



WIFIA CUSIP Number: [\_\_\_\_]

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**WIFIA LOAN AGREEMENT**

**For Up to \$315,000,000**

**With**

**THE METROPOLITAN GOVERNMENT OF NASHVILLE AND  
DAVIDSON COUNTY**

**For the**

**PROCESS ADVANCEMENTS AT OMOHUNDRO AND K.R.  
HARRINGTON WATER TREATMENT PLANTS PROJECT  
(WIFIA ID – N20115TN)**

Dated as of [\_\_\_\_], 2022

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND INTERPRETATION .....	2
Section 1. Definitions.....	2
Section 2. Interpretation .....	15
ARTICLE II THE WIFIA LOAN .....	17
Section 3. WIFIA Loan Amount.....	17
Section 4. Disbursement Conditions .....	17
Section 5. Term.....	17
Section 6. Interest Rate .....	17
Section 7. Security and Priority; Flow of Funds. ....	18
Section 8. Repayments .....	18
Section 9. Prepayment .....	20
Section 10. Fees and Expenses .....	21
ARTICLE III CONDITIONS PRECEDENT .....	23
Section 11. Conditions Precedent .....	23
ARTICLE IV REPRESENTATIONS AND WARRANTIES.....	27
Section 12. Representations and Warranties of Borrower .....	27
Section 13. Representations and Warranties of WIFIA Lender .....	32
ARTICLE V COVENANTS .....	32
Section 14. Affirmative Covenants .....	32
Section 15. Negative Covenants .....	36
Section 16. Reporting Requirements .....	38
ARTICLE VI EVENTS OF DEFAULT AND REMEDIES .....	38
Section 17. Events of Default and Remedies .....	38
ARTICLE VII MISCELLANEOUS.....	41
Section 18. Disclaimer of Warranty.....	41
Section 19. No Personal Recourse .....	41
Section 20. No Third-Party Rights.....	41
Section 21. Borrower's Authorized Representative .....	41
Section 22. WIFIA Lender's Authorized Representative .....	41
Section 23. Servicer .....	42
Section 24. Amendments, Waivers .....	42
Section 25. Governing Law .....	42
Section 26. Severability .....	42
Section 27. Successors and Assigns.....	42
Section 28. Remedies Not Exclusive .....	42
Section 29. Delay or Omission Not Waiver .....	43
Section 30. Counterparts.....	43
Section 31. Notices .....	43
Section 32. Indemnification .....	44
Section 33. Sale of WIFIA Loan.....	45
Section 34. Effectiveness .....	45
Section 35. Release of Lien .....	45
Section 36. Survival .....	45
Section 37. Integration .....	45

### **Schedules**

SCHEDULE I – WIFIA Loan Specific Terms  
ANNEX A – Rate Covenant  
ANNEX B – Additional Bonds Test  
ANNEX C – Flow of Funds

### **Exhibits**

EXHIBIT A – Form of WIFIA Bond  
EXHIBIT B – Form of Closing Certificate  
EXHIBIT C – Form of Public Benefits Report  
EXHIBIT D – Form of Requisition

ANNEX D – Certain Definitions from Bond Resolution	EXHIBIT E – Form of Certification of Eligible Project Costs Documentation
SCHEDULE II – Project Details	EXHIBIT F – Form of Construction Monitoring Report
SCHEDULE III – Borrower Disclosures	EXHIBIT G – Form of Certificate of Substantial Completion
SCHEDULE IV – Requisition Procedures	EXHIBIT H-1 – Opinions Required from General Counsel
SCHEDULE V – Reporting Requirements	EXHIBIT H-2 – Opinions Required from Bond Counsel
SCHEDULE VI – WIFIA Loan Amortization Schedule	

## WIFIA LOAN AGREEMENT

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

### RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended, and as may be further amended from time to time, the “**Act**”), 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 the Maximum Principal Amount (as defined herein) to be used to pay a portion of the Eligible Project Costs (as defined herein) pursuant to the Application (as defined herein);

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

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Lender proposes to make funding available to the Borrower for a portion of the costs of the Project through the issuance of the WIFIA 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. Capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement, except as otherwise expressly provided herein. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

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

“**Additional Bonds**” means any Bonds permitted under Section 15(a) (*Indebtedness*) and under the Bond Resolution, which Bonds are issued or incurred after the Effective Date.

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

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

“**Additional Obligations**” means Additional Bonds and Additional Subordinated Indebtedness.

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

“**Additionally Secured Series**” means a Series of Bonds for which the payment of the principal or Redemption Price, if any, of, and interest on, the Bonds of such Series shall be secured, in addition to the pledge created pursuant to Section 501(a) of the Bond Resolution in favor of all of the Bonds, by amounts on deposit in a separate account to be designated therefor in the Debt Service Reserve Fund.

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

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

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

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

“**Bankruptcy Related Event**” means, with respect to the Borrower, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a

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

**“Base Case Financial Model”** means the financial model or plan, prepared by the Borrower and delivered to the WIFIA Lender as part of the Application, forecasting the capital costs of the System (including the Project) and the estimated debt service coverage, rates, revenues, operating expenses and major maintenance requirements of the System (as may be applicable) for the Forecast Period and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Lender as of the Effective Date, which model or plan shall have been provided to the WIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format agreed with the WIFIA Lender.

**“Bond”** or **“Bonds”** means any bonds, notes, loan agreements or other obligations or evidences of indebtedness, as the case may be, authenticated and delivered under and Outstanding pursuant to the Bond Resolution.

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

**“Bond Resolution Documents”** means the Bond Resolution, each Supplemental Resolution, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

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

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

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

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

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

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

**“Commercial Paper Programs”** means, collectively (i) the Borrower’s not to exceed \$200,000,000 water and sewer revenue commercial paper bond anticipation note program issued pursuant to Resolution No. RS2021-1280, adopted by the Metropolitan Council on December 21, 2021 and (ii) the Borrower’s not to exceed \$200,000,000 water and sewer revenue extendable commercial paper bond anticipation note program issued pursuant to Resolution No. RS2015-1417, adopted by the Metropolitan Council on April 7, 2015, as amended by Resolution No. RS2018-1253, adopted by the Metropolitan Council on July 3, 2018, Resolution No. RS2021-906, adopted by the Metropolitan Council on May 4, 2021, and Resolution RS2021-1281, adopted by the Metropolitan Council on December 21, 2021.

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

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

**“Construction Period”** means the period from the Effective Date through (and including) the end of the Federal Fiscal Year during which the Substantial Completion Date occurs.

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

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

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

**“Debt Service Payment Commencement Date”** means the earlier to occur of (a) the first Payment Date immediately following the later of (i) the first Disbursement or (ii) if there is a Capitalized Interest Period, the end of the Capitalized Interest Period, in each case as set forth in the WIFIA Loan Amortization Schedule; or (b) the Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

**“Debt Service Reserve Fund”** shall mean the Debt Service Reserve Fund established in Section 502(a) of the Bond Resolution.

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

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

**“Development Default”** 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 by the Development Default Date, unless such failure to achieve Substantial Completion shall occur by reason of an Uncontrollable Force that is not due to the fault or gross negligence of the Borrower (and which the Borrower could not reasonably have avoided or mitigated), in which case the Development Default Date shall be extended by the number of days equal to the duration of such Uncontrollable Force or by such longer time as agreed upon by Borrower and WIFIA Lender as necessary to remedy any delay in the Project caused by such Uncontrollable Force.

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

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

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



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

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

**“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 33 U.S.C. §3905(8)), construction contingencies, and acquisition of equipment; or
- (d) capitalized interest (with respect to Obligations other than the WIFIA Loan) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Metropolitan Council”** means the Metropolitan County Council of the Borrower.

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

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

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

**“Net Revenues”** has the meaning ascribed to such term in **Annex D** (*Certain Definitions From Bond Resolution*).

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

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

**“Operation and Maintenance Expenses”** has the meaning ascribed to such term in **Annex D** (*Certain Definitions From Bond Resolution*).

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

operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

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

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

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

**“Paying Agent/Bond Registrar”** has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

**“Paying Agent/Bond Registrar Location”** has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

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

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

**“Permitted Debt”** means:

- (a) Existing Indebtedness;
- (b) the WIFIA Loan;
- (c) Additional Bonds that satisfy the requirements of Section 15(a) (*Bonds*) and the Bond Resolution; and
- (d) Additional Subordinated Indebtedness that satisfies the requirements of Section 15(a) (*Bonds*).

**“Permitted Investments”** has the meaning set forth for the term “Investment Securities” in the Bond Resolution.

**“Permitted Liens”** means:

- (a) Liens imposed pursuant to the WIFIA Loan Documents;

(b) Liens imposed pursuant to the Bond Resolution in respect of Permitted Debt that are Bonds or Additional Bonds and Liens imposed in respect of Permitted Debt that is Subordinated Indebtedness or Additional Subordinated Indebtedness;

(c) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(j) (*Material Obligations*);

(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) (*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 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)(viii) (*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.

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

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

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

**"Prior Resolution"** has the meaning ascribed to such term in **Part E of Schedule I** (*WIFIA Loan Specific Terms*).

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

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

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

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

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

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

**“Redemption Price”** means, with respect to any Bond, the principal amount thereof plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or a Supplemental Resolution.

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

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

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

**“Revenues”** has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*) [and in **Annex D** (*Certain Definitions From Bond Resolution*)].

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

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

**“Series”** means that portion of the Bonds authenticated and delivered in a single transaction and identified pursuant to the Supplemental Resolution authorizing such Bonds as a separate Series of Bonds, regardless of variations in maturity, interest rate or other provisions, together with any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to Article III or Section 405 or Section 1106 of the Bond Resolution.

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

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

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

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

**“Subordinated Indebtedness”** means any bonds, notes, loan agreements or other evidences of indebtedness issued from time to time and payable from and, if applicable, secured by the Revenues of the System on a basis subordinate to the pledge of Revenues (as part of the Trust Estate) in favor of the Bonds, including, without limitation, the Commercial Paper Programs.

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

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

**“Supplemental Resolution”** means any resolution supplemental to or amendatory of the Bond Resolution adopted by the Borrower in accordance with Article X of the Bond Resolution.

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

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

**“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 Bond Resolution Documents or the WIFIA Loan Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan or any other Obligations, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) in respect of any indebtedness of the Borrower (other than the WIFIA Loan), in each case in connection with the acquisition, design, construction and equipping of the Project; and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

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

**“Uncontrollable Force”** means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil



disturbance or similar occurrence, sabotage, pandemic, or act of God (provided, that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided, that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Unless the context shall otherwise require, all references to any resolution, contract, agreement, 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 prepayment of the WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the WIFIA Bond.

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

## ARTICLE II THE WIFIA LOAN

Section 3.     WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed the Maximum Principal Amount.

Section 4.     Disbursement Conditions.

(a)     WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the Borrower in connection with the Project, including, for the avoidance of doubt, Eligible Project Costs that were initially funded with Interim Financing proceeds. Each Disbursement of the WIFIA Loan shall be made pursuant to the procedures of **Schedule IV** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent to Disbursements*); provided, that no Disbursements shall be made after the Final Disbursement Date.

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

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

Section 6.     Interest Rate. The Borrower shall pay interest on the WIFIA Loan Balance at the WIFIA Interest Rate; provided, that, upon written notice from the WIFIA Lender pursuant to Section 17(c) hereof to apply the Default Rate under this Section 6, the Borrower shall pay interest on the WIFIA Loan Balance at the Default Rate, (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment of the overdue amount of principal of the WIFIA Loan and accrued interest thereon and (b) in the case of any other Event of Default, from (and including) the date of the occurrence of such Event of Default (and for the avoidance of doubt, not the date of written notice thereof pursuant to Section 17(c) hereof) to (but excluding) the earlier of the date on which (i) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement or waived by the WIFIA Lender

and (ii) the WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. Interest shall (x) accrue on the WIFIA Loan commencing on the date of the first disbursement of the WIFIA Loan, (y) be payable commencing on the Debt Service Payment Commencement Date and (z) be computed on the WIFIA Loan Balance on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

Section 7. Security and Priority; Flow of Funds.

(a) As security for the WIFIA Loan, and concurrently with the issuance and delivery of this Agreement, the Borrower has pledged, assigned and granted to the WIFIA Lender for its benefit, Liens on the Pledged Collateral to the extent and in the manner and priority set forth in the WIFIA Loan Documents. The Lien on the Pledged Collateral to secure the WIFIA Loan for the benefit of the WIFIA Lender is and shall be (i) on a parity in right of payment and right of security to the Lien on the Pledged Collateral in favor of the Bonds and (ii) senior in right of payment and right of security to the Lien on the Pledged Collateral in favor of the Subordinated Indebtedness. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, as the registered owner, on or prior to the Effective Date, the WIFIA Bond. The WIFIA Bond shall be a Bond under the Bond Resolution, entitled to all of the benefits of a Bond under the Bond Resolution Documents.

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

Section 8. Repayments.

(a) Payment of WIFIA Debt Service.

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

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

(iii) If a Capitalized Interest Period is applicable as set forth in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), during the Capitalized Interest Period, no payment of principal or interest on the WIFIA Loan will be required to be made. On each Interest Payment Date occurring during the Capitalized Interest Period (including the day immediately following the end of the Capitalized Interest Period), interest accrued and not paid on the WIFIA Loan during each such six (6) month period shall be capitalized and added to the WIFIA Loan Balance, as set forth in the WIFIA Loan Amortization Schedule.

Within thirty (30) days after the end of the Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower stating the WIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other WIFIA Loan Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the Borrower by the WIFIA Lender that an Event of Default has occurred and that the WIFIA Lender is ending the Capitalized Interest Period, in which case interest shall no longer be capitalized, payments of interest shall be due and payable beginning on the next Interest Payment Date and payments of principal shall be due and payable beginning on the next Principal Payment Date, in each case in accordance with the terms hereof.

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

(v) Any defeasance of the WIFIA Loan in accordance with Section 1201 (*Defeasance*) of the Bond Resolution and applicable law shall not be deemed a repayment or prepayment of the WIFIA Loan in full, and the Borrower shall comply with all of its obligations hereunder and under the other WIFIA Loan Documents (other than with respect to payments of WIFIA Debt Service, which payments shall continue to be made in accordance with the WIFIA Loan Amortization Schedule by the succeeding entity assuming the Borrower's payment obligations), unless otherwise agreed by the WIFIA Lender, until the irrevocable payment in full in immediately available funds of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto.

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

(c) Adjustments to WIFIA Loan Amortization Schedule.

(i) The WIFIA Lender may, from time to time, modify the WIFIA Loan Amortization Schedule included in **Schedule VI** (*WIFIA Loan Amortization Schedule*) to reflect (A) any change to the WIFIA Loan Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower hereunder in accordance with this Agreement, (C) any mathematical corrections as the WIFIA Lender may determine are necessary, and (D) with the consent of the Borrower (not to be unreasonably withheld), such other information as the WIFIA Lender may determine is necessary for administering the WIFIA Loan and this Agreement. Any

calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the WIFIA Loan Amortization Schedule as a result of a decrease in the WIFIA Loan Balance shall be applied to reduce future payments due on the WIFIA Loan in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(b) (*General Prepayment Instructions*). If the WIFIA Loan Amortization Schedule is modified pursuant to this Section 8(c), the WIFIA Lender shall immediately provide the Borrower with a copy of such revised WIFIA Loan Amortization Schedule, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents. The WIFIA Lender may also, from time to time or when so requested by the Borrower, advise the Borrower by written notice of the amount of the WIFIA Loan Balance as of the date of such notice. Absent manifest error, the WIFIA Lender's determination of the WIFIA Loan Balance and all matters as set forth on the WIFIA Loan Amortization Schedule shall be deemed conclusive evidence thereof; provided, that neither the failure to make any such determination, modification, or recordation nor any error in such determination, modification, or recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

(ii) The Borrower shall have the right to propose modifications to the WIFIA Loan Amortization Schedule with respect to the WIFIA Loan exercisable once on or prior to the date that is forty-five (45) days preceding the Debt Service Payment Commencement Date, such modifications to be submitted by the Borrower to the WIFIA Lender in an updated **Schedule VI** (*WIFIA Loan Amortization Schedule*) with adjustments to the column titled "Principal Payment as a % of Aggregate Amount of All Disbursements"; provided that (x) the form of and any modification to the Loan Amortization Schedule shall be reasonably acceptable to the WIFIA Lender, (y) the weighted average life of the WIFIA Loan shall not exceed [\_\_\_\_] ([\_\_\_\_])<sup>1</sup> years measured as of the initial disbursement date of the WIFIA Loan and (z) the WIFIA Loan Amortization Schedule shall comply with all applicable requirements under this Agreement and law and be approved by bond counsel to the Borrower.

