going to <https://www.pay.gov> and search for WIFIA or click on the following hyperlink to directly launch the WIFIA Loan Collection & Fees Form.
2. Provide the following information on your payment to ensure proper credit:
  - Remitter's contact phone number
  - Company/Organization Name as it appears on EPA document
  - Complete address, including city, state, zip code
  - Project Name
  - Loan Number: this is EPA WIFIA Loan number, NOT the remitter's number
  - From the "Payment Type" drop down menu select the type from the Fee Notice letter
  - Other Description: please note the reference number from the Fee Notice letter
3. Follow the remaining on-screen instructions to successfully process the payment to EPA.
4. Send an email to [OCFO-OC-ACAD-WIFIA@epa.gov](mailto:OCFO-OC-ACAD-WIFIA@epa.gov) and [wifia\\_portfolio@epa.gov](mailto:wifia_portfolio@epa.gov) informing that a payment has been made.

##### Option 2 FEDWIRE

Wire transfers made through FedWire are an alternative electronic wire transfer initiated between the borrower and its organization's financial institution (bank) and EPA. FedWire is typically used to initiate financial institution (bank) generated "same day" electronic payments.

Borrowers must work within the processing guidelines established by their bank, which may include processing cutoffs, transaction fees, and other bank requirements.

Banks that do not maintain an account at a Federal Reserve Bank (FRB) must use the services of correspondent banks that do have an FRB account. To process a payment using FedWire please:

1. Send FedWire deposits as early as possible and no later than 5 p.m. ET on the desired EPA receipt date
2. Review the FedWire form Instructions provided in Attachment 1 and complete the form. It is very important that all relevant details identified in the instructions are accurate.
3. Send an email to [OCFO-OC-ACAD-WIFIA@epa.gov](mailto:OCFO-OC-ACAD-WIFIA@epa.gov) and [wifia\\_portfolio@epa.gov](mailto:wifia_portfolio@epa.gov) informing that a payment has been made.

##### Option 3 CHECK PAYMENTS (Not allowed for payment of Principal or Interest)

1. Send checks to:

**USPS Mailing Address**

Laura Collier  
USEPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N. W.  
Mail Code: 2733R  
Washington, DC 20460

**Courier Address (e.g., FEDEX, UPS)**

Courier Address  
Laura Collier  
Ronald Reagan Building  
1300 Pennsylvania Ave., N.W.  
Rm # 81164  
Washington, DC 20004


2. Provide the following information on your check payment to ensure proper credit please:
  - Company/remitter's name (borrower name as it appears on EPA document)
  - Complete address, including city, state, zip
  - Remitter's point of contact person and phone number
  - EPA WIFIA Loan # (NOT the remitter's number)

- Payment Type/Reason for payment from the Fee Notice letter
  - Reference number from the Fee Notice letter.
3. Send an email to OCFO-OC-ACAD-WIFIA@epa.gov and [wifia\\_portfolio@epa.gov](mailto:wifia_portfolio@epa.gov) informing that a payment has been submitted.

**NOTES:**

1. *When checks are provided as payment, you authorize the EPA to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When the EPA uses information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.*
2. *As of the Effective Date, EPA is temporarily unable to accept paper checks due to the COVID-19 response. Prior to sending any paper check, contact EPA to determine whether paper checks are acceptable for payment at the time.*

**Attachment 1 – FedWire Payment Form and Instructions**

		<b>U.S. Environmental Protection Agency FUNDS TRANSFER DEPOSIT</b>		
<b>PC</b>		<b>INSTRUCTIONS:</b> Explicit completion and routing instructions are located on the reverse of this form. It is requested that prudent care be taken to ensure that all information is provided in the requested format. Failure to provide the information in the requested format may cause a delay in the notification of the funds transfer to EPA.		
<b>TO</b> 021030004	<b>TYPE</b> 10			
<b>FROM</b>	<b>CL</b>	<b>REF</b>	<b>AMOUNT</b> \$	
<b>SENDER</b>				
<b>RECEIVER</b> TREAS NYC/(68010099)EPA				
<b>THIRD PARTY INFORMATION</b>				

The above FedWire form presented to your bank (*who will initiate and transmit the FedWire payment*) **MUST** contain all details below: \*

