

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**WIFIA MASTER AGREEMENT**

**For Up to \$341,596,102**

**With**

**THE CITY OF PHILADELPHIA, PENNSYLVANIA**

**For the**

**CITY OF PHILADELPHIA WATER DEPARTMENT FIRST WATER AND  
WASTEWATER SYSTEM IMPROVEMENTS**

Dated as of January 18, 2023

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## WIFIA MASTER AGREEMENT

THIS **WIFIA MASTER 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 proposed the development and construction of multiple Projects (as defined herein) with respect to the System (as defined herein), and desires to obtain WIFIA financial assistance for each Project;

WHEREAS, the Borrower and the WIFIA Lender are entering into this Agreement to set forth certain common terms and conditions applicable to each prospective WIFIA financing;

WHEREAS, the Borrower will request, from time to time that the WIFIA Lender make a WIFIA Loan (as defined herein) in an aggregate 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) for each Project;

WHEREAS, subject to the terms and conditions set forth herein and in each WIFIA Loan Agreement (as defined herein) and the Act, the WIFIA Lender proposes to make funding available to the Borrower for a portion of the costs of each Project through the issuance of a WIFIA Bond (as defined herein) to be issued by the Borrower for each such Project; and, upon the terms and conditions set forth herein;

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the applicable WIFIA Bond in accordance with the terms and provisions hereof and of such 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 Test**” has the meaning ascribed to such term in **Part D of Schedule I** (*Master Program Terms*).

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

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

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

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

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

“**Aggregate Master Program Amount**” has the meaning ascribed to such term in **Part A of Schedule II** (*WIFIA Master Program Details*).

“**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*).

“**Authorizing Act**” has the meaning ascribed to such term in **Part A of Schedule I** (*Master Program 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; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Collateral in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the holders of the Obligations, funds on deposit in any of the System Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under the Ordinance Documents for application to the prepayment or repayment of any principal amount of the Senior Obligations other than in accordance with the provisions of the General Ordinance.

**“Base Case Financial Model”** means a 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 Master Program) and the estimated debt service coverage, additional revenues above current rates and charges revenue, 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 Registrar/Fiscal Agent”** has the meaning ascribed to such term in **Part A of Schedule I** (*Master Program Terms*).

“**Borrower**” has the meaning ascribed to such term in **Part A of Schedule I** (*Master Program 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 Bond Registrar/Fiscal Agent Location or any Project Location.

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

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

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

“**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, with respect to each Project, the period from the applicable WIFIA Loan Agreement Effective Date through (and including) the end of the Federal Fiscal Year during which the applicable 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*) to the applicable WIFIA Loan Agreement.

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for each Project are set forth, attached hereto as **Part B of Schedule II** (*Project Details*) to the applicable WIFIA Loan Agreement, 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, with respect to each WIFIA Loan, the earlier to occur of (a) the first Payment Date immediately following the later of (i) the first Disbursement under such WIFIA Loan and (ii) if there is a Capitalized Interest Period under such WIFIA Loan, the end of the Capitalized Interest Period for such WIFIA Loan, in each case as set forth in the WIFIA Loan Amortization Schedule; and (b) the Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date for such WIFIA Loan.

“**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)** to the applicable WIFIA Loan Agreement.

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

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

“**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.

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

“**Eligible Project Costs**” means, with respect to each Project, amounts in the Project Budget relating to such Project that have been approved by the WIFIA Lender and, which are paid by or for the account of the Borrower in connection with such 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 such 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 any WIFIA Loan) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided, that such 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, with respect to any Project, each Construction Contract of the Borrower in effect as of the applicable WIFIA Loan Agreement Effective Date, as set forth in **Part C of Schedule II** (*Project Details*) to the applicable WIFIA Loan Agreement.

**“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 with respect to each WIFIA Loan, the earliest of (a) the date on which such WIFIA Loan has been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current WIFIA Loan Disbursement Schedule for such WIFIA Loan; (c) the date as of which the Borrower has certified to the WIFIA Lender that it will not request any further disbursements under such WIFIA Loan; (d) the date on which the WIFIA Lender terminates its obligations relating to disbursements of any undisbursed amounts of such 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 of the Project relating to such WIFIA Loan.

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

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

“**Fiscal Agent Agreement**” means that certain agreement dated as of June 3, 1991 by and between the City of Philadelphia, Pennsylvania, and Fidelity Bank, National Association.

“**Flow of Funds**” has the meaning ascribed to such term in **Part D of Schedule I** (*Master Program 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.

“**General Obligation Bonds**” has the meaning conferred to such term in the General Ordinance.

“**General Ordinance**” has the meaning ascribed to such term in **Part E of Schedule I** (*Master Program Terms*).

“**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.