## Section 9. Prepayment.

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

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<sup>1</sup> To be determined based on the Borrower's proposed repayment schedule.

days prior to the requested date of prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 9(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

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

(c) [Reserved]

#### Section 10. Fees and Expenses.

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

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

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

(iii) the Operating Period Servicing Fee, which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the



Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Maturity Date; provided, that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date occurs shall be equal to the *pro-rata* monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Maturity Date.

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

(c) Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt by the Borrower of any invoice (prepared in reasonable detail) from the WIFIA Lender, for any and all documented fees, costs, charges, and expenses incurred by it (including the documented 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 documented attorneys', and engineers' fees and professional costs, including all such documented fees, costs, and expenses incurred as a result of or in connection with: (i) the enforcement of or attempt to enforce, or the monitoring, protection or preservation of any right or claim under, the Liens on the Pledged Collateral or any provision of this Agreement or any of the other WIFIA Loan Documents or the rights of the WIFIA Lender thereunder; (ii) any amendment, modification, re-execution, waiver, or consent with respect to this Agreement or any other WIFIA Loan Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default. The WIFIA Lender shall endeavor to provide the Borrower with prior notice of the incurrence of any such fees, costs, charges or expenses incurred by it in connection with the performance of this Agreement and the other WIFIA Loan Documents and the transactions; provided, however, that the failure by the WIFIA Lender to provide such notice or the timeliness thereof shall not in any way relieve the Borrower of its obligation to reimburse the WIFIA Lender for such fees, costs, charges or expenses.

(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, the WIFIA Bond, and the WIFIA Supplemental Resolution, each 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 (A) the Bond Resolution, together with any amendments, supplements, waivers or modifications thereto (but excluding any document that solely provides for the issuance or incurrence of Additional Bonds, hedging obligations for any Bonds or Interim Financing) and (B) any Related Document with respect to which all or a portion of the proceeds are or will be applied to fund all or any portion of Total Project Costs, in each case that has been entered into on or prior to the Effective Date, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect, and that all conditions contained in the Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled.

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

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

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

(A) as of the Effective Date, (1) the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance

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

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

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

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

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

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

(G) the Prior Resolution has been discharged, and the Prior Resolution and the provisions thereof are no longer in effect.

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

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

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

(ix) The Borrower shall have delivered to the WIFIA Lender evidence that those provisions of Resolution No. RS2011-114, adopted on December 20, 2011, as amended, authorizing the issuance of subordinate lien bonds thereunder have been discharged and are no longer in effect nor incorporated by reference into any other documents.

(x) The Borrower shall have delivered to the WIFIA Lender duly executed copies of any consents to the incurrence of the WIFIA Loan and the issuance of the WIFIA Bond that are required under the issuing instruments pursuant to which the Existing Indebtedness was issued.

(xi) The Borrower shall have delivered to the WIFIA Lender evidence of satisfaction of all requirements and conditions set forth in the Additional Bonds Test for the WIFIA Bond, including supporting calculations thereof, assuming interest on the WIFIA Bond at the Default Rate.

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

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

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

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

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

(D) the Eligible Project Costs for which reimbursement or payment is being requested has not been reimbursed or paid by any previous

disbursement of (1) WIFIA Loan proceeds or (2) any other source of funding for the Project as identified in the Project Budget;

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

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

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

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

(I) (1) the amount of the aggregate increase in the WIFIA Debt Service Reserve Requirement resulting from the aggregate amount of all Disbursements (including the requested Disbursement amount and any interest that is capitalized in accordance with the terms hereof), (2) the supporting calculations therefor and (3) the Borrower represents that it has caused the WIFIA Debt Service Reserve Account to be funded from Revenues in the amount of such increase, with the funding immediately prior to the final disbursement of proceeds of the WIFIA Loan in an amount sufficient to cause the total amount funded to the WIFIA Debt Service Reserve Account with respect to the WIFIA Bond to be equal to the aggregate increase in the WIFIA Debt Service Reserve Requirement resulting from the aggregate amount of all Disbursements (including the

requested Disbursement amount and any interest that is capitalized in accordance with the terms hereof), as approved by the WIFIA Lender.

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

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

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

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

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

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

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

generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

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

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

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

(g) Security Interests. (i) The Bond Resolution Documents and the Organizational Documents together establish, and (ii) the Borrower has taken all necessary action to pledge, assign, and grant, in each case for the benefit 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 Bond Resolution Documents, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act, and if applicable, the security interests created in the Pledged Collateral have been duly perfected under applicable State law. 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 Liens arising by operation of law, and not *pari passu* with any Liens other than the Liens on the Pledged Collateral in favor of the Bonds. The Borrower is not in breach of any covenant set forth in Section 14(b) (*Securing Liens*) or in the Bond Resolution Documents with

respect to the matters described in Section 14(b) (*Securing Liens*). As of the Effective Date and as of each other date this representation and warranty is made, (A) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable and, if applicable, perfected, Lien on the Pledged Collateral in favor of the WIFIA Lender to the extent contemplated by the Bond Resolution Documents, and (B) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Bond Resolution Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, validity, enforceability, priority or, if applicable, perfection, of the security interest in the Pledged Collateral granted pursuant to the Bond Resolution 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) (i) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters, (ii) is presently indicted for or otherwise criminally or civilly charged by a Governmental Authority with commission of any of the offenses listed in 2 C.F.R. § 180 or 2 C.F.R. § 1532; and (iii) have, within the three (3) year period preceding the Effective Date, (x) been convicted for or had a civil judgment rendered against the Borrower for any of the offenses within such period or (y) had any public transactions (federal, state or local) terminated for cause or default.

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

(j) Compliance with Laws.

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

(ii) To ensure such compliance, the Borrower has included in all contracts with respect to the Project (A) the contract clauses relating to applicable federal



requirements (such as Davis-Bacon and Equal Employment Opportunity) and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j).

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

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

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

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

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

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

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

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

operations of the Borrower for the respective periods covered by the statements of income included therein.

(r) Securities Laws. Under existing law, the WIFIA Bond may be issued and sold without registration under the Securities Act of 1933, as amended, and any State blue sky laws, and the Bond Resolution is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

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

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

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

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

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

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

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

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

## **ARTICLE V COVENANTS**

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

(a) Rate Covenant. The Borrower shall comply with all requirements and conditions specified in 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. The Borrower shall at all times maintain the Pledged Collateral free and clear of any Lien that has priority over, or equal rank with, the Liens created by the Bond Resolution Documents, other than Permitted Liens, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the 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 solely for purposes permitted by applicable law, this Agreement and the other WIFIA Loan Documents.

(d) Prosecution of Work; Verification Requirements.

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

(ii) The Borrower shall comply with Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

(e) Operations and Maintenance. The Borrower shall operate and maintain the System (including the Project) substantially in accordance with the Updated Financial Model/Plan most recently delivered by the Borrower to the WIFIA Lender pursuant to **Part A of Schedule V (Reporting Requirements)** and its operations and maintenance plan (that incorporates the Project). The Borrower shall operate and maintain the System (including the Project) in accordance with Section 710 of the Bond Resolution.

(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 in accordance with the Bond Resolution Documents and Construction Contracts. The insurance policies shall be available at all reasonable times for inspection upon request by the WIFIA Lender, its agents and representatives.

(ii) The Borrower shall cause all liability insurance policies that it maintains (excluding property damage, automobile or workers' compensation insurance), to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.<sup>2</sup>

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

(h) System Accounts; Permitted Investments.

(i) The Borrower shall maintain the Revenue Fund in accordance with the terms hereof and the Bond Resolution Documents. All Revenues received shall be deposited into the Revenue Fund, subject to the application of Revenues to Operation and Maintenance Expenses, in accordance with Section 504 of the Bond Resolution. The Borrower shall not apply any portion of the Revenues in contravention of this Agreement or the Bond Resolution Documents. Any funds then on deposit in the WIFIA Debt Service Account (if applicable) shall only be used for payments of WIFIA Debt Service by the Borrower (or Paying Agent/Bond Registrar, if applicable, as directed by the Borrower) in accordance with the WIFIA Loan Documents.

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<sup>2</sup> **Note to Borrower:** This requirement only applies to liability insurance policies.

(ii) If a WIFIA Debt Service Reserve Requirement is applicable as set forth in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), the Borrower shall maintain the WIFIA Debt Service Reserve Account in an amount equal to the WIFIA Debt Service Reserve Requirement in accordance with the provisions of the applicable Bond Resolution Documents, including Section 508 of the Bond Resolution, a copy of which as of the Effective Date is attached hereto for reference as **Annex C to Schedule I** (*WIFIA Loan Specific Terms*), and Section 2.3 of the WIFIA Supplemental Resolution, a copy of which as of the Effective Date is attached hereto for reference as **Annex C to Schedule I** (*WIFIA Loan Specific Terms*); provided, that for purposes of funding and maintaining the WIFIA Debt Service Reserve Account in connection with Disbursements of the WIFIA Loan and the issuance of any Additionally Secured Series, the WIFIA Debt Service Reserve Requirement shall be calculated as set forth in **Part D of Schedule I** (*WIFIA Loan Specific Terms*). If the WIFIA Debt Service Reserve Account is funded with proceeds of the WIFIA Loan, amounts in the WIFIA Debt Service Reserve Account shall be applied only to make payments with respect to the WIFIA Bond.

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

(i) Compliance with Laws.

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

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

(j) Material Obligations. The Borrower shall pay its material obligations payable from the Revenues promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Pledged Collateral or other assets of the System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims

which, if unpaid, might give rise to a Lien upon the System or any part thereof or on the Revenues or the Pledged Collateral; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

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

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

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

(n) Accounting and Audit Procedures.

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

(ii) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 from (and including) the first Borrower Fiscal Year in which a Disbursement is made under this

Agreement and annually thereafter to the extent required by applicable law, except in all cases to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the WIFIA Loan, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(o) Access; Records.

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

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

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

(a) Indebtedness.

(i) Program Requirements. The Borrower may not create, incur or suffer to exist (A) any Obligations (1) the payments with respect to which are senior or prior in right of payment by the Borrower of the WIFIA Loan or (2) secured by a Lien on the Pledged Collateral that is senior to the Lien on the Pledged Collateral in favor of the WIFIA Lender or (3) all or a portion of the proceeds of which are or will be applied at any time to fund all or any portion of Total Project Costs, that are secured by a Lien on any assets or property of the Borrower other than the Pledged Collateral.

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

(iii) Issuance of Additional Subordinated Indebtedness. The Borrower shall not issue or incur any Additional Subordinated Indebtedness except for Additional Subordinated Indebtedness which (A) is secured by a pledge of Revenues which is fully subordinated in all respects to the pledge of Revenues (as part of the Trust Estate) in favor of the Bonds, (B) has a right of payment and is payable in the Flow of Funds on a basis subordinate to the priority of payment of the Bonds; and (C) does not have a right to accelerate without the consent of all of the Bondholders of the Bonds; provided, however, that this clause (C) is not intended to and shall not prohibit or in any way limit the Borrower's ability to enter into credit facility agreements with the right to accelerate in connection with either of the Commercial Paper Programs or any successor programs thereto.

(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 Bonds (the proceeds of which are applied to fund Total Project Costs), in each case granted pursuant to the Bond Resolution, (iii) amend, modify, replace or supplement any Related Document or permit a waiver of any provision thereof in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to result in a Material Adverse Effect, or (iv) terminate, assign or replace any Related Document in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to have a Material Adverse Effect.

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

(d) Restricted Payments and Transfers. The Borrower shall not permit Revenues or other assets of the System, or any funds in any accounts held under the Bond Resolution 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 as permitted by Tennessee Code Annotated Section 7-34-115.



(e) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the System or a substantial portion of the assets included in the System, unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the Borrower in the ordinary course of business or is otherwise permitted in accordance with Section 707(b) of the Bond Resolution.

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

(g) Hedging. Other than interest rate hedging transactions permitted under the Bond Resolution Documents, the Borrower shall not enter into any swap or hedging transaction, including any such transaction that is speculative or creates extraordinary leverage or risk, without the prior written consent of the WIFIA Lender.

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

## **ARTICLE VI EVENTS OF DEFAULT AND REMEDIES**

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

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

(i) Payment Default. The Borrower shall fail to pay when due any part of the principal amount of or interest on the WIFIA Loan (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 8 (*Repayment*)), and such failure continues for a period of five (5) days, 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) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the Borrower.

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

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

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

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

issue giving rise to the misrepresentation is capable of being cured and (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days after the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation.

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

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

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

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

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

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

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

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

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

(v) the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the WIFIA 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

(if applicable), and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the Borrower under this Agreement, the WIFIA 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; provided, however, that no sums under the WIFIA Bond or other WIFIA Loan Documents may be declared due and payable solely by operation of this Section 17(c)(v).

(d) [Reserved]

(e) No action taken pursuant to this Section 17 shall (i) 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 or (ii) limit the WIFIA Lender's rights under the Bond Resolution Documents, including the right to declare the unpaid principal amount of the WIFIA Bond to be immediately due and payable as set forth and in accordance with Section 801 of the Bond Resolution as they relate to "Events of Default" as defined in the Bond Resolution.

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

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

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

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

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

Section 29. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided hereunder or under the WIFIA Bond upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or under the WIFIA Bond 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 of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 31. Notices.

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

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

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

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

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

(d) Notices to the Paying Agent/Bond Registrar should be made by (i) nationally recognized courier service, (ii) hand delivery, (iii) email, to the email address noted below for the Paying Agent/Bond Registrar, or (iv) another electronic medium in a format

acceptable to the Paying Agent/Bond Registrar, unless otherwise instructed by an authorized representative of the Paying Agent/Bond Registrar:

If \_\_\_\_\_ to Paying Agent/Bond Registrar: The notice details set forth in **Part G of Schedule I**  
(*WIFIA Loan Specific Terms*)

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

Section 32. Indemnification. The Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender, the Servicer (if any), and any official, employee, agent, advisor or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnatee**") against, and hold each Indemnatee 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 Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement, any Construction Contract, or any Related Document, (b) the WIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. 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 Construction Contract, or any Related Document, the other transactions contemplated hereby and thereby, the WIFIA Loan or the use of the proceeds thereof, provided, that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 32 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 shall survive the payment or prepayment in full or transfer of the WIFIA Loan, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 33. Sale of WIFIA Loan. The WIFIA Lender shall not sell the WIFIA Loan at any time prior to the later of (a) the Substantial Completion Date and (b) other than with respect to a sale or transfer to another Governmental Entity within the Federal Government, the Final Disbursement Date. After such date, the WIFIA Lender may sell the WIFIA Loan 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*). Prior to any sale or reoffering of the WIFIA Loan, the WIFIA Lender shall provide reasonable written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering. The provision of any notice pursuant to this Section 33 shall neither (x) obligate the WIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell the WIFIA Loan.