TO (ABA)	021030004
TYPE	10
RECEIVER	TREAS NYC/(68010099)EPA
THIRD PARTY INFORMATION	<p>To ensure proper credit please include the following information on your payment:</p> <ul style="list-style-type: none"> <li>• Company/remitter's name (borrower name as it appears on EPA document)</li> <li>• Complete address, including city, state, zip code</li> <li>• Remitter's point of contact person and phone number</li> <li>• EPA WIFIA Loan # (NOT the remitter's number)</li> <li>• Payment Type/Reason for payment from the Fee Notice letter</li> <li>• Reference number from the Fee Notice letter</li> </ul>
Shaded Areas	Those items that are shaded on the Form are to be entered by the bank on the funds transfer message. (Depending on the Federal Reserve District, some items may not be required.)
<b>*Important: Failure to initiate the FedWire electronic wire transaction properly with the above fields included, will result in untimely or non-receipt of funds at EPA.</b>	

**For questions about payments to EPA please contact EPA's Office of the Controller:**

Phone: 202-564-7593. Voicemails can be left when calling outside business hours

Email: [OCFO-OC-ACAD-WIFIA@epa.gov](mailto:OCFO-OC-ACAD-WIFIA@epa.gov)

**For questions about the WIFIA program:**

Email: [wifia@epa.gov](mailto:wifia@epa.gov)

**SCHEDULE 12(f)**

**LITIGATION<sup>8</sup>**

<b>No.</b>	<b>Parties</b>	<b>Date Initiated</b>	<b>Description</b>	<b>Venue</b>
--	--	--	--	--

<sup>8</sup> To be completed by Borrower.

## SCHEDULE 12(n)

### PRINCIPAL PROJECT CONTRACTS

#### A. Existing Principal Project Contracts

Contract	Date	Parties	Description
Condition Assessment	04/27/2017	City of Sunnyvale  AECOM	Professional services necessary to conduct a condition assessment of several Water Pollution Control Plant assets and related services for a project known as Sunnyvale Cleanwater Program Facility Condition Assessment
Existing Plant Rehabilitation Design 2.1	08/13/2019	City of Sunnyvale  Carollo Engineers, Inc	Professional services necessary for investigation, analysis, design, preparation of construction drawings and contract specifications, consultation, engineering services during construction and other services for a project known as Sunnyvale Cleanwater Program Existing Plant Rehabilitation Design 2.1
Secondary Treatment and Dewatering Project 2.2	09/11/2017  Amended: 02/11/2020	City of Sunnyvale  Carollo Engineers Inc.	Professional services necessary for development of a safe and efficient design, preparation of bid documents for Public Works competitive bidding and, construction support for the Secondary Treatment and Dewatering project
Evaluation of Alternate Locations for the Administration and Lab Building for the Sunnyvale Clean Water Program (SCWP) 8.3	05/14/2019	City of Sunnyvale  Carollo Engineers	Specialized services for the evaluation of alternate locations for the Administration and Lab Building, Project 8.3

Design And Construction Support Services for Administration and Laboratory Building at the Water Pollution Control Plant Project 8.3	09/18/2017  Amended: 11/12/2019	City of Sunnyvale  MWA	Professional services necessary for development of a safe and efficient design, preparation of bid documents for Public Works competitive bidding and, construction support for the Administration and Laboratory Building at the Water Pollution Control Plant Project
Water Pollution Control Plant Program Management Services	03/28/2014  Amended: 03/28/2017 07/29/2019	City of Sunnyvale  CDM Smith	Program management services necessary for oversight, analysis, coordination, review, consultation, services during construction and other services for the Cleanwater Program
Environmental Mitigation Groundwater Modeling	04/10/2019	City of Sunnyvale  Ulrick & Associates	Professional services necessary for groundwater modeling, preparation of a report, and participation in meetings for the Cleanwater Program's Environmental Mitigation Groundwater Modeling
Water Pollution Control Plant Construction Management Services	05/06/2015  Amended: 03/12/2018 10/16/2018 12/07/2019	City of Sunnyvale  Psomas (previously known as The Covello Group)	Professional services necessary for investigation, analysis, contract specifications, consultation, services during construction and other services for a project known as Water Pollution Control Plant Construction Management Services

**B. Additional Principal Project Contracts**

<b>Contract</b>	<b>Expected Effective Date (if known)</b>	<b>Parties</b>	<b>Description</b>
4160-Volt Demo	05/2021	City of Sunnyvale  Pacific Gas and Electric	Demolish underground power line no longer in use

12-kV Relocation	To Be Determined (TBD)	City of Sunnyvale Pacific Gas and Electric	Relocate the Water Pollution Control Plant's main power feed line
Site Preparation Construction	05/2021	City of Sunnyvale Contractor TBD	Demolish existing facilities, relocate utilities, and construct temporary facilities
Existing Plant Rehabilitation Construction	11/2021	City of Sunnyvale Contractor TBD	Rehabilitate disinfection and secondary treatment facilities, replace select mechanical/ electrical equipment, and complete the Water Pollution Control Plant perimeter wall
Secondary Treatment and Thickening & Dewatering Construction	07/2022	City of Sunnyvale Contractor TBD	Construct a conventional activated sludge facility, thickening and dewatering facilities, and associated site improvements
Cleanwater Center Construction	11/2022	City of Sunnyvale Contractor TBD	Construct a Cleanwater Center to house the Water Pollution Control Plant's employees, laboratory, and maintenance/instrumentation shops.



**SCHEDULE 12(p)**  
**ENVIRONMENTAL MATTERS<sup>9</sup>**

*[To be provided by Borrower]*

<sup>9</sup> Delete if not applicable.

**EXHIBIT A**

**FORM OF WIFIA BOND**

**CITY OF SUNNYVALE**

**SUNNYVALE CLEANWATER PROGRAM PHASE 2  
(WIFIA — N[\_\_\_\_]CA)**

**WIFIA BOND**

**Maximum Principal Amount: \$ [Maximum Amount of WIFIA Loan]  
(including the maximum amount of capitalized interest that has been authorized)**

**Effective Date:** \_\_\_\_\_ **Due:** \_\_\_\_\_

The CITY OF SUNNYVALE, a municipal corporation and charter city organized and existing 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 (the “**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 the WIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the WIFIA Loan Agreement in accordance with **Exhibit F** (*WIFIA Debt Service*) to the WIFIA Loan Agreement, as revised from time to time in accordance with the WIFIA Loan Agreement, until paid in full (which **Exhibit F**, as modified from time to time in accordance with the terms of the WIFIA Loan Agreement, is incorporated in and is a part of this WIFIA Bond). The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** to the WIFIA Loan Agreement from time to time in accordance with the terms of the WIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on **Exhibit F** to the WIFIA Loan Agreement 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.

The interest rate on this WIFIA Bond shall be [\_\_\_\_] percent ([\_\_\_\_]%) per annum. Interest will accrue and be computed on the Outstanding Principal Sum (as well as on any past due interest) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the Outstanding Principal Sum at the Default Rate (as defined in the WIFIA Loan

Agreement to be the sum of (a) the WIFIA Interest Rate set forth above plus (b) 200 basis points) in accordance with Section 6 (*Interest Rate*) of the WIFIA Loan Agreement.

Payments hereon are to be made in accordance with Section 8(d) (*Payment of Principal and Interest – Manner of Payment*) and Section 31 (*Notices*) of the WIFIA Loan Agreement as the same become due. Principal of and interest on this WIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. [If the Final Maturity Date is amended in connection with an update to the Updated Financial Model approved by the WIFIA Lender pursuant to Section 16(a) (*Reporting Requirements – Updated Financial Model*) of the WIFIA Loan Agreement, the due date of this WIFIA Bond 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 Bond without the prior written agreement of the WIFIA Lender. Any such amendment shall be reflected in a revised **Exhibit F.**]<sup>10</sup>

This WIFIA Bond has been executed under and pursuant to that certain WIFIA Loan Agreement, dated as of the date hereof, between the WIFIA Lender and the Borrower (the “**WIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the WIFIA Loan Agreement 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. All capitalized terms used in this WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

This WIFIA Bond 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), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Lender all or part of the principal amount of the WIFIA Bond in accordance with the WIFIA Loan Agreement.

This WIFIA Bond shall be subject to mandatory prepayment on the terms and conditions set forth in the WIFIA Loan Agreement.

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to 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 Bond have happened, exist and have been performed as so required. This WIFIA Bond is issued with the intent that the federal

<sup>10</sup> To be included when the WIFIA Lender has agreed to a Final Maturity Date that is a defined anniversary of the Substantial Completion Date. Pursuant to the Act, the Final Maturity Date cannot be later than the 35<sup>th</sup> anniversary of the Substantial Completion Date. The actual number of years will be determined as part of the WIFIA Lender’s underwriting process.

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, CITY OF SUNNYVALE has caused this WIFIA Bond 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 SUNNYVALE,**  
by its authorized representative

(SEAL)

By \_\_\_\_\_

Name: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
Secretary

(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 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**  
**ANTICIPATED WIFIA LOAN DISBURSEMENT SCHEDULE<sup>11</sup>**

<u>Federal Fiscal Year</u>	<u>Amount</u>
	\$

<sup>11</sup> WIFIA Underwriting to work with Borrower to provide.