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

Section 35. Release of Lien. 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, the WIFIA Lender shall cancel and discharge the Lien on the Pledged Collateral and surrender the WIFIA Bond to the Borrower in accordance with Section 9(b) (*General Prepayment Instructions*).

Section 36. Survival. The indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(o) (*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 37. Integration. This Agreement, together with the other WIFIA Loan Documents, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.



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

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

**THE METROPOLITAN  
GOVERNMENT OF NASHVILLE AND  
DAVIDSON COUNTY,**  
by its authorized representative

By: \_\_\_\_\_  
Name: John Cooper  
Title: Mayor

Attested:

By: \_\_\_\_\_  
Name:  
Title: Metropolitan Clerk

Approved As to Form and Legality:

By: \_\_\_\_\_  
Name: Wallace Dietz  
Title: Director of Law

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

By: \_\_\_\_\_  
Name: Michael S. Regan  
Title: Administrator

**SCHEDULE I**

**WIFIA LOAN SPECIFIC TERMS**

No.	Item	WIFIA Loan Specific Term
<b>PART A.      <i>Key Borrower Metrics</i></b>		
1.	Effective Date	[____], 2022.
2.	Borrower	The Metropolitan Government of Nashville and Davidson County, a Legal Entity organized and existing under the State.
3.	Legal Entity	A Tennessee local governmental entity.
4.	State	State of Tennessee.
5.	Borrower FEIN	62-0694743.
6.	Borrower DUNS Number	605166941.
7.	Initial Borrower Fiscal Year	The fiscal year of the Borrower commencing on July 1 of any given calendar year and ending on June 30 of the immediately succeeding calendar year.
8.	Application Receipt Date	November 24, 2021.
9.	WIFIA CUSIP Number	[____], as the CUSIP number for the WIFIA Loan for purposes of monitoring through EMMA.
10.	System	The water and sewer system owned and operated by the Borrower (and of which the Project is a part), as further described in Section 101 of the Bond Resolution.
11.	Revenues	Has the meaning ascribed to such term in Section 101 of the Bond Resolution.
12.	Paying Agent/Bond Registrar	U.S. Bank Trust Company, National Association, a national banking association organized and existing under the laws of the United States of America
13.	Paying Agent/Bond Registrar Location	Nashville, Tennessee.
14.	[Reserved]	

No.	Item	WIFIA Loan Specific Term
<b>PART B. Key Project Metrics</b>		
15.	Project	The project is the Process Advancements at Omohundro and K.R. Harrington Water Treatment Plants Project, located at the Project Location, and consists of various improvements to upgrade and replace equipment at the existing, active water treatment plant sites, including a new raw water pump station, new post-filtration facilities at both sites, clearwell storage improvements and replacement, filter underdrain improvements and flood risk mitigation upgrades, as described in further detail in <b>Part D of Schedule II</b> ( <i>Project Details</i> ).
16.	Project Location	Nashville, Tennessee.
17.	Projected Substantial Completion Date	08/01/2028, as such date may be adjusted in accordance with <b>Part C of Schedule V</b> ( <i>Reporting Requirements</i> ).
18.	Development Default Date	08/01/2030.
19.	NEPA Determination	[Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by EPA on [____], 20[____] in accordance with NEPA.
20.	[Reserved]	Not Applicable.
<b>PART C. Key Loan Metrics</b>		
21.	Maximum Principal Amount	Principal amount up to \$315,000,000 (excluding interest that is capitalized in accordance with this Agreement).
22.	WIFIA Interest Rate	[____]% per annum.
23.	Default Rate	Interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 200 basis points.
24.	Interest Payment Date	Each January 1 and July 1, beginning on the Debt Service Payment Commencement Date.
25.	Capitalized Interest Period	Not Applicable.

No.	Item	WIFIA Loan Specific Term
26.	Interest Only Period	The period commencing from (and including) the Debt Service Payment Commencement Date and ending on January 1, 2028 (or on such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in cash).
27.	Principal Payment Date	Each July 1, beginning on July 1, 2029.
28.	Final Maturity Date	The earliest of (a) July 1, 2058, (b) the date on which the maturity of the WIFIA Loan and corresponding WIFIA Bond have been accelerated or subject to mandatory redemption or prepayment (as the case may be) prior to maturity thereof; and (c) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.
29.	[Reserved]	Not Applicable.
<b>PART D. Key Security Metrics</b>		
30.	Lien priority	Senior lien on a parity with the other Bonds.
31.	Springing lien	Not Applicable.
32.	Dedicated source of repayment	The dedicated source of repayment for the WIFIA Loan shall be the Revenues of the System.
33.	Pledged Collateral	<p>The Trust Estate and the WIFIA Debt Service Reserve Account.</p> <p>The term “<b>Trust Estate</b>” means the Revenues and amounts on deposit in all Funds and Accounts established by the Bond Resolution (other than the Debt Service Reserve Fund and the Tax Credit Payment Account within the Debt Service Fund).</p> <p>The term “<b>WIFIA Debt Service Reserve Account</b>” means the account within the Debt Service Reserve Fund established in Section 502(a) of the Bond</p>

No.	Item	WIFIA Loan Specific Term
		Resolution securing, as of the Effective Date, the WIFIA Bond.
34.	System Accounts	<p>The Funds and Accounts established in Section 502 of the Bond Resolution:</p> <p>Construction Fund, which shall contain a Project Account and a Capitalized Interest Account;</p> <p>Revenue Fund;</p> <p>Debt Service Fund established pursuant to Section 502(a) of the Bond Resolution (the “Debt Service Fund”), which shall contain one or more Tax Credit Payment Accounts established in the Debt Service Fund pursuant to Section 502(a) and 507(c) of the Bond Resolution (each, a “Tax Credit Payment Account”), if applicable;</p> <p>Debt Service Reserve Fund established pursuant to Section 502(a) of the Bond Resolution, which shall contain one or more accounts (including the WIFIA Debt Service Reserve Account) as Additional Secured Series are issued (the “Debt Service Reserve Fund”);</p> <p>Rate Stabilization Fund established pursuant to Section 502(a) of the Bond Resolution; and</p> <p>Surplus Fund established pursuant to Section 502(a) of the Bond Resolution.</p> <p>The term “Account” or “Accounts” means, as the case may be, each or all of the accounts established in Section 502(a) of the Bond Resolution.</p> <p>The term “Fund” or “Funds” means, as the case may be, each or all of the Funds established in Section 502 of the Bond Resolution.</p>
35.	Revenue Fund	The Revenue Fund established in Section 502(a) of the Bond Resolution.
36.	WIFIA Debt Service Account	Not Applicable.
37.	WIFIA Debt Service Reserve Account	The term “WIFIA Debt Service Reserve Account” means the Debt Service Reserve Account established

No.	Item	WIFIA Loan Specific Term
		within the Reserve Fund for the benefit of the WIFIA Bond.
38.	WIFIA Debt Service Reserve Requirement	<p>The term “WIFIA Debt Service Reserve Requirement” means the Debt Service Reserve Requirement.</p> <p>The term “<b>Debt Service Reserve Requirement</b>” means, with respect to the WIFIA Bond, an amount equal to the least of (a) 10% of the then-Outstanding principal amount of the WIFIA Bond; (b) the maximum Debt Service Requirement on the WIFIA Bond for any Borrower Fiscal Year; or (c) 125% of the average Debt Service Requirement for each Borrower Fiscal Year on the WIFIA Bond.</p> <p>Until the final Disbursement of proceeds of the WIFIA Loan and the establishment of the final repayment schedule for the WIFIA Bond, the Borrower shall treat each Disbursement of proceeds of the WIFIA Loan and the resulting repayment schedule for the WIFIA Bond in the following manner for purposes of calculating the Debt Service Reserve Requirement: (i) the then-Outstanding principal amount of the WIFIA Bond shall equal the sum of the proposed Disbursement and all prior Disbursements of proceeds of the WIFIA Loan; (ii) the Debt Service Requirement on the WIFIA Bond shall be the debt service that would be payable over the term of the WIFIA Bond, in accordance with the terms hereof, on the proposed Disbursement and all prior Disbursements of proceeds of the WIFIA Loan, assuming a Substantial Completion Date of August 1, 2028, an initial Interest Payment Date of July 1, 2025, an initial Principal Payment Date of July 1, 2029 and a final maturity date of July 1, 2058.</p> <p>For purposes of calculating the WIFIA Debt Service Reserve Requirement, the Debt Service Requirement shall be calculated using the WIFIA Interest Rate.</p>
39.	Rate Covenant	The requirements and conditions set forth in Section 711 of the Bond Resolution, a copy of which



No.	Item	WIFIA Loan Specific Term
		as of the Effective Date is attached hereto for reference as <b>Annex A.</b>
40.	Additional Bonds Test	The requirements and conditions set forth in Article II of the Bond Resolution, a copy of which as of the Effective Date is attached hereto for reference as <b>Annex B.</b>
41.	Flow of Funds	The requirements and conditions set forth in Section 506 of the Bond Resolution, a copy of which as of the Effective Date is attached hereto for reference as <b>Annex C.</b>
42.	Funding of WIFIA Debt Service Reserve Requirement	Immediately prior to each disbursement of proceeds of the WIFIA Loan, the Borrower shall have (i) calculated the increase in the Debt Service Reserve Requirement resulting from such disbursement and, in connection with the final disbursement of proceeds of the WIFIA Loan, notified the WIFIA Lender of the amount of the aggregate increase in the Debt Service Reserve Requirement resulting from the aggregate amount of all Disbursements (including the requested Disbursement amount and any interest that is capitalized in accordance with the terms of this Agreement) and the supporting calculations therefor, and (ii) caused the WIFIA Debt Service Reserve Account to be funded from Revenues in an amount sufficient to cause the total amount funded to the WIFIA Debt Service Reserve Account to be equal to the WIFIA Debt Service Reserve Requirement.
<b>PART E. Other Key WIFIA Loan Documents</b>		
43.	WIFIA Bond	The bond issued and delivered by the Borrower in substantially the form of <b>Exhibit A</b> ( <i>Form of WIFIA Bond</i> ).
44.	Bond Resolution	Substitute Resolution No. RS2010-1442 of the Metropolitan Council adopted on November 16, 2010, as amended by Resolution No. RS2011-114 adopted by the Metropolitan Council on December 20, 2011.

No.	Item	WIFIA Loan Specific Term
45.	WIFIA Supplemental Resolution	Resolution No. RS2022-[____], adopted by the Metropolitan Council on [____], 2022, authorizing the execution, delivery and performance by the Borrower of this Agreement, the WIFIA Bond, and certain related actions by the Borrower in connection with the issuance of the WIFIA Loan.
46.	WIFIA Term Sheet	WIFIA term sheet, dated as of the Effective Date, between the Borrower and the WIFIA Lender.
47.	Prior Resolution	Metropolitan Council Resolution R85-762, adopted on November 5, 1985, as supplemented and amended, including without limitation as supplemented and amended by Substitute Resolution No. R93-770 of the Metropolitan Council.
<b>PART F. Fees</b>		
48.	Servicing Set-Up Fee	A servicing set-up fee equal to \$21,580.
49.	Construction Period Servicing Fee	An annual construction period servicing fee equal to \$21,580.
50.	Initial Construction Period Servicing Fee	The initial Construction Period Servicing Fee in a pro-rated amount equal to \$1,790. <sup>1</sup>
51.	Operating Period Servicing Fee	An annual operating period servicing fee equal to \$8,100.
<b>PART G. Borrower Related Notices</b>		
52.	Borrower notice details	[Name] <sup>2</sup> [Address] Attention: [____] Email: [____]
53.	Paying Agent/Bond Registrar notice details	U.S. Bank Trust Company, National Association 333 Commerce St., Ste. 800, Nashville, TN 37201 Attention: Connie Jaco Email: connie.jaco@usbank.com

<sup>1</sup> **Note to Borrower:** The pro-rated construction servicing fee amount assumes a current closing date in August 2022.

<sup>2</sup> **Note to Borrower:** Borrower to provide.

## ANNEX A

### RATE COVENANT

*All terms used in this Annex A shall have the meaning assigned to such terms as provided in the Bond Resolution. All section references used in this Annex A shall be references to the appropriate section in the Bond Resolution. All references to “herein” or “hereof” in this Annex A shall be references to the Bond Resolution. The following is intended to copy (without change) the provisions of Section 711 of the Bond Resolution as of the Effective Date. For reference purposes, certain defined terms of the Bond Resolution used in this Annex A, as of the Effective Date, are set forth in Section 1 of this Agreement or Annex D.*

#### **SECTION 711. Rates, Fees and Charges.**

(a) The Metropolitan Government shall at all times fix, establish, maintain, charge and collect rates, fees and charges for the use or the sale of the output, capacity or service of the System which shall be sufficient to produce Net Revenues in each Fiscal Year at least equal to the greater of:

(i) 120% of the sum of the Debt Service Requirement on the Prior Bonds and the Outstanding Bonds in such Fiscal Year; or

(ii) 100% of the sum of:

(A) the Debt Service Requirement on the Prior Bonds, the Outstanding Bonds and Subordinated Indebtedness in such Fiscal Year,

(B) the amounts required to be paid during such Fiscal Year into the Debt Service Reserve Fund and the Operating Reserve Fund established by the Prior Resolution and to the Debt Service Reserve Fund pursuant to the Resolution, and

(C) the amount of all other charges and liens whatsoever payable out of Revenues during such Fiscal Year, including payments in lieu of taxes and any payments required during such Fiscal Year under Contracts to the extent not otherwise provided for in this subsection (ii).

(b) For purposes of this Section 711, the Metropolitan Government may, when calculating the Debt Service Requirement on Subordinated Indebtedness, make the adjustments and assumptions set forth in subsection (b) of the definition of “Debt Service Requirement”, as if such provisions were applicable to Subordinated Indebtedness; provided however, that there shall be disregarded any scheduled principal amount of Subordinated Indebtedness which are notes or other evidences of indebtedness issued in anticipation of the issuance of Bonds, the payment of which is to be paid from the proceeds of such Bonds.

(c) If the Metropolitan Government fails to prescribe, fix, maintain, and collect rates, fees, and other charges, or to revise such rates, fees, and other charges, in accordance with the provisions of this section in any Fiscal Year, but the Metropolitan Government in the next Fiscal Year has promptly taken all available measures to revise such rates, fees and other charges as advised by a Consultant retained by the Metropolitan Government to review the

operations of the System, there shall be no Event of Default as described in Section 801 until at least the end of such next Fiscal Year and only then if Net Revenues are less than the amount required by this section.

## **ANNEX B**

### **ADDITIONAL BONDS TEST**

*All terms used in this Annex B shall have the meaning assigned to such terms as provided in the Bond Resolution. All section references used in this Annex B shall be references to the appropriate section in the Bond Resolution. All references to “herein” or “hereof” in this Annex B shall be references to the Bond Resolution. The following is intended to copy (without change) the provisions of Article II of the Bond Resolution as of the Effective Date. For reference purposes, certain defined terms of the Bond Resolution used in this Annex B, as of the Effective Date, are set forth in Section 1 of this Agreement or Annex D.*

### **ARTICLE II ISSUANCE OF BONDS; SUBORDINATE INDEBTEDNESS; CREDIT FACILITIES AND HEDGE AGREEMENTS**

#### **SECTION 201. Authorization of Bonds.**

(a) The Metropolitan Government is hereby authorized to issue from time to time, as hereinafter provided, Bonds of the Metropolitan Government. The aggregate principal amount of the Bonds which may be executed, authenticated and delivered under the Resolution is not limited except as may hereafter be provided in the Resolution or in any Supplemental Resolution or as may be limited by law.

(b) The Bonds may, if and when authorized by the Metropolitan Government pursuant to one or more Supplemental Resolutions, be issued in one or more Series. The designation of each Series shall bear such designation as the Metropolitan Government may determine. Each Bond shall bear upon its face the designation so determined by the Metropolitan Government for the Series to which it belongs.