## EXHIBIT C

### FORM OF NON-DEBARMENT CERTIFICATE

The undersigned, on behalf of the CITY OF SUNNYVALE, hereby certifies that the CITY OF SUNNYVALE has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

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

CITY OF SUNNYVALE,  
by its authorized representative

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

Name:

Title:

## EXHIBIT D

### REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of WIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the WIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Lender under the WIFIA Loan Agreement, and (ii) nothing contained herein 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 the WIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of WIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the WIFIA Lender, in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the WIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as **Appendix One** (*Form of Requisition*) to this **Exhibit D**.

Supporting documentation should be submitted with the Requisition. If the Borrower anticipates that it will draw down all or a portion of the proceeds of the WIFIA Loan to reimburse the Borrower for Eligible Project Costs paid by or on behalf of the Borrower prior to such disbursement of WIFIA Loan proceeds, whether paid from funds of the Borrower or proceeds of System Debt issued by the Borrower, including for the purpose of paying or redeeming such System Debt, the Borrower shall deliver appropriate documentation, including invoices and records, evidencing such incurred or paid Eligible Project Costs (the "**Eligible Project Costs Documentation**"). The Eligible Project Costs Documentation must provide sufficient detail to enable the WIFIA Lender to verify that such costs are Eligible Project Costs paid by the Borrower, in connection with the reimbursement of such Eligible Project Costs or for the purpose of paying or redeeming, in whole or part, the portion of any such short-term interim financing in respect of which the proceeds were used to pay such documented Eligible Project Costs. The WIFIA Lender shall review the Eligible Project Costs Documentation for compliance with WIFIA disbursement requirements, and any amounts approved by the WIFIA Lender as Eligible Project Costs will be disbursed at such time as the Borrower submits a Requisition in respect of such approved amounts.

A Certificate of the Borrower evidencing the Borrower's compliance with Section 15(a)(iii) (*Negative Covenants – Indebtedness – Additional Parity Debt*) and an opinion of Bond Counsel in connection with the Parity Debt incurred by the requested disbursement should be submitted with the Requisition.

The WIFIA Lender agrees to promptly send to the Borrower in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement, an acknowledgement of receipt of each Requisition in the form attached as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to this



**Exhibit D** setting forth the date of receipt by the WIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Lender. All disbursement requests must be received by the WIFIA Lender at or before 5:00 P.M. (EST) on the first (1<sup>st</sup>) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15<sup>th</sup>) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. 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.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the WIFIA Lender if it is: (a) submitted without signature; (b) submitted under signature of a Person other than a Borrower's Authorized Representative; (c) submitted after prior disbursement of all proceeds of the WIFIA Loan; (d) submitted without adequate Eligible Project Costs Documentation, including (i) copies of invoices and records evidencing the Eligible Project Costs, (ii) a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied (or a certification that no change has occurred since the date of the latest quarterly report provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*), and (iii) a copy of the most recent update to the Borrower's risk register, if requested by the WIFIA Lender.

The WIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified above (other than Section 2(c)) must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Lender will so notify the Borrower.

Section 3. Correction. 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.

Section 4. Withholding. The WIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of WIFIA Loan proceeds if: (a) a Default or an Event of Default shall have occurred and be continuing; (b) the Borrower (i) 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; (ii) 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 the WIFIA Loan Agreement; (iii) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Loan Agreement; (iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement; or (v) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement; provided, that in such case of Section 4(v), the WIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

## APPENDIX ONE TO EXHIBIT D

### FORM OF REQUISITION

United States Environmental Protection Agency<sup>12</sup>  
1200 Pennsylvania Avenue NW  
WJC-W 6201A  
Washington, D.C. 20460  
Attention: WIFIA Director

Re: Sunnyvale Cleanwater Program Phase 2 (WIFIA — N[ ]CA)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [ ], 2020 (the “**WIFIA Loan Agreement**”), by and between the CITY OF SUNNYVALE (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the Borrower hereby requests 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.	<b>Project name</b>	Sunnyvale Cleanwater Program Phase 2
2.	<b>Borrower name</b>	City of Sunnyvale
3.	<b>WIFIA reference number</b>	N[ ]CA
4.	<b>Requisition number</b>	[ ]
5.	<b>Requested disbursement amount</b>	\$[ ]
6.	<b>Requested disbursement date</b>	[ ]

<sup>12</sup> If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.