#### **SECTION 202. General Provisions for Issuance of Bonds of Each Series.**

(a) When authorized pursuant to a Supplemental Resolution, the officers of the Metropolitan Government specified in Section 303 may execute all (but not less than all) the Bonds of each Series for issuance under the Resolution and deliver such Bonds to the Bond Registrar therefor for completion, authentication and delivery. Such Bond Registrar shall authenticate and deliver such Bonds upon the order of the Metropolitan Government, but only upon satisfaction by the Metropolitan Government of the conditions specified in Article X of the Resolution and in the Supplemental Resolution authorizing the Series of which such Bonds are a part and upon satisfaction by the Metropolitan Government of the following conditions:

(i) receipt of a Counsel’s Opinion to the effect that (A) the Metropolitan Government has the right and power under applicable Tennessee law to adopt the Resolution, and the Resolution has been duly and lawfully adopted by the Metropolitan Government, is in full force and effect and is valid and binding upon the Metropolitan Government in accordance with its terms, and no other authorization for the Resolution is required; (B) the Resolution creates the valid pledge which it purports to create of the Trust Estate and, if such Series of Bonds shall be an Additionally Secured Series, the

separate account in the Debt Service Reserve Fund established for the benefit of such Bonds, subject to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution; and (C) the Bonds of such Series are valid and binding obligations of the Metropolitan Government as provided in the Resolution and are entitled to the benefits of the Resolution and of applicable Tennessee law, and such Bonds have been duly and validly authorized and issued in accordance with applicable Tennessee law and in accordance with the Resolution. Such Opinion may take exception as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors' rights and may state that no opinion is being rendered as to the availability of any particular remedy. No opinion need be expressed as to the priority of the pledge created by the Resolution over the rights of other persons in the Trust Estate and, if applicable, such separate account in the Debt Service Reserve Fund;

(ii) adoption of a Supplemental Resolution authorizing such Bonds, which shall specify such terms and conditions relative to the Bonds of such Series, and such other matters relative thereto, as the Metropolitan Government may determine;

(iii) if such Series shall be an Additionally Secured Series, evidence of the funding of the account within the Debt Service Reserve Fund designated therefor in the manner prescribed by the Supplemental Resolution;

(iv) execution by an Authorized Finance Officer of a certificate stating that upon the issuance of such Series the Metropolitan Government will not be in default in the performance of any of the covenants, conditions, agreements or provisions contained in the Resolution;

(v) except in the case of the Bonds issued under the first Supplemental Resolution, execution by an Authorized Finance Officer of a certificate (A) setting forth the amounts of Net Revenues for any twelve (12) consecutive month period within the twenty-four (24) consecutive months immediately preceding the date of issuance of the Bonds of the Series with respect to which such certificate is being given; and (B) stating that the Net Revenues for such 12 month period were at least equal to 120% of the maximum Debt Service Requirement on the Prior Bonds and the Bonds in any future Fiscal Year (calculated with respect to the Bonds of all Series then Outstanding, the Prior Bonds then outstanding and the Bonds of the Series with respect to which such certificate is given); provided, however, that the Net Revenues for such twelve (12) month period may be adjusted for the purposes of such certificate (X) to reflect for such period revisions in the rates, fees, rentals and other charges of the Metropolitan Government for the product and services of the System made after the commencement of such period and preceding the date of issuance of the Bonds of the Series with respect to which such certificate is given; (Y) to reflect any increase in Net Revenues due to any new facilities of the System having been placed into use and operation subsequent to the commencement of such period and prior to the Date of Issuance of such Bonds, as certified by a Consultant; and (Z) to include an amount equal to the average annual contribution to Net Revenues for the first three full Fiscal Years commencing after the date of acquisition thereof, estimated to be made by facilities anticipated to be acquired

and expected to be placed into use and operation within two years of the Date of Issuance of such Bonds, as certified by a Consultant;

(vi) in the case of a Series of Tax Credit Bonds, a Counsel's Opinion addressed to the Metropolitan Government regarding the status of such Series of Bonds as Tax Credit Bonds; and

(vii) delivery of such further documents, moneys and securities as are required by the provisions of this Article II or Article X or any Supplemental Resolution adopted pursuant to Article X.

(b) All the Bonds of each Series of like maturity shall be identical in all respects, except as to interest rates, redemption provisions, denominations, numbers and letters. After the issuance of the Bonds of any Series, no Bonds of such Series shall be issued except in lieu of or in substitution for other Bonds of such Series pursuant to Article III or Section 405 or Section 1106.

### **SECTION 203. Bonds Other Than Refunding Bonds.**

(a) One or more Series of Bonds may be issued at any time for the purpose of financing capital improvements to the System and any and all other Costs related thereto or to the issuance of the Bonds. Bonds of each such Series shall be authenticated and delivered only upon compliance with the terms and conditions set forth in Section 202.

(b) The proceeds of each Series of Bonds authorized under this Section 203 shall be applied simultaneously with the delivery of such Bonds as provided in the Supplemental Resolution authorizing such Series.

### **SECTION 204. Refunding Bonds.**

(a) One or more Series of Refunding Bonds may be issued at any time to refund all or any Outstanding Bonds, Prior Bonds or Subordinated Indebtedness. Refunding Bonds shall be issued in a principal amount sufficient, together with other moneys available therefor, to accomplish such refunding and to make the deposits in the Funds and Accounts under the Resolution required by the provisions of the Supplemental Resolution authorizing such Bonds or to make any deposits or payments required by the Prior Resolution or resolution authorizing Subordinate Indebtedness, as applicable.

(b) In addition to the conditions set forth in Section 202, the Bonds of each Series of Refunding Bonds issued pursuant to subsection (a) of this Section 204 may be authenticated and delivered only upon the filing with the records of the Metropolitan Government of a certificate of an Authorized Finance Officer certifying that all conditions relating to the payment or prepayment of such Bonds, Prior Bonds or Subordinated Indebtedness as set forth in the documents relating thereto have been satisfied.

(c) The proceeds, including accrued interest, of the Refunding Bonds of each Series shall be applied simultaneously with the delivery of such Bonds for the purposes of making deposits in such Funds and Accounts under the Resolution as shall be provided by the Supplemental Resolution authorizing such Series of Refunding Bonds and shall be applied to the refunding purposes thereof or to the payment or prepayment purposes thereof in the manner provided in said Supplemental Resolution.

(d) In lieu of compliance with Section 202(a)(v), Refunded Bonds may be issued to refund Prior Bonds or Outstanding Bonds (i) if the refunding will constitute a refunding of all Outstanding Bonds, including the retirement of related Contracts, or (ii) upon the execution by an Authorized Finance Officer of a certificate stating that the refunding will result in a reduction in the future Debt Service Requirement on the Bonds and the Prior Bonds in all future Fiscal Years.

(e) In complying with Section 202(a)(v), there shall be deleted from the calculation of maximum Debt Service Requirement the Debt Service Requirement on any Bonds or Prior Bonds being refunded by the Bonds with respect to which the certificate described in Section 202(a)(v) is being given.

#### **SECTION 205. Credit Facilities and Hedge Agreements.**

(a) The Metropolitan Government may obtain or cause to be obtained one or more Credit Facilities providing for payment of all or a portion of the principal of, premium, if any, or interest due or to become due on such Bonds, providing for the purchase of such Bonds by the Credit Issuer, or providing funds for the purchase of such Bonds by the Metropolitan Government. In connection therewith, the Metropolitan Government may enter into Credit Facility Agreements with such Credit Issuers providing for, among other things, (i) the payment of fees and expenses to such Credit Issuers for the issuance of such Credit Facilities; (ii) the terms and conditions of such Credit Facilities and the Bonds affected thereby; and (iii) the security, if any, to be provided for the issuance of such Credit Facilities.

(b) The Metropolitan Government may secure any Credit Facility by an agreement providing for the purchase of the Bonds secured thereby with such adjustments to the rate of interest, method of determining interest, maturity, or redemption provisions for such Bonds as are specified by the Metropolitan Government in the applicable Supplemental Resolution. The Metropolitan Government may in a Credit Facility Agreement agree to directly reimburse such Credit Issuer for amounts paid under the terms of such Credit Facility, together with interest thereon; provided, however, that no Reimbursement Obligation shall be created for purposes of the Resolution until amounts are paid under such Credit Facility. Any such Credit Facility shall be for the benefit of and secure such Bonds or portion thereof as specified in the applicable Supplemental Resolution. The Metropolitan Government's obligations under a Credit Facility may be payable from and/or secured by a pledge of, and lien on, the Trust Estate as described Section 501, if and as set forth in a Supplemental Resolution.

(c) In connection with the issuance of any Bonds or at any time thereafter so long as such Bonds remain Outstanding, the Metropolitan Government may enter into Hedge Agreements with Qualified Hedge Providers, and no other providers, with respect to any Bonds. The Metropolitan Government shall authorize the execution, delivery, and performance of each Qualified Hedge Agreement in a Supplemental Resolution, in which it shall designate the Bonds to which such Qualified Hedge Agreement relates. The Metropolitan Government's obligation to pay Hedge Payments on a Qualified Hedge Agreement may be payable from and/or secured by a pledge of, and lien on, the Trust Estate as described in Section 501 (other than with respect to Termination Payments), if and as set forth in a Supplemental Resolution.

**SECTION 206. No Other Obligations.** No obligations payable from the Trust Estate or any portion thereof, other than Subordinated Indebtedness, shall be issued or incurred by the



Metropolitan Government, except as set forth in this Article II, including without limitation any obligations issued under the Prior Resolution.

**SECTION 207. Special Provisions Relating to Capital Appreciation Bonds and Deferred Income Bonds.**

(a) The principal and interest portions of the Accreted Value of Capital Appreciation Bonds or the Appreciated Value of Deferred Income Bonds becoming due at maturity or by virtue of mandatory redemption requirements shall be included in the calculations of accrued and unpaid and accruing interest or Principal Installments made under the definitions of Debt Service Requirement only from and after the date (the “Calculation Date”) which is one year prior to the date on which such Accreted Value or Appreciated Value, as the case may be, becomes so due, and the principal and interest portions of such Accreted Value or Appreciated Value shall be deemed to accrue in equal daily installments from the Calculation Date to such due date.

(b) For the purposes of (i) receiving payment of the Redemption Price if a Capital Appreciation Bond is redeemed prior to maturity, or (ii) receiving payment of a Capital Appreciation Bond if the principal of all Bonds is declared immediately due and payable following an Event of Default, as provided in Section 801 of the Resolution or (iii) computing the principal amount of Bonds held by the Holder of a Capital Appreciation Bond in giving to the Metropolitan Government any notice, consent, request, or demand pursuant to the Resolution for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its then-current Accreted Value.

(c) For the purposes of (i) receiving payment of the Redemption Price if a Deferred Income Bond is redeemed prior to maturity, or (ii) receiving payment of a Deferred Income Bond if the principal of all Bonds is declared immediately due and payable following an Event of Default, as provided in Section 801 of the Resolution or (iii) computing the principal amount of Bonds held by the Holder of a Deferred Income Bond in giving to the Metropolitan Government any notice, consent, request, or demand pursuant to the Resolution for any purpose whatsoever, the principal amount of a Deferred Income Bond shall be deemed to be its then current Appreciated Value.

## ANNEX C

### FLOW OF FUNDS

*All terms used in this Annex C shall have the meaning assigned to such terms as provided in the Bond Resolution. All section references used in this Annex C shall be references to the appropriate section in the Bond Resolution. All references to “herein” or “hereof” in this Annex C shall be references to the Bond Resolution. The following is intended to copy (without change) the provisions of Sections 504, 505, 506, 507, 508, 509 and 510 of the Bond Resolution and Section [\_\_\_\_\_] of the WIFIA Supplemental Resolution as of the Effective Date. For reference purposes, certain defined terms of the Bond Resolution used in this Annex C, as of the Effective Date, are set forth in Section 1 of this Agreement or in Annex D.*

SECTION 504. Revenues and Revenue Fund. Except as provided by Section 603, all Revenues shall be deposited promptly as collected by the Metropolitan Government to the credit of the Revenue Fund.

SECTION 505. Payment of Operation and Maintenance Expenses. Operation and Maintenance Expenses shall be paid from the Revenue Fund as they become due and payable.

SECTION 506. Payments into Certain Funds. The Metropolitan Government shall make monthly withdrawals from the Revenue Fund, to the extent of amounts available therein, in order to make the following deposits and payments, in the order and amounts set forth below:

(a) for deposit in the Debt Service Fund an amount sufficient to provide for the timely payments required by Section 507, in amounts calculated as prescribed by Section 507(b); then

(b) for deposit in the Debt Service Reserve Fund an amount sufficient to satisfy the requirements of Section 508 for such month; then

(c) for payment of Subordinated Indebtedness, the funding of such debt service reserves as may be required therewith and the payment of all related financing costs thereof, including without limitation any liquidity and credit enhancement charges or fees; then

(d) for payment to the Metropolitan Government, the amount of any payment in lieu of tax required of the System; then

(e) for deposit in the Rate Stabilization Fund, the amount, if any, budgeted for deposit into such Fund for the then current month as set forth in the then current Annual Budget or the amount otherwise determined by an Authorized Finance Officer to be deposited to such Fund for the month; and then

(f) for deposit in the Surplus Fund, the balance of any such remaining amounts in the Revenue Fund.

SECTION 507. Debt Service Fund.

(a) Sufficient moneys shall be deposited to the Debt Service Fund from the Revenue Fund for the purpose of paying the Bonds as they become due and payable and, if and to the extent directed by a Supplemental Resolution, for the purpose of making payments under Contracts. Specifically:

(i) Unless otherwise provided in a Supplemental Resolution, on or before each interest payment date for a Series of Bonds, there shall be deposited in the Debt Service Fund an amount which, together with available moneys already on deposit therein (including Capitalized Interest Account transfers and Hedge Receipts and Termination Payments attributable to such Series of Bonds, which shall be deposited directly to the Debt Service Fund) and amounts scheduled to be deposited therein from a Tax Credit Payment Account, is not less than the interest coming due on such Bonds on such interest payment date. Such amount shall be used solely to pay interest on the Bonds when due or pay Reimbursement Obligations for Credit Facilities under which the Credit Issuer makes all interest payments on the Bonds.

(ii) Unless otherwise provided in a Supplemental Resolution or a Hedge Agreement, on or before each payment date for Hedge Payments under a Qualified Hedge Agreement, the Metropolitan Government shall deposit in the Debt Service Fund an amount which, together with any Hedge Receipts and other moneys already on deposit therein and available to make such payment, is not less than such Hedge Payments coming due on such payment date. Such amount shall be used solely to pay Hedge Payments under Qualified Hedge Agreements when due.

(iii) Unless otherwise provided in a Supplemental Resolution or a Contract, on or before each payment date for amounts due on Contracts, other than for Reimbursement Obligations and Qualified Hedge Agreements, the Metropolitan Government shall deposit in the Debt Service Fund an amount which, together with any other moneys already on deposit therein and available to make such payment, is not less than the amount coming due on such payment date. Such amount shall be used solely for such Contract payments when due.

(iv) Unless otherwise provided in a Supplemental Resolution, on or before each Principal Installment date for a Series of Bonds, the Metropolitan Government shall deposit in the Debt Service Fund an amount which, together with any other moneys already on deposit therein and available to make such payment, is not less than the principal payable on such Bonds on such Principal Installment date, other than principal to be paid from a source other than Revenues. Such amount shall be used solely for the payment of principal of the Bonds as the same shall become due and payable or to pay Reimbursement Obligations for Credit Facilities under which the Credit Issuer makes all principal payments on the Bonds.