	<b>(the “Disbursement Date”)</b>	
7.	<b>Total amounts previously disbursed under the WIFIA Loan Agreement</b>	\$[ ]
8.	<b>Wire instructions</b>	[ ]

9. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Loan proceeds. No portion of the amounts requisitioned will be applied to pay for Eligible Project Costs that have been previously paid, or are expected to be paid, with proceeds of debt of the Borrower that is not the WIFIA Loan (“**Other Debt**”)[.], except as set forth below:

Source of Other Debt	Amount of Other Debt
[ ]	\$[ ]
<b>Total Amount of Other Debt</b>	<b>\$[ ]</b>

The portion of the amount requisitioned equal to the total amount of the Other Debt set forth above will be promptly applied by the Borrower to either (i) discharge a like principal amount of such Other Debt or (ii) reimburse the applicable fund or account from which the proceeds of such Other Debt were spent.]<sup>13</sup>

10. The aggregate amount of all disbursements of the WIFIA Loan (including the amount requested under this Requisition but excluding any interest that is capitalized in accordance with the WIFIA Loan Agreement) does not exceed (a) the amount of the WIFIA Loan, (b) the amount of Eligible Project Costs paid or incurred by the Borrower, and (c) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule.
11. The Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.

<sup>13</sup> This paragraph should be included when the Eligible Project Costs for which the proceeds of the requisition are to be applied were previously funded with bond anticipation notes or other short-term interim financing by the Borrower on a temporary basis with the intent of redeeming the bond anticipation notes or other obligations with proceeds of the WIFIA Loan as permanent financing, or reimbursing the applicable funds of the other obligations such that they become available for payment of other Project costs.

12. 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.
13. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval has been issued and is in full force and effect (and is not subject to any notice of violation, breach or revocation).
14. Each of the insurance policies obtained by the Borrower in satisfaction of Section 11(a)(xi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
15. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), (i) no Default or Event of Default and (ii) no event of default under any other Related Document and no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing. 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 [October 10, 2019].
16. 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 without limitation 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.
17. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related 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 shall be true and correct as of such earlier date).
18. Each Principal Project Contract that has been delivered by the Borrower to the WIFIA Lender pursuant to Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) is complete, fully executed and in full force and effect.

19. The current estimated percentage of physical completion of the Project is [ ]%. The Borrower is in compliance with Section 16(d) (*Reporting Requirements – Construction Reporting*) and no change has occurred since the date of the most recently delivered quarterly construction progress report that could reasonably be expected to cause a Material Adverse Effect.<sup>14</sup>
20. All documentation evidencing the Eligible Project Costs to be reimbursed to the Borrower [or to be used to pay Eligible Project Costs previously paid from proceeds of Other Debt] by the above-requested disbursement has been delivered by the Borrower to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement, including the details set forth [in the attachment hereto, which is in form satisfactory to the WIFIA Lender][below:

Vendor or Contractor Name <sup>15</sup>	Invoice Number <sup>16</sup>	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount <sup>17</sup>	Activity Type <sup>18</sup>	Description of Activity <sup>19</sup>	WIFIA USE ONLY	
								Approved Amount	Notes

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

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

CITY OF SUNNYVALE ,

<sup>14</sup> 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. If not, PM should request additional information (including a risk register, if applicable).

<sup>15</sup> If seeking reimbursement for internal costs, enter "Internally financed activities."

<sup>16</sup> Vendor's number indicated on the invoice sent to the Borrower.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> 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.

By its authorized representative

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

Name:

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

## APPENDIX TWO TO EXHIBIT D

### [APPROVAL/DISAPPROVAL] OF THE WIFIA LENDER (To be delivered to the Borrower)

Requisition Number [ ] is [approved in the amount of \$[ ]]  
[approved in part in the amount of \$[ ]] [not approved, for the reasons set forth in Annex  
A attached hereto,]<sup>20</sup> by the WIFIA Lender (as defined herein) pursuant to Section 4  
(*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [ ], 2020, by  
and between the City of Sunnyvale (the “**Borrower**”) and the United States Environmental  
Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”).

Any determination, action or failure to act by the WIFIA Lender with respect to the  
Requisition set forth above, including any withholding of a disbursement, shall be at the WIFIA  
Lender’s sole discretion, and in no event shall the WIFIA Lender be responsible for or liable to  
the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**, acting by and  
through the Administrator

By: \_\_\_\_\_  
WIFIA Lender’s Authorized Representative  
Name:  
Title:  
Dated:

<sup>20</sup>If there is any partial or full denial of approval, the WIFIA Lender should provide a separate attachment setting forth  
the reasons for such partial or full denial of approval.

**EXHIBIT E**  
**FORM OF NON-LOBBYING CERTIFICATE**

The undersigned, on behalf of the CITY OF SUNNYVALE, hereby certifies, to the best of his or her knowledge and belief, that:

(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 of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the WIFIA Loan.

(b) If any funds other than proceeds of the WIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the WIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the WIFIA Lender entered into this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

CITY OF SUNNYVALE,  
by its authorized representative

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



**EXHIBIT F**  
**WIFIA DEBT SERVICE<sup>21</sup>**

<sup>21</sup> WIFIA Underwriting to work with Borrower to provide an initial amortization schedule. This will need to be finalized on the day of closing to account for the final interest rate.

## EXHIBIT G-1

### OPINIONS REQUIRED FROM COUNSEL TO BORROWER

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that:

(a) The Borrower is duly formed, validly existing, and in good standing under the laws of the State of California.

(b) 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 Principal Project Contracts and to issue the WIFIA Bond.

(c) The WIFIA Resolution was duly and validly adopted by the Borrower and is in full force and effect; the WIFIA Resolution and all other proceedings pertinent to the execution and delivery by the Borrower of, and the performance of its respective obligations under, the WIFIA Loan Agreement and the Principal Project Contracts, and the issuance by the Borrower of, and the performance of its respective obligations under, the WIFIA Bond, have been duly and validly adopted or undertaken in compliance with all applicable procedural requirements of the Borrower and in compliance with the Constitution and the laws of the State (including the charter of the Borrower as amended to the date hereof (the “**Charter**”)).

(d) The Borrower has duly executed and delivered the WIFIA Loan Agreement and each Principal Project Contract, and the WIFIA Loan Agreement and each Principal Project Contract constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with their respective terms.

(e) The Borrower has duly issued the WIFIA Bond and the WIFIA Bond constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

(e) No authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by the Borrower of, and the performance of the Borrower under, the WIFIA Loan Agreement or any Principal Project Contract, or for the issuance of, and the performance of the Borrower under, the WIFIA Bond, other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower.

(f) The execution and delivery by the Borrower of, and compliance with the provisions of, the WIFIA Loan Agreement and the Principal Project Contracts, and the issuance by the Borrower of, and compliance with the provisions of, the WIFIA Bond, in each case do not (i) violate the Organizational Documents of the Borrower or the WIFIA Resolution, (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 such counsel to which the Borrower is a party, or to the best of such counsel’s knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject.

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

(h) To our 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 WIFIA Loan Agreement, the Principal Project Contracts, the WIFIA Bond or the Project that are pending; and

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

## EXHIBIT G-2

### OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that:

(a) The Borrower has been duly created and validly exists as a municipal corporation and charter city under and pursuant to the laws of the State (including the charter of the Borrower as amended to the date hereof (the “**Charter**”)), with good right and power to enter into the WIFIA Loan Agreement and to issue the WIFIA Bond and to perform the agreements on its part contained therein.

(b) The Borrower has the right and power under the laws of the State, including the Charter, and the provisions of Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code, enacted pursuant to the Charter and Ordinance No. 2917-10, adopted April 6, 2010 (collectively, the “**Bond Law**”) to enter into the WIFIA Loan Agreement and to issue the WIFIA Bond; the WIFIA Loan Agreement has been duly authorized, executed and delivered by the Borrower, is in full force and effect, and constitutes a legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms and conditions; the WIFIA Bond has been duly authorized, executed and delivered by the Borrower, is in full force and effect, and constitutes a legal, valid and binding special obligation of the Borrower enforceable against the Borrower in accordance with its terms and conditions and payable solely from the sources provided therefor in the WIFIA Loan Agreement.

(c) The obligations of the Borrower under the WIFIA Loan Agreement and the WIFIA Bond are (i) secured by a valid lien on the Pledged Collateral on a parity with other Parity Debt, (ii) Parity Debt, (iii) enforceable under the laws of the State without any further action by the Borrower or any other Person, and (iv) rank *pari passu* in right of payment and right of security with all Parity Debt and are senior in right of payment and right of security to all Subordinated Debt.

(d) Pursuant to the Bond Law, the WIFIA Loan Documents create the valid and binding assignment and pledge of and lien on the Pledged Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Loan pursuant to the WIFIA Loan Agreement and the WIFIA Bond on a parity with other Parity Debt, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act.