(b) Without limiting Section 507(a), and except as may otherwise be set forth in a Supplemental Resolution, the payment required to be made each month from the Revenue Fund to the Debt Service Fund shall be calculated to provide for the deposit obligations described in Section 507(a) which will have accrued by the end of the month of such payment to the Debt Service Fund. For purposes of calculating the accrual of such deposit obligations, (i) Principal

Installments of a Series will be deemed to accrue daily in equal amounts from the preceding Principal Installment date for such Series (but in no event shall any accrual be made for any Principal Installment more than one year prior to the due date of such Principal Installment or from the Date of Issuance of Bonds of such Series, whichever date is later); (ii) each fixed payment obligation (other than Principal Installments) will be deemed to accrue daily in equal amounts from the preceding relevant payment obligation date (but in no event more than one year prior to such payment obligation date or the initial incurrence of the payment obligation, whichever is later); (iii) principal and interest portions of the Accreted Value of Capital Appreciation Bonds or the Appreciated Value of Deferred Income Bonds shall accrue in the manner provided in Section 207(a); and (iv) variable payment obligations, whether interest related to Bonds issued with Variable Rates or otherwise, shall accrue as estimated by the Metropolitan Government. Any monthly deposit in excess of the amount required by this subsection (b) shall be credited against the next ensuing monthly payment or payments.

(c) There shall be established within the Debt Service Fund a Tax Credit Payment Account for each Series of Tax Credit Bonds. Tax Credit Payments received by the Metropolitan Government shall be deposited directly into the applicable Tax Credit Payment Account and such amounts shall be applied solely to the payment of debt service on the applicable Series of Tax Credit Bonds, at the times and in the manner otherwise described in this Section 507.

(d) Nothing herein shall limit the right of the Metropolitan Government to use amounts on deposit in the Debt Service Fund, together with such other amounts as may be determined by an Authorized Finance Officer, to defease all or a portion of Bonds attributable to such Debt Service Fund deposits, purchase all or a portion of such Bonds in the open market, or redeem all or a portion of such Bonds at their Redemption Price; provided that the amount thereafter remaining in the Debt Service Fund shall not be less than the remaining requirement of such Fund, as set forth in Section 506(a) and this Section 507. Any Bonds so purchased or redeemed by the Metropolitan Government which are subject to mandatory redemption requirements may be applied as a credit against such mandatory redemption requirements as prescribed by the Supplemental Resolution authorizing such Bonds.

#### SECTION 508. Debt Service Reserve Fund.

(a) There shall be deposited into the Debt Service Reserve Fund the amounts specified, if any, in Supplemental Resolutions with respect to one or more Additionally Secured Series. The Metropolitan Government shall establish by Supplemental Resolution an account within the Debt Service Reserve Fund for each separately secured Additionally Secured Series. Each such account shall be for the benefit and security of one or more Additionally Secured Series and need not secure all Additionally Secured Series. Each such account shall be initially funded, maintained and replenished as prescribed by Supplemental Resolution. In the event that deposits are required hereunder for two or more accounts within the Debt Service Reserve Fund, transfers from the Revenue Fund to such accounts shall be made on a pro rata basis in proportion to the respective monthly funding requirements. Whenever, on the date that interest or principal is due on any Additionally Secured Series, there are insufficient moneys therefor in the Debt Service Fund, the Metropolitan Government shall, without further instructions, apply so much as may be needed of the moneys in the related account of the Debt Service Reserve Fund to prevent default in the payment of such interest or principal, with priority to interest payments.

(b) Whenever the moneys on deposit in an account established in the Debt Service Reserve Fund shall exceed the Debt Service Reserve Requirement related thereto, and after giving effect to any Reserve Fund Credit Facility that may be credited to such account in accordance with the provisions of the Supplemental Resolution establishing such subaccount, such excess shall be transferred from such account of the Debt Service Reserve Fund to the Debt Service Fund to redeem Bonds allocable thereto or to such other Fund or Account as may be directed by an Authorized Finance Officer, subject to a Counsel's Opinion to the effect that such application is permitted by applicable law and will not adversely affect any applicable exemption from federal income taxation of the interest on any Series of Bonds (or the Metropolitan Government's right to any Tax Credit Payments applicable thereto).

(c) Whenever the amount in an account within the Debt Service Reserve Fund attributable to an Additionally Secured Series, together with the amount in the Debt Service Fund for such Series, is sufficient to pay in full all such Bonds secured thereby in accordance with their terms (including the maximum amount of principal or applicable sinking fund Redemption Price and interest which could become payable thereon), the applicable funds on deposit in such account of the Debt Service Reserve Fund shall be transferred to the Debt Service Fund and applied to the timely payment of principal or Redemption Price, if applicable, and interest on the outstanding Bonds secured thereby.

(d) In the event of the refunding or defeasance of any Bonds of an Additionally Secured Series, the Metropolitan Government may withdraw from the separate account in the Debt Service Reserve Fund established for the benefit of the Bonds of such Additionally Secured Series all or any portion of the amounts accumulated therein and deposit such amounts with the Escrow Agent for the Bonds being refunded or defeased to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Bonds being refunded or defeased; provided that such withdrawal shall not be made unless the amount thereafter remaining in such separate account in such account shall not be less than the remaining Debt Service Reserve Requirement related thereto.

(e) The Metropolitan Government may satisfy the Debt Service Reserve Requirement for an Additionally Secured Series by purchasing and depositing to the applicable account of the Debt Service Reserve Fund one or more Reserve Fund Credit Facilities, and may provide for the reimbursement of payments made by the providers of such Reserve Fund Credit Facilities from amounts required to be deposited to such account of the Debt Service Reserve Fund, all as may be set forth in a Supplemental Resolution.

#### SECTION 509. Rate Stabilization Fund.

(a) Each month, the Metropolitan Government shall transfer from the Rate Stabilization Fund to the Revenue Fund the amount budgeted for transfer into such Fund for the then current month as set forth in the then current Annual Budget or the amount otherwise determined by the Metropolitan Government to be deposited into such Fund for the month.

(b) The Metropolitan Government may, from time to time and upon written direction of an Authorized Finance Officer, withdraw amounts on deposit in the Rate Stabilization Fund and (i) transfer such amounts to any other Fund or Account established under the Resolution other than

the Revenue Fund, (ii) use such amounts to purchase or redeem Bonds and/or Prior Bonds, (iii) use such amounts to otherwise provide for the payment of Bonds and/or Prior Bonds or interest thereon or (iv) use such funds to make any other lawful payments.

SECTION 510. Surplus Fund. Amounts in the Surplus Fund shall be applied first to remedy any deficiencies in the amounts required to be withdrawn from the Revenue Fund pursuant to Sections 505 and 506(a)-(d), which such deficiencies shall be remedied from amounts on deposit in the Surplus Fund in the order set forth in Sections 505 and 506(a)-(d). Amounts at any time not needed therefor may be applied to the payment of the cost of capital improvements to the System, the purchase, redemption, payment or provision for payment of Bonds, Prior Bonds or Subordinated Indebtedness, the payment of Contracts, including Termination Payments, and any other legal expenditure of System funds.

[insert from WIFIA Supplemental Resolution]

## ANNEX D

### CERTAIN DEFINITIONS FROM BOND RESOLUTION

*All terms used in this Annex D shall have the meaning assigned to such terms as provided in the Bond Resolution. All section references used in this Annex D shall be references to the appropriate section in the Bond Resolution. All references to “herein” or “hereof” in this Annex D shall be references to the Bond Resolution. The following is intended to copy (without change) certain defined terms in the Bond Resolution as of the Effective Date.*

**Accreted Value** shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Bond plus the interest accrued on such Bond from the date of original issuance of such Bond to the periodic date specified in the Supplemental Resolution authorizing such Capital Appreciation Bond on which interest on such Bond is to be compounded (hereinafter, a “Periodic Compounding Date”) next preceding the date of computation or the date of computation if a Periodic Compounding Date, such interest to accrue at the interest rate per annum of the Capital Appreciation Bonds set forth in the Supplemental Resolution authorizing such Bonds, compounded periodically on each Periodic Compounding Date, plus, if such date of computation shall not be a Periodic Compounding Date, a portion of the difference between the Accreted Value as of the immediately preceding Periodic Compounding Date (or the date of original issuance if the date of computation is prior to the first Periodic Compounding Date succeeding the date of original issuance) and the Accreted Value as of the immediately succeeding Periodic Compounding Date, calculated based upon an assumption that, unless otherwise provided in the Supplemental Resolution authorizing such Capital Appreciation Bonds, Accreted Value accrues in equal daily amounts on the basis of a year consisting of twelve 30-day months.

**Alternate Variable Rate Taxable Index** shall mean such index as, at the time, is in general use as a proxy for short-term interest rates on debt obligations of state and local governments the interest on which is not excluded from gross income for federal income tax purposes, as determined by an Authorized Finance Officer.

**Alternate Variable Rate Tax-Exempt Index** shall mean such index as, at the time, is in general use as a proxy for short-term interest rates on debt obligations of state and local governments the interest on which is excluded from gross income for federal income tax purposes, as determined by an Authorized Finance Officer.

**Annual Budget** shall mean the annual budget or budgets of the System, as amended or supplemented, adopted or in effect for a particular Fiscal Year as provided in Section 709.

**Appreciated Value** shall mean, with respect to any Deferred Income Bond, (i) as of any date of computation prior to the Current Interest Commencement Date with respect to such Deferred Income Bond, an amount equal to the principal amount of such Bond plus the interest accrued on such Bond from the date of original issuance of such Bond to the periodic date specified in the Supplemental Resolution authorizing such Deferred Income Bond on which interest on such Bond is to be compounded (hereinafter, a “Periodic Compounding Date”) next preceding the date of computation or the date of computation if a Periodic Compounding Date, such interest to accrue at the interest rate per annum of the Deferred Income Bonds set forth in the Supplemental Resolution authorizing such Bonds, compounded periodically on each Periodic Compounding Date, plus, if such date of computation shall not be a Periodic

Compounding Date, a portion of the difference between the Appreciated Value as of the immediately preceding Periodic Compounding Date (or the date of original issuance if the date of computation is prior to the first Periodic Compounding Date succeeding the date of original issuance) and the Appreciated Value as of the immediately succeeding Periodic Compounding Date, calculated based upon an assumption that, unless otherwise provided in the Supplemental Resolution authorizing such Deferred Income Bonds, Appreciated Value accrues in equal daily amounts on the basis of a year consisting of twelve 30-day months and (ii) as of any date of computation on and after the Current Interest Commencement Date, the Appreciated Value on the Current Interest Commencement Date.

**Authorized Finance Officer** shall mean the Director of Finance and any other persons authorized in writing by the Director of Finance to act as an Authorized Finance Officer hereunder.

**Balloon Date** means any date of a Principal Installment or any date on which a Holder may elect to have Balloon Obligations redeemed, prepaid, purchased directly or indirectly by the Metropolitan Government, or otherwise paid, in a Balloon Year.

**Balloon Obligations** means any Series of Bonds 25% or more of the Principal Installments of which is due or may be required to be paid in any 12-month period; provided that, in calculating the principal amount of such Bonds due or required to be redeemed, prepaid, purchased, or otherwise paid in any 12-month period, such principal amount shall be reduced to the extent that all or any portion of such amount is required to be redeemed or amortized prior to such 12-month period.

**Balloon Year** means any 12-month period in which more than 25% of the original principal amount of related Balloon Obligations mature or are subject to mandatory redemption or could, at the option of the holders thereof, be required to be redeemed, prepaid, purchased directly or indirectly by the Metropolitan Government, or otherwise paid.

**Capital Appreciation Bonds** shall mean any Bonds issued under the Resolution as to which interest is (a) compounded periodically on dates that are specified in the Supplemental Resolution authorizing such Capital Appreciation Bonds and (b) payable only at the maturity, earlier redemption or other payment thereof pursuant to the Resolution or the Supplemental Resolution authorizing such Capital Appreciation Bonds.

**Capitalized Interest Account** shall mean the Capitalized Interest Account established within the Construction Fund in Section 502(a).

**Certified Interest Rate** shall mean, as of any date of determination:

(a) with respect to Bonds that were or will be, at the date of the original issuance thereof, the subject of a Counsel's Opinion to the effect that the interest thereon is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code, a rate of interest equal to the average of the Variable Rate Tax-Exempt Index for the five (5) years preceding such date of determination; and

(b) with respect to Bonds that were not and will not be, at the date of the original issuance thereof, the subject of a Counsel's Opinion to the effect that the interest thereon is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code, a rate of interest equal to the average of the Variable Rate Taxable Index for the five (5) years preceding such date of determination.



**Commitment**, when used with respect to Balloon Obligations, means a binding written commitment from a financial institution, surety, or insurance company to refinance such Balloon Obligations on or prior to any Balloon Date thereof, including without limitation any Credit Facility for such Balloon Obligations.

**Construction Fund** shall mean the Construction Fund established in Section 502(a).

**Consultant** shall mean a firm of engineers, accountants or water and sewer consultants of national reputation for advising municipalities with respect to the setting of rates and charges for the use of water and sewer systems, as selected by an Authorized Finance Officer.

**Contracts** means all Credit Facility Agreements, including any Reimbursement Obligations, and all Qualified Hedge Agreements.

**Costs** shall mean any and all costs permitted to be financed by applicable Tennessee law through the issuance of a Series of Bonds.

**Counsel's Opinion** shall mean an opinion signed by an attorney or firm of attorneys of recognized standing in the field of law relating to municipal bonds (who may be counsel to the Metropolitan Government) selected by the Metropolitan Government.

**Credit Facility** means any letter of credit, insurance policy, guaranty, surety bond, standby bond purchase agreement, line of credit, revolving credit agreement, or similar obligation, arrangement or instrument (other than a Reserve Fund Credit Facility) issued by a bank, insurance company, or any entity that is used by the Metropolitan Government to perform one or more of the following tasks: (i) enhancing the Metropolitan Government's credit by assuring owners of any of the Bonds that principal of and interest on such Bonds will be paid promptly when due; (ii) providing liquidity for the owners of Bonds through undertaking to cause Bonds to be bought from the owners thereof when submitted pursuant to an arrangement prescribed by a Supplemental Resolution; or (iii) remarketing any Bonds so submitted to the Credit Issuer (whether or not the same Credit Issuer is remarketing the Bonds).

**Credit Facility Agreement** means an agreement between the Metropolitan Government and a Credit Issuer pursuant to which the Credit Issuer issues a Credit Facility.

**Credit Issuer** means any issuer of a Credit Facility then in effect for all or part of the Bonds.

**Current Interest Commencement Date** shall mean, with respect to any particular Deferred Income Bonds, the date specified in the Supplemental Resolution authorizing such Deferred Income Bonds (which date must be prior to the maturity date for such Deferred Income Bonds) after which interest accruing on such Deferred Income Bonds shall be payable periodically on dates specified in such Supplemental Resolution, with the first such payment date being the first such periodic date immediately succeeding such Current Interest Commencement Date.

**Date of Issuance** shall mean, with respect to any Series of Bonds, the date upon which such Bonds are or have been authenticated and delivered by the Bond Registrar therefor.

**Debt Service Fund** shall mean the Debt Service Fund established in Section 502(a)

**Debt Service Requirement** shall mean:

(a) with respect to the Prior Bonds and Subordinated Indebtedness, the total principal and interest coming due, whether at maturity or upon mandatory redemption, in any specified period.

(b) with respect to the Bonds, the total Principal Installments and interest accruing in any specified period, provided that:

(i) If any Bonds Outstanding or proposed to be issued shall bear interest at a Variable Rate, including Hedged Obligations if the interest thereon calculated as set forth below is expected to vary and Bonds secured by a Credit Facility if the interest thereon calculated as set forth below is expected to vary, the interest coming due in any specified future period shall be determined as if the Variable Rate in effect at all times during such future period equaled, at the option of the Metropolitan Government either (1) the average of the actual Variable Rates which were in effect (weighted according to the length of the period during which each such Variable Rate was in effect) for the most recent 12-month period immediately preceding the date of calculation for which such information is available (or shorter period if such information is not available for a 12-month period), or (2) the Certified Interest Rate.

(ii) With respect to any Bonds secured by a Credit Facility, the Debt Service Requirement therefor shall include (1) any commission or commitment fee obligations with respect to such Credit Facility, (2) the outstanding and unpaid amount of any Reimbursement Obligation and interest thereon, (3) any additional interest owed on Bonds which have been purchased by a Credit Issuer pursuant to a Credit Facility Agreement, and (4) any remarketing agent fees; provided if (a) the Credit Facility requires the Credit Issuer to make all interest payments on the Bonds, (b) the Reimbursement Obligation provides for payments by the Metropolitan Government or the Credit Issuer based on levels of, or changes or differences in, interest rates, currency exchange rates, or stock or other indices, and (c) the Credit Issuer, upon the execution of the Credit Facility Agreement, would qualify as a Qualified Hedge Provider if the Credit Facility Agreement were to be construed as a Hedge Agreement and the related Bonds as Hedged Obligations, then interest on such Bonds shall be calculated by adding (x) the amount of interest payable on such Bonds pursuant to their terms and (y) the amount of payments for interest to be made by the Metropolitan Government under the Credit Facility Agreement, and subtracting (z) the amounts payable by the Credit Issuer to the Metropolitan Government as interest on such Bonds as specified in the Credit Facility Agreement; but only to the extent the Credit Issuer is not in default under the Credit Facility and if such default has occurred and is continuing, interest on such Bonds shall be calculated as if there were no Credit Facility. In determining the amounts described in this paragraph for any future period, the Metropolitan Government (A) may assume that any Credit Facility presently in effect will remain in effect even if such Credit Facility has an expiration date prior to the maturity of the related Bonds and (B) may assume that the current payments relating to the Credit Facility will remain in effect or may estimate such payments in the future provided that the Metropolitan Government obtains a certificate from a Financial Adviser that such estimates are reasonable.

(iii) With respect to any Hedged Obligations, the interest on such Hedged Obligations during any Hedge Period and for so long as the provider of the related

Hedge Agreement has not defaulted on its payment obligations thereunder shall be calculated by adding (x) the amount of interest payable by the Metropolitan Government on such Hedged Obligations pursuant to their terms and (y) the amount of Hedge Payments payable by the Metropolitan Government under the related Hedge Agreement and subtracting (z) the amount of Hedge Receipts payable by the provider of the related Hedge Agreement at the rate specified in the related Hedge Agreement; provided, however, that to the extent that the provider of any Hedge Agreement is in default thereunder, the amount of interest payable by the Metropolitan Government on the related Hedged Obligations shall be the interest calculated as if such Hedge Agreement had not been executed. In determining the amount of Hedge Payments or Hedge Receipts that are not fixed throughout the Hedge Period (i.e., which are variable), payable or receivable for any future period, such Hedge Payments or Hedge Receipts for any period of calculation (the "Determination Period") shall be computed by assuming that the variables comprising the calculation (e.g., indices) applicable to the Determination Period are equal to the average of the actual variables which were in effect (weighted according to the length of the period during which each such variable was in effect) for the most recent 12-month period immediately preceding the date of calculation for which such information is available (or shorter period if such information is not available for a 12-month period).

(iv) For the purpose of calculating the Debt Service Requirement on Balloon Obligations (1) which are subject to a Commitment or (2) which do not have a Balloon Year commencing within 12 months from the date of calculation or (3) which are issued in anticipation of the issuance of Bonds that are not Balloon Obligations or (4) which are issued pursuant to a Supplemental Resolution which contemplates that the principal of Bonds tendered for payment at the option of the holder thereof prior to the stated maturity of such Bonds will be paid from the proceeds of the remarketing of such tendered Bonds (or from the issuance of new Bonds authorized by such Supplemental Resolution), at the option of the Metropolitan Government, the actual principal and interest on such Balloon Obligations shall be included in the Debt Service Requirement, subject to the other assumptions contained herein, or such Balloon Obligations shall be assumed to be amortized in substantially equal annual amounts to be paid for principal and interest over an assumed amortization period of 30 years at an assumed interest rate (which shall be the interest rate certified by a Financial Adviser to be the interest rate at which the Metropolitan Government could reasonably expect to borrow the same amount by issuing Bonds with the same priority of lien as such Balloon Obligations and with a 30-year term). For the purpose of calculating the Debt Service Requirement on Balloon Obligations not described in the preceding sentence, the principal payable on such Bonds during the Balloon Year shall be calculated as if paid on the Balloon Date.

(v) The principal and interest portions of the Accreted Value of Capital Appreciation Bonds or the Appreciated Value of Deferred Income Bonds shall be included in the calculation of Debt Service Requirement in the manner prescribed in Section 207(a).

(vi) Interest on Bonds shall be excluded from the determination of Debt Service Requirement to the extent amounts on deposit in the Capitalized Interest Account of the Construction Fund are scheduled to be applied thereto during such period.

(vii) Scheduled interest payments on Tax Credit Bonds during any period shall be reduced to reflect Tax Credit Payments attributable to such scheduled interest payments.

(c) For purposes of calculating the accrual of Principal Installments and interest on the Bonds, (i) Principal Installments of a Series will be deemed to accrue daily in equal amounts from the preceding Principal Installment date for such Series (but in no event shall any accrual be made for any Principal Installment more than one year prior to the due date of such Principal Installment or from the Date of Issuance of Bonds of such Series, whichever date is later); (ii) each fixed payment obligation (other than Principal Installments) will be deemed to accrue daily in equal amounts from the preceding relevant payment obligation date (but in no event more than one year prior to such payment obligation date or the initial incurrence of the payment obligation, whichever is later); and (iii) principal and interest portions of the Accreted Value of Capital Appreciation Bonds or the Appreciated Value of Deferred Income Bonds shall accrue in the manner provided in Section 207(a).

**Debt Service Reserve Requirement** shall mean, with respect to each separate account in the Debt Service Reserve Fund, the amount specified in the Supplemental Resolution establishing such account.

**Deferred Income Bonds** shall mean any Bonds issued under the Resolution as to which interest accruing prior to the Current Interest Commencement Date is (i) compounded periodically on dates specified in the Supplemental Resolution authorizing such Deferred Income Bonds and (ii) payable only at the maturity, earlier redemption or other payment thereof pursuant to the Resolution or the Supplemental Resolution authorizing such Deferred Income Bonds.

**Escrow Agent** shall mean, with respect to the refunding or defeasance of any particular Bond or Bonds at any one time, the entity with which moneys or investments shall be deposited in trust for the Holders of such Bond or Bonds to be refunded or defeased, and who shall agree, through an appropriate agreement with the Metropolitan Government, to perform the duties of Escrow Agent with respect to such Bond or Bonds as provided in the Resolution or the Supplemental Resolution authorizing the Series of which such Bond or Bonds are a part.

**Financial Adviser** shall mean an investment banking or financial advisory firm, commercial bank, or any other person who or which is retained by the Metropolitan Government for the purpose of passing on questions relating to the availability and terms of specified types of bonds or the financial condition or operation of the System and is actively engaged in and, in the good faith opinion of the Metropolitan Government, has a favorable reputation for skill and experience in providing financial advisory services of the type with respect to which the Financial Adviser has been retained.

**Fiscal Year** shall mean the 12 month period established by the Metropolitan Council or provided by law from time to time as the fiscal year for the System, and which, as of the date of adoption of this Resolution, is the 12 month period commencing on July 1 of any year and ending on June 30 of the following year.

**Hedge Agreement** means, without limitation, (i) any contract known as or referred to or which performs the function of an interest rate swap agreement, currency swap agreement, forward payment conversion agreement, or futures contract; (ii) any contract providing for payments based on levels of, or changes or differences in, interest rates, currency exchange

rates, or stock or other indices; (iii) any contract to exchange cash flows or payments or series of payments; (iv) any type of contract called, or designed to perform the function of, interest rate floors, collars, or caps, options, puts, or calls, to hedge or minimize any type of financial risk, including, without limitation, payment, currency, rate, or other financial risk; and (v) any other type of contract or arrangement that the Metropolitan Government determines is to be used, or is intended to be used, to manage or reduce the cost of any Bonds, to convert any element of any Bonds from one form to another, to maximize or increase investment return, to minimize investment return risk, or to protect against any type of financial risk or uncertainty.

**Hedge Payments** means amounts payable by the Metropolitan Government pursuant to any Hedge Agreement, other than Termination Payments.

**Hedge Receipts** means amounts payable by any provider of a Hedge Agreement pursuant to such Hedge Agreement, other than Termination Payments.

**Hedge Period** means the period during which a Hedge Agreement is in effect.

**Hedged Obligations** means any Bonds with respect to which the Metropolitan Government shall have entered into a Qualified Hedge Agreement.

**Holder** shall mean any person who shall be the registered owner of any Bond or Bonds.

**Metropolitan Government** shall mean The Metropolitan Government of Nashville and Davidson County.

**Net Revenues** shall mean, for any period, the Revenues during such period, minus the Operation and Maintenance Expenses during such period.

**One-Month LIBOR Rate** shall mean, as of any date of determination, the offered rate for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 A.M., London time, on such date, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market.

**Operation and Maintenance Expenses** shall mean the current expenses, paid or accrued, of operation, maintenance and repair of the System, including administration costs, as calculated in accordance with generally accepted accounting principles. Notwithstanding the foregoing, Operation and Maintenance Expenses shall not include payments in lieu of taxes or any reserve for renewals or replacements or any allowance for depreciation or amortization, and there shall be included in Operation and Maintenance Expenses only that portion of the total administrative, general and other expenses of the Metropolitan Government which are properly allocable to the System.

**Principal Installment** shall mean, as of any date of calculation and with respect to any Series, so long as any Bonds thereof are Outstanding, the principal amount of Bonds of such Series due on a certain future date, whether at stated maturity or as a result of mandatory redemption requirements, or which may, at the option of the holders thereof, be required to be redeemed, prepaid, purchased or otherwise paid, as set forth in a Supplemental Resolution.

**Prior Bonds** means the Borrower's Water and Sewer Revenue Refunding Bonds, Series 1986; its Water and Sewer Revenue Bonds, Series 1993; its Water and Sewer Revenue

Refunding Bonds, Series 1998A; its Water and Sewer Revenue Bonds, Series 1998B; its Water and Sewer Revenue Refunding Bonds, Series 2002; its Water and Sewer Revenue Refunding Bonds, Series 2007; its Water and Sewer Revenue Refunding Bonds, Series 2008A; and its Water and Sewer Revenue Refunding Bonds, Series 2008B. As of the Effective Date, there are no Prior Bonds Outstanding.

**Qualified Hedge Agreement** means any Hedge Agreement with a Qualified Hedge Provider.

**Qualified Hedge Provider** means an entity whose senior unsecured long term obligations, financial program rating, counterparty rating, or claims paying ability, or whose payment obligations under the related Hedge Agreement are absolutely and unconditionally guaranteed or insured or collateralized by an entity whose senior unsecured long term obligations, financial program rating, counterparty rating, or claims paying ability, is sufficient to satisfy applicable Tennessee law.

**Rate Stabilization Fund** shall mean the Rate Stabilization Fund established in Section 502(a).

**Refunding Bonds** shall mean Bonds authenticated and delivered pursuant to Section 204, and all Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to Article III or Section 405 or Section 1106.

**Reimbursement Obligation** means the obligation of the Metropolitan Government to directly reimburse any Credit Issuer for amounts paid by such Credit Issuer under a Credit Facility, whether or not such obligation to so reimburse is evidenced by a promissory note or other similar instrument. The term Reimbursement Obligation includes obligations pursuant to a Credit Facility Agreement either to make payments for interest based on levels of, or changes or differences in, interest rates, currency exchange rates, or stock or other indices, in return for the Credit Issuer's fixed obligations under the Credit Facility or to make fixed payments for interest in return for the Credit Issuer's payments based on such variables.

**Reserve Fund Credit Facility** means a municipal bond insurance policy, surety bond, letter of credit, line of credit, guarantee or other agreement which provides for payment of amounts equal to all or any portion of the Debt Service Reserve Requirement.

**Resolution** shall mean Substitute Resolution No. RS2010-1442, sometimes referred to herein as the "Water and Sewer System Revenue Bond Resolution", as from time to time amended or supplemented by Supplemental Resolutions in accordance with the terms hereof.

**Revenues** shall mean (a) all revenues, income, rents, service fees and receipts properly allocable to the System resulting from ownership and operation of the System, excluding any customer deposits or other deposits subject to refund, unless such deposits have become property of the Metropolitan Government, (b) the proceeds of any insurance covering business interruption loss relating to the System and (c) interest received or to be received on any moneys or securities held in any of the funds or accounts established by the Prior Resolution or the Resolution, with the exception of (i) moneys held in the Construction Fund or any account thereof and (ii) moneys held in the Debt Service Reserve Fund during any period in which the investment earnings thereon are directed by Supplemental Resolution to the Construction Fund or an account thereof. The computation of Revenues with respect to any period of time hereunder shall be increased by the amount of transfers during such period from the Rate Stabilization Fund to the Revenue Fund

pursuant to Section 509(a), and decreased by the amount of any transfers during such period from the Revenue Fund to the Rate Stabilization Fund pursuant to Section 506(e). “Revenues” shall not include any Tax Credit Payments, grant proceeds or, except as set forth in (b) above, insurance proceeds.

**SIFMA Municipal Swap Index** shall mean the rate determined on the basis of an index based upon the weekly interest rates of tax-exempt variable rate issues included in a database maintained by Municipal Market Data or any successor indexing agent which meets specific criteria established by The Securities Industry and Financial Markets Association.

**Surplus Fund** shall mean the Surplus Fund established in Section 502(a).

**Tax Credit Bonds** shall mean any Bonds with respect to which the Metropolitan Government has received a Counsel’s Opinion to the effect that the Metropolitan Government is entitled to receive payments by the United States Department of the Treasury or other agency of the United States government in offset of the debt service on such Bonds.

**Tax Credit Payment Account** shall mean a Tax Credit Payment Account established in the Debt Service Fund pursuant to Section 502(a) and 507(c).

**Tax Credit Payments** shall mean and amounts payable to the Issuer by the United States Department of the Treasury or other agency of the United States government with respect to Tax Credit Bonds.

**Termination Payment** means an amount payable by the Metropolitan Government or a Qualified Hedge Provider upon termination of a Qualified Hedge Agreement.

**Variable Rate** shall mean a rate of interest applicable to the Bonds, other than a fixed rate of interest which applies to a particular maturity of the Bonds so long as that maturity of the Bonds remains Outstanding.

**Variable Rate Taxable Index** shall mean the One-Month LIBOR Rate or, if the One-Month LIBOR Rate no longer shall be available, the Alternate Variable Rate Taxable Index.

**Variable Rate Tax-Exempt Index** shall mean the SIMFA Municipal Swap Index or, if the SIMFA Municipal Swap Index no longer shall be available, the Alternate Variable Rate Tax-Exempt Index.