## EXHIBIT H

### FORM OF CLOSING CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [\_\_\_\_], 2020 (the “WIFIA Loan Agreement”), by and among the City of Sunnyvale (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 – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, the undersigned, [\_\_\_\_], as 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)(viii), the Borrower has delivered to the WIFIA Lender an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related 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, a true, correct and complete copy of which is included in the closing transcripts for the WIFIA Loan;
- (b) pursuant to Section 11(a)(ii), the Borrower has delivered to the WIFIA Lender copies of the WIFIA Resolution and the Ordinance, true, correct and complete copies of which are included in the closing transcripts for the WIFIA Loan, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled;
- (c) pursuant to Section 11(a)(iii), the Borrower has delivered to the WIFIA Lender copies of each Existing Principal Project Contract, together with any amendments, waivers or modifications thereto, and each such document is complete, fully executed, and in full force and effect;
- (d) pursuant to Section 11(a)(iv), the Borrower has delivered to the WIFIA Lender a copy of Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code, as in effect on the Effective Date, a true, correct and complete copy of which is included in the closing transcripts for the WIFIA Loan; the Borrower’s Organizational Documents (including Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code), as in effect on the Effective Date, are in full force and effect; the Borrower has also delivered to the WIFIA Lender a copy of Resolution No. [\_\_\_\_], adopted by the City Council of the Borrower on [\_\_\_\_], 2020, authorizing the execution and delivery of the WIFIA Loan Agreement, the WIFIA Bond, and certain related actions by the Borrower in connection with the issuance of the WIFIA Loan (the “WIFIA

Resolution”), a true, correct and complete copy of which is included in the closing transcripts for the WIFIA Loan, which WIFIA Resolution has been duly adopted by the City Council of the Borrower and is in full force and effect; and other than the WIFIA Resolution, 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;

- (e) pursuant to Section 11(a)(viii)(1), the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;
- (f) pursuant to Section 11(a)(viii)(2), the Borrower has obtained all Governmental Approvals necessary (i) as of the Effective Date in connection with the Project and (ii) to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (g) pursuant to Section 11(a)(viii)(3), (i) 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 and (ii) 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;
- (h) pursuant to Section 11(a)(viii)(4), the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project, and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such compliance;
- (i) pursuant to Section 11(a)(viii)(5), the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;
- (j) pursuant to Section 11(a)(viii)(6), (i) the Borrower’s Federal Employer Identification Number is [\_\_\_\_], and the Borrower has delivered to the WIFIA Lender evidence of such Federal Employer Identification Number, a true, correct and complete copy of which is included in the closing transcripts for the WIFIA Loan, (ii) the Borrower’s Data Universal Numbering System number is [\_\_\_\_], and the Borrower has delivered to the WIFIA Lender evidence of such Data Universal Numbering System number, a true, correct and complete copy of which is included in the closing transcripts for the WIFIA Loan, and (iii) the Borrower has registered

with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and the Borrower has delivered to the WIFIA Lender evidence of such confirmation of active registration status, a true, correct and complete copy of which is included in the closing transcripts for the WIFIA Loan;

- (k) pursuant to Section 11(a)(viii)(7), the CUSIP number for the WIFIA Loan is [\_\_\_\_], and the Borrower has delivered to the WIFIA Lender evidence of such CUSIP number, a true, correct and complete copy of which is included in the closing transcripts for the WIFIA Loan;
- (l) pursuant to Section 11(a)(viii)(8), the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related 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;
- (m) pursuant to Section 11(a)(viii)(9), 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 [October 10, 2019];
- (n) pursuant to Section 11(a)(ix), none of the rating letters delivered to the WIFIA Lender pursuant to such Section 11(a)(ix) has been reduced, withdrawn or suspended as of the Effective Date;
- (o) pursuant to Section 11(a)(x), the Borrower has delivered to the WIFIA Lender the Base Case Financial Model, a true, correct and complete copy of which is included in the closing transcripts for the WIFIA Loan, which (i) demonstrates that projected Gross Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender, (iv) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over its useful life and (v) otherwise meets the requirements of such Section 11(a)(x); [and]
- (p) pursuant to Section 11(a)(xi), the Borrower has delivered to the WIFIA Lender [certificates of insurance][a certificate of the Borrower's risk management department pertaining to the Borrower's self-insurance program], true, correct and complete copies of which are included in the closing transcripts for the WIFIA Loan, and such [certificates of insurance are]/[insurance certificate is] true and correct and demonstrates compliance with the requirements of Section 14(f) (*Affirmative Covenants – Insurance*) of the WIFIA Loan Agreement[; and][.]
- (q) [*any other attachments and provisions, as may apply to the specific WIFIA Loan Agreement*].

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

CITY OF SUNNYVALE,  
by its authorized representative

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



### FORM OF INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of the City of Sunnyvale, a municipal corporation and charter city organized and existing under the laws of the State of California, (the “Borrower”), and as such he/she is 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 are their true and genuine signatures. He/She further certifies that any 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>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of [\_\_\_\_], 2020.

CITY OF SUNNYVALE,  
by its authorized representative

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

## EXHIBIT I

### FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

*[Letterhead of Borrower]*

*[Date]*

WIFIA Program Office  
[Insert Proper Address]  
Attention: Administrator

**Project:** Sunnyvale Cleanwater Program Phase 2 (WIFIA — N[\_\_\_\_\_]CA)

Dear Director:

This Notice is provided pursuant to Section 16(a)(i)(A) (*Affirmative Covenants – Notice – Substantial Completion*) of that certain WIFIA Loan Agreement (the “WIFIA Loan Agreement”), dated as of [\_\_\_\_], 2020, by and between the City of Sunnyvale (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 Notice 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) on *[insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[Insert reference to the concession agreement, design-build or similar agreement for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved.