**SCHEDULE II**  
**PROJECT DETAILS**

**PART A.     Project Budget.**

<b>SOURCES OF FUNDS</b>	<b>AMOUNT (\$ USD)</b>	<b>PERCENTAGE (%)</b>
WIFIA Loan	\$315,000,000	49%
Revenue Bonds	\$316,027,743	49%
Borrower Cash	\$9,512,257	1%
Previously Incurred Eligible Costs - Planning	\$2,329,491	1%
<b>Total Sources of Funds</b>	\$642,869,491	100%
<b>USES OF FUNDS</b>	<b>AMOUNT (\$ USD)</b>	<b>PERCENTAGE (%)</b>
Construction	\$562,000,000	87%
Design	\$78,540,000	12%
Planning	\$2,329,491	1%
<b>Total Uses of Funds</b>	\$642,869,491	100%
<b>Total Eligible Project Costs</b>	\$642,869,491	100%
<b>Total Project Costs</b>	\$642,869,491	100%

**PART B.     Construction Schedule.**

Projected Substantial Completion Date: August 1, 2028

<b>PROJECT ELEMENT</b>	<b>DESIGN START</b>	<b>DESIGN END</b>	<b>CONSTRUCTION START</b>	<b>CONSTRUCTION END</b>
Omohundro - New 150 MGD Raw Water Pumping Station	1/1/2023	1/1/2024	5/1/2024	11/1/2026
Omohundro - New Pretreatment Basin and Plate Settlers	8/1/2022	8/1/2023	11/1/2023	8/1/2028
Omohundro – New Conventional Filter Gallery	8/1/2022	8/1/2023	11/1/2023	8/1/2028
Omohundro - Post Filter GAC Contractors	1/1/2023	1/1/2024	11/1/2024	5/1/2028
Omohundro - New 15 MG (minimum) Clearwell Storage	1/1/2023	1/1/2024	11/1/2024	11/1/2026
Omohundro - New and/or Improvements to the Dedicated High Service Pump Station	1/1/2023	5/1/2024	11/1/2024	11/1/2026



Omohundro - Piping and Process Replacements (Piping/Valves/Actuators)	1/1/2023	2/1/2024	5/1/2024	11/1/2025
Omohundro - Maintenance Building and Architectural Improvements	1/1/2023	10/1/2024	11/1/2023	5/1/2025
Omohundro - Flood Mitigation	1/1/2023	10/1/2023	2/1/2024	8/1/2028
K.R. Harrington - Filter Underdrain and Raw Water Intake Improvements	8/1/2021	7/1/2022	10/1/2022	10/1/2024
K.R. Harrington - New pretreatment with plate settlers	7/1/2022	7/1/2023	4/1/2024	4/1/2028
K.R. Harrington – New Conventional Filter Gallery and Intermediate Pump Station	7/1/2022	7/1/2023	11/1/2025	11/1/2027
K.R. Harrington – GAC Contractors	7/1/2022	7/1/2023	11/1/2025	11/1/2027
K.R. Harrington - Clearwell Modifications	2/1/2023	2/1/2024	5/1/2024	5/1/2026
K.R. Harrington - Piping and Process Replacements (Piping/Valves/Actuators)	2/1/2023	2/1/2024	5/1/2024	5/1/2026
K.R. Harrington - New phosphate storage area and new boiler system	2/1/2024	11/1/2024	2/1/2025	2/1/2026
K.R. Harrington - VFDs and 5th generator	3/1/2024	9/1/2024	12/1/2024	12/1/2026
K.R. Harrington - Flood Mitigation	2/1/2024	9/1/2024	12/1/2024	12/1/2026
K.R. Harrington - New Pumping Station	2/1/2024	9/1/2024	12/1/2025	12/1/2027
Pilot Plant Project	N/A	N/A	N/A	N/A

**PART C.     Existing Construction Contracts.<sup>1</sup>**

Contract Name	Effective Date	Amount	Parties	Description

**PART D.     Project Description.**

Project Component	Description
<b>Pilot Plant Project</b>	Research Project. Piloted treatment technologies for selection prior to full scale implementation.
<b>New Raw Water Pumping Station</b>	New raw water pump station with a rated capacity of 150 MGD, which will include a new building, pumps, piping, and appurtenances as well as a new chemical feed storage building. New infrastructure will replace the existing George Reyer Low Service Pump Station and relocate process chemicals closer to the raw water pump station to improve mixing and enhance treatment.
<b>New Pretreatment Basin and Plate Settlers</b>	Evaluate pretreatment technologies and alternatives, utilize existing basins to install plate settlers and potential plate covers or a roof for algae control. Add additional flocculation/sedimentation basin infrastructure if required by rated capacity. Depending on the alternative selected, pretreatment may require an entirely new process treatment train relocated in its entirety to achieve gravity flow. This alternative would include all new grit and flocculation/sedimentation infrastructure, piping and appurtenances for a fully operational system.
<b>New Conventional Filter Gallery</b>	New conventional filters including a new building, backwash pumps, necessary piping and appurtenances capable of treatment at the rated capacity of 150 MGD. Blue line stream relocation will be required to construct new infrastructure. Evaluation of attenuating backwash flows and implementing alternative selected (e.g. new backwash EQ storage or recycle flow). Depending on alternative selected, a post-filter intermediate pump station may also be required to pump from the new filters to the post-filter GAC.
<b>Post Filter GAC Contactors</b>	Convert existing 1920's filters into post filter GAC contactors including all necessary piping and appurtenances. It is anticipated that GAC facility will be designed to achieve a 10-minute empty bed contact time (EBCT) at the rated capacity of 150 MGD. Based on this design criteria, new post filter GAC infrastructure will be built in addition to the retrofit. This will include additional new post filter GAC contactors including all necessary piping and appurtenances in either the existing sedimentation basin location or adjacent to the retrofit. Both alternatives include the demolition of existing 1960's filters, an intermediate pump station from post filter GAC contactors to the new above ground clearwell storage tanks and GAC backwash pumps, piping and appurtenances.

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<sup>1</sup> **Note to Borrower:** Borrower to provide.

<b>New Clearwell Storage</b>	New aboveground clearwell storage 15-20 MG in capacity. The new clearwell storage will add to the existing 1.9 MG of clearwell storage capacity. It will provide additional storage of finished water in the event of an emergency.
<b>New and/or Improvements to the Dedicated High Service Pump Station</b>	Evaluate whether the existing George Reyer Pump Station building can accommodate new high service pumps. Determination will be based on ability to keep plant in service as well as hydraulics and location of Post Filter GAC Adsorbers. Current evaluation and conceptual layouts indicate that the existing George Reyer Pump Station is not adequate to keep the plant in service during construction or in the correct location hydraulically. A new high service pump station will likely be necessary including a new building, pumps, pumping and all appurtenances.
<b>Piping and Process Replacements</b>	Piping, valve and actuator evaluation to determine assets that have reached their useful life and/or are sized too small hydraulically to achieve the rated capacity of 150 MGD. Schedules of the assessment will be tabulated and assets requiring replacement will be identified and replaced as part of this project. This applies throughout the plant from the raw water intake to the high service pumps.
<b>Maintenance Building and Architectural Improvements</b>	A new and larger maintenance building is needed for the onsite Omohundro maintenance staff. New building will be designed to match the aesthetics of the campus. Additionally, the 3rd floor of the existing filter building will be converted to office space. If George Reyer Pump Station is decommissioned as a pump station, evaluate re-purposing the building and refurbish the space with the selected alternative.
<b>Flood Mitigation</b>	All assets will be constructed to an elevation of the 500-year flood event + 2 feet per the Hazard Mitigation Plan.
<b>Filter Underdrain and Raw Water Intake Improvements</b>	Filter underdrain improvements include removing the clay tile filter underdrains which have failed and replacing with ortho filter nozzle system underdrains. New media will be installed, and subsurface components refurbished to increase filter performance during construction prior to GAC retrofit. Raw water improvements include measures to address corrosion issues on piping and valves as well as flow metering vault.
<b>New pretreatment with plate settlers</b>	Evaluate pretreatment technologies, install plate settlers in existing basins and potential plate covers or a roof for algae control. Install new rapid mix flow split structures. Convert existing circular clarifiers into PAC contact basins and pre-sedimentation.
<b>New Conventional Filter Gallery and Intermediate Pump Station</b>	New conventional filters including a new building, backwash pumps, necessary piping and appurtenances capable of treatment at the rated capacity of 120 MGD. Also includes the construction of an intermediate pump station to lift the filter water to the influent of the GAC adsorbers.
<b>GAC Contactors</b>	Retrofit existing filters into post filter GAC facility including all necessary piping and appurtenances. It is anticipated that GAC facility will be designed to achieve a 10-minute empty bed contact time (EBCT) at the rated capacity of 120 MGD. Additional new GAC contactors may be necessary at the rated capacity.
<b>Clearwell Modifications</b>	Structural modifications to the existing clearwells are needed to divert filtered water to the intermediate pump station prior to the GAC adsorbers. Once the water passes through the GAC adsorbers the structure modifications will make it possible for the water to gravity back to the clearwells.
<b>Piping and Process Replacements</b>	Piping, valve and actuator evaluation to determine assets that have reached their useful life and/or are sized too small hydraulically to achieve the rated capacity of 120 MGD. Schedules of the assessment will be tabulated and assets requiring replacement will be identified and replaced as part of this project. This applies throughout the plant from the raw water intake to the high service pumps.

<b>New phosphate storage area and boiler system</b>	Current phosphate storage is below the 500-year flood event + 2 feet level and therefore the tanks need to be relocated to a new area for flood mitigation. Additionally, the existing boiler system that heats the plant during the colder months is past its useful life and is also below the 500-year flood event + 2 feet level and therefore a new system is needed.
<b>VFDs and 5th generator</b>	A 5th generator is needed at KR to ensure the plant can be operated during a power failure at full capacity. Additionally, finished water pumps currently share a VFD drive and individual VFD drives for each pump are needed.
<b>Flood Mitigation</b>	All assets will be constructed to an elevation of the 500-year flood event + 2 feet per the Hazard Mitigation Plan. Incorporate hazard mitigation elements to protect vulnerable assets.
<b>New Pumping Station</b>	Evaluate reusing the existing Pump Station building to accommodate new potential rated capacity. Determination will be based on hydraulics, flood mitigation measures, and location of Post Filter GAC Adsorbers.

**SCHEDULE III**  
**BORROWER DISCLOSURES<sup>1</sup>**

**PART A.     Existing Indebtedness.**

**1.     Bonds**

	<b>Agreement/Series</b>	<b>Outstanding Principal as of Effective Date</b>
<b>1.</b>	[Series [____]] senior revenue bonds, issued pursuant to the [____], dated [____], maturing on [____] [Loan agreement, dated [____], between the Borrower and [SRF], maturing on [____]]	
<b>2.</b>		
<b>3.</b>		
<b>4.</b>		
<b>5.</b>		

**2.     Subordinated Indebtedness**

	<b>Agreement/Series</b>	<b>Outstanding Principal as of Effective Date</b>
<b>1.</b>	[Series [____]] subordinate revenue bonds], issued pursuant to the [____], dated [____], maturing on [____] [Loan agreement, dated [____], between the Borrower and [SRF], maturing on [____]]	
<b>2.</b>		
<b>3.</b>		
<b>4.</b>		
<b>5.</b>		

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<sup>1</sup> **Note to Borrower:** Borrower to complete.

**PART B.     Litigation Disclosure.**

[\_\_]<sup>2</sup>

No.	Parties	Date Initiated	Description / Status	Venue

**PART C.     Environmental Matter Disclosure.**

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<sup>2</sup> Include “None” if no litigation disclosures are necessary.

<sup>3</sup> Include “None” if no environmental matter disclosures are necessary.

## SCHEDULE IV

### REQUISITION PROCEDURES

This **Schedule IV** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for any Disbursement of the WIFIA Loan. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Lender under the WIFIA Loan Documents, and (ii) nothing contained 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.

#### **PART A.     General Requirements.**

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

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

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

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

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

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

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

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

**PART B.      WIFIA Lender Review Process.**

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

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

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

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



**SCHEDULE V**  
**REPORTING REQUIREMENTS**

**PART A.     Updated Financial Model/Plan.**

The Borrower shall provide to the WIFIA Lender, not later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, an Updated Financial Model/Plan. The Updated Financial Model/Plan shall reflect the Borrower's reasonable expectations, using assumptions that the Borrower believes to be reasonable, and include: (a) the Borrower's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected Revenues and projected Operating Expenses for a reasonable projection period consistent with the Borrower's operating and financial planning and demonstrating that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining, and repairing the Project; (b) evidence of compliance with the Rate Covenant for the most recent Borrower Fiscal Year for which the Borrower's Financial Statements are available and the projected debt service coverage ratios (including projected Rate Covenant coverages) through the Forecast Period; and (c) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model/Plan.

**PART B.     Annual Financial Statements.**

The Borrower shall deliver to the WIFIA Lender, as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the System as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the System 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 public accounting firm selected by the Borrower and (c) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein); provided, that the failure of the Borrower to deliver to the WIFIA Lender the annual audited financial statements required under this paragraph within such 180-day period shall not constitute a Default or an Event of Default so long as the Borrower delivers such financial statements within ninety (90) days after the end of such period and provided that any declaration of a Default or Event of Default in connection herewith shall be in accordance with and subject to the provisions of Section 17, including but not limited to the notice requirement imposed upon the WIFIA Lender in Section 17(a) and the additional cure periods provided to the Borrower in Section 17(a)(v) if such annual audited financial statements are not delivered by the Borrower within two hundred seventy (270) days after the end of the Borrower Fiscal Year.

## **PART C.     Construction Monitoring.**

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

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

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

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

**PART D. Public Benefits Report.**

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

**PART E. Notices.**

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

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

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

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

(v) 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;

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

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

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

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

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

(xi) 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;

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

(xiii) Postings on EMMA: the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document with respect to any Outstanding Obligations relating to annual financial information and operating data and the reporting of significant events; provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

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

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

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

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

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

**SCHEDULE VI**  
**WIFIA LOAN AMORTIZATION SCHEDULE<sup>1</sup>**

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

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<sup>1</sup> WIFIA Underwriter to work with Borrower to provide an initial amortization schedule that is shared with the transaction team prior to closing. The final schedule will be finalized on the day of closing to account for the final interest rate.

**EXHIBIT A**

**FORM OF WIFIA BOND**

REGISTERED  
Number \_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TENNESSEE  
THE METROPOLITAN GOVERNMENT  
OF NASHVILLE AND DAVIDSON COUNTY  
WATER AND SEWER REVENUE BOND, SERIES 2022

(WIFIA ID – N20115TN)  
WIFIA BOND

Interest Rate	Maturity Date	Date of Bond:	CUSIP No.:
---------------	---------------	---------------	------------

[_____]%, subject to the Default Rate (as defined and in accordance with the WIFIA Loan Agreement)	July 1, 2058, subject to adjustment as set forth in the WIFIA Loan Agreement	[_____]	[_____]
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Registered Owner:	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency
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Principal Amount:	\$315,000,000
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KNOW ALL MEN BY THESE PRESENTS: That the **METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**, a lawfully organized and existing municipal corporation (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the “**WIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all Disbursements made by the WIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the WIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in

connection therewith, all as more fully described in that certain WIFIA Loan Agreement, dated as of the date hereof, between the WIFIA Lender and the Borrower (the “**WIFIA Loan Agreement**”). All capitalized terms used in this WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

The WIFIA Debt Service hereof shall be payable in the amounts, manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule in accordance with the WIFIA Loan Agreement (which WIFIA Loan Amortization Schedule may be revised from time to time in accordance with the WIFIA Loan Agreement), until paid in full (which Loan Amortization Schedule, as 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 WIFIA Loan Amortization Schedule from time to time to reflect the amount of each Disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder and otherwise in accordance with the terms of the WIFIA Loan Agreement. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on the WIFIA Loan Amortization Schedule 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.

Payments hereon are to be made in accordance with Section 8(b) (*Manner of Payment*) and Section 31 (*Notices*) of the WIFIA Loan Agreement as the same become due. Principal of and interest on this WIFIA Bond shall be made in Dollars and in immediately available funds (without counterclaim, offset or deduction). 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. If the Final Maturity Date is adjusted in accordance with 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 Loan Amortization Schedule.

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

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to the WIFIA Supplemental Resolution and the Bond Resolution. This WIFIA Bond is a Bond (as such term is defined in the Bond Resolution), entitled to all of the benefits of a Bond under the Bond Resolution. The Lien on the Pledged Collateral securing this WIFIA Bond for the benefit of the WIFIA Lender is (i) on a parity in right of payment and right of security to the Lien on the Pledged Collateral in favor of the Bonds and (b) senior in right of payment and right of security to the Lien on the Pledged Collateral in favor of the Subordinated Indebtedness.



This WIFIA Bond may be prepaid at the option of the Borrower, without penalty or premium, (i) in full on any date or (ii) in part on any Payment Date on or after the Final Disbursement Date (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, that such prepayment shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), in each case from time to time but not more than once annually in accordance with 33 U.S.C. § 3908(c)(4)(A), and otherwise in accordance with the WIFIA Loan Agreement.

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

It is hereby certified, recited, and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this WIFIA Bond exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this WIFIA Bond, together with all other indebtedness of the Borrower, does not exceed any limitation prescribed by the constitution and statutes of the State. This WIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, the Metropolitan Government has caused this WIFIA Bond to be signed by its Metropolitan Mayor, attested by its Metropolitan Clerk, and approved as to form and legality by its Director of Law, under corporate seal of the Metropolitan Government, all as of the Effective Date hereinabove set forth.

THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY

By: \_\_\_\_\_  
Metropolitan Mayor

(SEAL)

ATTESTED:

\_\_\_\_\_  
Metropolitan Clerk

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Director of Law

Transferable and payable at the  
principal corporate trust office of:

[NAME OF REGISTRATION AGENT]

Date of Registration: \_\_\_\_\_

This WIFIA Bond is the WIFIA Bond described in the within-mentioned WIFIA Supplemental Resolution.

[Name of Registration Agent]  
Registration Agent

By: \_\_\_\_\_  
Authorized Officer

## FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto \_\_\_\_\_, whose address is \_\_\_\_\_, (Please insert Social Security or Federal Tax Identification Number \_\_\_\_\_) the within WIFIA Bond of The Metropolitan Government of Nashville and Davidson County, and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer the said WIFIA Bond on the records kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_  
**NOTICE:** The signature to this assignment must correspond with the name of the registered owner as it appears on the face of the within WIFIA Bond in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed:

\_\_\_\_\_  
**NOTICE:** Signature(s) must be guaranteed by a member firm of a Medallion Program acceptable to the Registration Agent.

## EXHIBIT B

### FORM OF CLOSING CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [\_\_\_\_], 2022 (the “**WIFIA Loan Agreement**”), by and among Metropolitan Government of Nashville and Davidson County (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement.

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

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

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

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

**THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY,**  
by its authorized representative

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

**ANNEX A TO EXHIBIT B**

**INCUMBENCY CERTIFICATE**

The undersigned certifies that he/she is the [Secretary] of Metropolitan Government of Nashville and Davidson County, a Tennessee local governmental entity, (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 [\_\_\_\_], 2022.

**THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY** by  
its authorized representative

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

## EXHIBIT C

### FORM OF PUBLIC BENEFITS REPORT

Pursuant to Section 11(a)(vii)) and Part D of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement (as defined below), the Metropolitan Government of Nashville and Davidson County (the “**Borrower**”) is providing this Public Benefits Report in connection with the Process Advancements at Omohundro and K.R. Harrington Water Treatment Plants Project (WIFIA ID – N20115TN). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement dated [on or about the date hereof][\_\_\_\_] (the “**WIFIA Loan Agreement**”), between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator.

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

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

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

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

Yes ☐

If yes, additional description: [\_\_\_\_]

No ☐

- (iii) **The Project will assist the Borrower with the following environmental measure:<sup>1</sup>**

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<sup>1</sup> **Internal Note:** Refer to WIFIA Internal Engineering Memo for the appropriate measure specific to the Project. Consult with WIFIA Engineer for questions. Possible measures may include:

[Measure not reported to prevent double-counting of measure.]

[Amount by which the Project will provide new, expanded, more reliable, or more resilient drinking water (measured in MGD capacity at Substantial Completion).]

[Amount by which the Project will provide cleaner and safer drinking water (measured in MGD capacity at Substantial Completion).]

[Number of watermain breaks prevented by the Project (measured in number of breaks per year at Substantial Completion).]

[Number of lead service line replaced by the Project (measured in count at Substantial Completion).]

[Amount by which Project will provide new, expanded, improved, more reliable, more resilient, or more efficient treatment capacity for wastewater treatment (measured in MGD capacity at Substantial Completion).]

[ ].

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[Amount by which Project will provide higher level of treatment at wastewater treatment plants (measured in MGD capacity at Substantial Completion).]

[Frequency and volume of CSOs events per year eliminated by the Project (measured in gallons and events per year at Substantial Completion).]

[Frequency and volume of CSOs events per year eliminated by the Project (measured in gallons and events per year at Substantial Completion).]

[Number of SSO events per year prevented by the Project (measured in number of SSO events per year at Substantial Completion).]

[Amount by which the Project will increase Class A and Class B biosolids production (measured in Tons annually at Substantial Completion).]

[Amount by which the Project will capture, contain, divert, manage, or treat stormwater runoff (measured in acre-ft per year).]

[The amount by which the Project will increase the volume of water recycled, recharged, or redirected (measured in MGD capacity at Substantial Completion).]

Refer to WIFIA Engineering's memo on Environmental Program Measures Guiding Principles for further details on these measures. Note that the above are measures typical for system credits under WIFIA's base program. Consult with WIFIA engineer for measures for SRF program borrowers.



## EXHIBIT D

### FORM OF REQUISITION

#### VIA EMAIL

United States Environmental Protection Agency<sup>1</sup>  
1200 Pennsylvania Avenue NW  
WJC-E 7334A  
Washington, D.C. 20460  
Attention: WIFIA Director  
Email: WIFIA\_Portfolio@epa.gov

Re: The Metropolitan Government of Nashville and Davidson County Process Advancements at Omohundro and K.R. Harrington Water Treatment Plants Project (WIFIA ID – N20115TN)

Ladies and Gentlemen:

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

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

1.	<b>Project name</b>	Process Advancements at Omohundro and K.R. Harrington Water Treatment Plants Project
2.	<b>Borrower name</b>	The Metropolitan Government of Nashville and Davidson County
3.	<b>WIFIA Loan ID</b>	N20115TN
4.	<b>Borrower DUNS Number</b>	605166941
5.	<b>Borrower FEIN number</b>	62-0694743
6.	<b>Requisition number</b>	[ ]
7.	<b>Requested Disbursement amount</b>	[\$ ]
8.	<b>Requested date of Disbursement</b>	[ ]

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<sup>1</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”)<sup>2</sup></b>	
9.	<b>Total amounts previously disbursed under the WIFIA Loan Agreement</b>	\$[ ]
10.	<b>Wire or ACH transfer instructions (please specify method)</b>	[ ]

11. As of the date hereof, and immediately after giving effect to the Disbursement of WIFIA Loan proceeds requested under this Requisition, (a) no Default or Event of Default and no event of default under any other Related Document shall have occurred and be continuing and (b) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document, shall have occurred and be continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since the Effective Date.
13. The aggregate amount of all Disbursements (including the requested Disbursement amount under this Requisition but excluding any interest that is capitalized in accordance with the WIFIA Loan Agreement) does not exceed (a) the maximum principal amount of the WIFIA Loan or (b) the amount of Eligible Project Costs paid or incurred by the Borrower.
14. The Eligible Project Costs for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of (a) WIFIA Loan proceeds or (b) any other source of funding for the Project as identified in the Project Budget.
15. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender.
16. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date).

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<sup>2</sup> Note this should be the actual disbursement date on which the Borrower requests to receive the funds, not the date that this Requisition form is submitted to the WIFIA Lender.

17. The Borrower has delivered all required deliverables under and in compliance with the requirements of Schedule V (*Reporting Requirements*), except as has been otherwise agreed by the WIFIA Lender.<sup>3</sup>
18. The amount hereby being requested for Disbursement is with respect to Eligible Project Costs for which [all][a portion][none] of the Eligible Project Costs Documentation was previously submitted to and approved by the WIFIA Lender in accordance with Schedule IV (*Requisition Procedures*) and Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement. The [following table below][attached excel sheet] sets out a summary of any Eligible Project Costs that have not otherwise been previously submitted to the WIFIA Lender for approval, and supporting Eligible Project Costs Documentation in respect of such new Eligible Project Costs is attached hereto.<sup>4</sup>

								WIFIA USE ONLY	
Vendor or Contractor Name <sup>5</sup>	Invoice Number <sup>6</sup>	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount <sup>7</sup>	Activity Type <sup>8</sup>	Description of Activity <sup>9</sup>	Approved Amount	Notes

19. (1) The amount of the aggregate increase in the WIFIA Debt Service Reserve Requirement resulting from the aggregate amount of all Disbursements (including the requested Disbursement amount and any interest that is capitalized in accordance with the terms hereof) is \$[\_\_\_\_], (2) the supporting calculations therefor are attached hereto and (3) the Borrower has caused the WIFIA Debt Service Reserve Account to be funded from Revenues in the amount of such increase, with the funding immediately prior to the final disbursement of proceeds of the WIFIA Loan in an amount sufficient to cause the total amount funded to the WIFIA Debt Service Reserve Account with respect to the WIFIA Bond to be equal to the aggregate increase in the WIFIA Debt Service Reserve Requirement resulting from the aggregate amount of all Disbursements (including the

<sup>3</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>4</sup> See Schedules IV, V and Exhibit E of the WIFIA Loan Agreement for additional details on EPC Documentation.

<sup>5</sup> If seeking reimbursement for internal costs, enter "Internally financed activities."

<sup>6</sup> Vendor's number indicated on the invoice sent to the Borrower.

<sup>7</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>8</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>9</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.

requested Disbursement amount and any interest that is capitalized in accordance with the terms hereof), as approved by the WIFIA Lender.

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: \_\_\_\_\_

**METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY,**  
by its authorized representative

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

Name:

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

## EXHIBIT E

### FORM OF CERTIFICATION OF ELIGIBLE PROJECT COSTS DOCUMENTATION

#### VIA EMAIL

United States Environmental Protection Agency<sup>1</sup>  
1200 Pennsylvania Avenue NW  
WJC-E 7334A  
Washington, D.C. 20460  
Attention: WIFIA Director  
Email: WIFIA\_Portfolio@epa.gov

Re: The Metropolitan Government of Nashville and Davidson County Process Advancements at Omohundro and K.R. Harrington Water Treatment Plants Project (WIFIA ID – N20115TN)

Ladies and Gentlemen:

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

The undersigned does hereby represent and certify the following:

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

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<sup>1</sup> If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.

							WIFIA USE ONLY	
Vendor or Contractor Name <sup>2</sup>	Invoice Number <sup>3</sup>	Invoice Date	Payment Date	Invoice Amount	Activity Type <sup>4</sup>	Description of Activity <sup>5</sup>	Approved Amount	Notes

3. The anticipated sources of funding for such Eligible Project Costs are [listed below][set forth in the attached excel sheet].
4. Supporting Eligible Project Costs Documentation for the above Eligible Project Costs for the Quarterly Period are also attached hereto.<sup>6</sup>
5. The most recently delivered Construction Monitoring Report delivered in accordance with Part C of Schedule V (*Reporting Requirements*) sets out a summary of the progress of construction of the Project, no change has occurred since the date of such Construction Monitoring Report that could reasonably be expected to cause a Material Adverse Effect, and the Borrower is otherwise in compliance with Part C of Schedule V (*Reporting Requirements*).

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

**THE METROPOLITAN GOVERNMENT  
OF NASHVILLE AND DAVIDSON  
COUNTY<sup>7</sup>**

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

Name:

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

<sup>2</sup> If the expectation is to seek reimbursement for internal costs, enter "Internally financed activities."

<sup>3</sup> Vendor's number indicated on the invoice sent to the Borrower.

<sup>4</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 on other Project Obligations during construction, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the "Description of Activity" column.

<sup>5</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 documentation.

<sup>6</sup> See Schedules IV and V of the WIFIA Loan Agreement for additional details on EPC Documentation.

<sup>7</sup> To be executed by the Borrower's Authorized Representative.

## EXHIBIT F

### FORM OF CONSTRUCTION MONITORING REPORT

#### VIA EMAIL

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

Re: The Metropolitan Government of Nashville and Davidson County Process Advancements at Omohundro and K.R. Harrington Water Treatment Plants Project (WIFIA ID – N20115TN)

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

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

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

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

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

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

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

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

**THE METROPOLITAN GOVERNMENT  
OF NASHVILLE AND DAVIDSON  
COUNTY**

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

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

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



## APPENDIX A <sup>1</sup> / <sup>2</sup>

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

### Table Definitions:

Project Component – project name or ID as tracked by the borrower

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

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

Location (program of projects only) – physical project boundaries

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

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

Bid Advertisement Date – the date the bid was advertised

Contract Award date – the date the contract was awarded

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

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

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

Original Contract Amount – the original contract award amount

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

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

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

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

<sup>2</sup> Include the appropriate option and delete the other option prior to circulating a draft to the Borrower.

## EXHIBIT G

### FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

*[Letterhead of Borrower]*

*[Date]*

#### VIA EMAIL

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

**Project:** The Metropolitan Government of Nashville and Davidson County Process Advancements at Omohundro and K.R. Harrington Water Treatment Plants Project (WIFIA ID – N20115TN)

Dear Director:

This Notice is provided pursuant to Part E of Schedule V (*Reporting Requirements*) of that certain WIFIA Loan Agreement (the “**WIFIA Loan Agreement**”), dated as of *[date]*, by and between THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through its Administrator (the “**WIFIA Lender**”).

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

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

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

**THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY,**  
by its authorized representative

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

Name:

Title:

## **EXHIBIT H-1**

### **OPINIONS REQUIRED FROM GENERAL 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 jurisdiction of its organization;

(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 Documents to which it is a party;

(c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the WIFIA Loan Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action, and other than the Borrower's Organizational Documents and the Bond Resolution Documents, no further instruments or documents 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;

(d) the Borrower has duly executed and delivered each WIFIA Loan Document to which it is a party and each such WIFIA Loan Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective 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 such party of, and the performance of such party under, any WIFIA Loan Document to which it is a party 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 Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (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; and

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

## EXHIBIT H-2

### OPINIONS REQUIRED FROM BOND COUNSEL TO BORROWER

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 local governmental entity of the State under and pursuant to the laws of the State (including the [*Borrower enabling legislation*] as amended to the date hereof) (the “**Borrower Act**”), with good right and power to issue the WIFIA Bond.

(b) The Borrower has the right and power under the laws of the State, including the Borrower Act, to enter into the Bond Resolution Documents, the WIFIA Loan Documents and the WIFIA Bond, and each 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 respective terms and conditions.

(c) the WIFIA Bond (i) is secured by the Pledged Collateral, (ii) is a Bond entitled to the benefits of a Bond under the Bond Resolution, (iii) is enforceable under the laws of the State without any further action by the Borrower or any other Person, and (iv) ranks *pari passu* in right of payment and right of security with all Bonds and are senior in right of payment and right of security to all Subordinated Indebtedness;

(d) the Bond Resolution creates the valid and binding assignment and pledge of the Pledged Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act;

(e) all actions by the Borrower that are required for the application of Revenues as required under the Bond Resolution Documents and under the WIFIA Loan Agreement have been duly and lawfully made;

(f) the Borrower has complied with the requirements of State law to lawfully pledge the Pledged Collateral and use the Revenues as required by the terms of the Bond Resolution and the WIFIA Loan Agreement;

(g) the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; and

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