CITY OF SUNNYVALE,  
by its authorized representative

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

## EXHIBIT J

### FORM OF QUARTERLY REPORT

United States Environmental Protection Agency  
WIFIA Director  
WJC-W 6201A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
WIFIA\_Portfolio@epa.gov

Re: Sunnyvale Cleanwater Program Phase 2 (WIFIA — N[ ]CA)

This Quarterly Report for the period of [ ] is provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) of the WIFIA Loan Agreement, dated as of [ ], 2020 (the “**WIFIA Loan Agreement**”), by and between the City of Sunnyvale (“**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 Quarterly Report have the meanings assigned to those terms in the WIFIA Loan Agreement.

#### (i) Amount Expended

Principal Project Contract (PPC)	Original Contract Amount	Change Orders to Date	Total Estimated Costs	Estimated Costs to Complete	Costs Earned or Paid Through Previous Reporting period	Current Reporting Period Costs Earned or Paid	Total Costs Earned or Paid to date	% Costs Earned or Paid to Date
<b>TOTAL</b>								

#### (ii) Construction Progress, Governmental Approvals, Updated Schedule

Assessment of overall construction progress:

Notice of receipt of relevant Governmental Approvals since the Effective Date and since the prior Quarterly Report:

**Assessment of construction progress compared to Construction Schedule provided in the prior Quarterly Report:**

Principal Project Contract (PPC)	NTP Effective Date	Original Time for Completion (days)	Original Contract Completion (date)	Time Added to Date (days)	Current Contract Completion (date)	Days Elapsed	% Contract Duration

**(iii) Substantial Completion Date**

**Current projection for the Substantial Completion Date:** \_\_\_\_\_

If the current projection for the substantial completion date is later than previously reported in the prior Quarterly Report, provide a description in reasonable detail for such projected delay:

**(iv) Material Problems (if any)**

Detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any), encountered or anticipated in connection with the construction of the Project during the preceding quarter, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems:

**(v) Proposed or pending change orders that exceed the threshold set out in Section 16(f) (*Modifications to Total Project Costs*) or could reasonably be expected to result in a Material Adverse Effect**

**(vi) Other matters related to the Project**

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

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

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

Name: \_\_\_\_\_

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

## EXHIBIT K

### FORM OF PUBLIC BENEFITS REPORT

Pursuant to [Section 11(a)(xii)] [and] [Section 16(e)] of the WIFIA Loan Agreement, the City of Sunnyvale (the “**Borrower**”) is providing this Public Benefits Report in connection with the Sunnyvale Cleanwater Program Phase 2 (WIFIA — N[\_\_\_\_\_]CA):

- (i) **The estimated interest savings the Borrower is realizing through the use of the WIFIA Loan compared to comparable market rate financing:**

The estimated interest savings from use of the WIFIA Loan compared to a comparable market rate financing is \$[\_\_\_\_\_] million on a gross savings basis and \$[\_\_\_\_\_] million on a present value basis.

- (ii) **With respect to the report delivered [prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) following the fifth anniversary of the Substantial Completion Date], the number of jobs projected to be created by the Project during the period between the Effective Date and the Substantial Completion Date:**

The Borrower projects [\_\_\_\_\_] jobs to be created by the Project during the period between [[(1)] the Effective Date and the Substantial Completion Date]<sup>22</sup> [and] [[(2)] the Substantial Completion Date and the fifth anniversary of the Substantial Completion Date]<sup>23</sup>.

- (iii) **Whether the Project will assist the Borrower in complying with applicable regulatory requirements, and if so, a narrative description describing such enhancements:**

[\_\_\_\_].

- (iv) **The amount by which the Project will [assist the Borrower (measured by percent annually) in reducing levels of Nitrogen, Phosphorus, biochemical oxygen demand (BOD) and total suspended solids (TSS)][increase the volume of potable water produced (measured in MGD annually)][increase the volume of water recycled, recharged or redirected (measured in MGD annually)][increase Class [A][B] biosolids (measured in tons annually)]<sup>24</sup>:**

[\_\_\_\_].

<sup>22</sup> Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the Substantial Completion Date.

<sup>23</sup> Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the fifth anniversary of the Substantial Completion Date.

<sup>24</sup> Include one of the bracketed items as applicable.