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

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

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

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

“**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*) to the applicable WIFIA Loan Agreement, or if designated as “Not Applicable” in such **Schedule I**, means no interest only period shall be applicable with respect to the corresponding WIFIA Loan.

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

“**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** (*Master Program 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.

“**Master Availability Period**” has the meaning ascribed to such term in **Part C of Schedule I** (*Master Program Terms*).

“**Master Program**” means the Borrower’s anticipated improvements to the System through the development and construction of each Project component as set forth on **Part D of Schedule II** (*WIFIA Master Program Details*).

“**Master Program Budget**” means the total estimated aggregate budget for each Project attached to this Agreement as **Part A of Schedule II** (*WIFIA Master Program Details*), as updated from time to time to reflect updated Project Budgets as provided in Section 11(b)(v) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*), or as otherwise amended from time to time with approval of the WIFIA Lender in its sole discretion.

“**Material Adverse Effect**” means a material adverse effect on (a) the System, the Master Program, any Project or the Project Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower (other than any change that would not reasonably be expected to affect the ability of the Borrower to enter into or deliver, or perform or comply with its obligations under, this Agreement or any other Related Document), (c) the legality, validity or enforceability of any material provision of any Ordinance 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 Ordinance Document or WIFIA Loan Document, (e) the validity, enforceability or priority of the Liens provided under the Ordinance Documents on the Pledged Collateral or (f) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document.

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

“**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*) to the applicable WIFIA Loan Agreement.

“**Net Revenues**” has the meaning ascribed to such term in **Part A of Schedule I** (*Master Program Terms*).

“**Obligations**” means debt of the Borrower that is secured by a pledge and lien on all or a portion of the Project Revenues, including the Senior Obligations, General Obligation Bonds (to the extent secured by or payable in whole or in part from Project Revenues) and Subordinated Obligations.

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

“**Operations and Maintenance Expenses**” has the meaning conferred to the term “Operating Expenses” in the General Ordinance.

“**Ordinance Documents**” means the General Ordinance, the Fiscal Agent Agreement, each Supplemental Ordinance, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“**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) any resolutions, bylaws, determinations, or other organizational or authorizing 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 Ordinance Documents and the WIFIA Loan Documents) entered into between the Borrower and a holder of an Obligation providing for the issuance of Obligations secured by a pledge and lien on all or a portion of the Project Revenues.

“**Outstanding**” means (a) with respect to Obligations other than the WIFIA Loans, Obligations that have not been cancelled or legally defeased or discharged within the meaning of the General Ordinance, and (b) with respect to any WIFIA Loan, the (i) entire amount available to be drawn under this Agreement and the applicable WIFIA Loan 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 and the applicable WIFIA Loan Agreement, less (iii) the aggregate principal amount (under all WIFIA Loans) of the WIFIA Loan Balance that has been repaid or prepaid.

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

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

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

“**Permitted Debt**” means:

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

“**Permitted Investments**” means (with respect to the investment of the proceeds of the WIFIA Loan) any investment permitted under the then-current Investment Policy of the City.

“**Permitted Liens**” means:

- (a) Liens imposed pursuant to the WIFIA Loan Documents;
- (b) Liens imposed pursuant to the General Ordinance;
- (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, for each Project, the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*) to the applicable WIFIA Loan Agreement.

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

“**Project Budget**” means, for each Project, the budget for the Project attached to the corresponding WIFIA Loan Agreement as **Part A of Schedule II** (*Project Details*) to such WIFIA Loan Agreement 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 Closing Certificate**” has the meaning provided in Section 11(b)(vi) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*).

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

“**Project Revenues**” has the meaning ascribed to such term in **Part A of Schedule I** (*Master Program Terms*).

“**Project Term Sheet**” means any term sheet entered into by the Borrower and the WIFIA Lender in respect of any WIFIA Loan.

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

“**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** (*Master Program Terms*).

“**Related Documents**” means the WIFIA Loan Documents, the Ordinance 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** (*Master Program Terms*).

“**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.

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

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

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

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

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

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

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

“**Substantial Completion Date**” means, with respect to each Project, 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 for such Project has occurred.

“**Supplemental Ordinance**” means a supplement to or modification or amendment of the provisions of the General Ordinance adopted by the Borrower in accordance with the terms of the



General Ordinance, authorizing the issuance of Additional Obligations or amending the terms of the General Ordinance.

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

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

“**Total Project Costs**” means, with respect to each Project, (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 such Project, including legal, administrative, engineering, planning, design, insurance and financing (including costs of issuance); (b) amounts, if any, required by the Ordinance 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 such 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 such Project; and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of such Project, including general administrative expenses and overhead of the Borrower.

“**UEI Number**” means, with respect to any Person, a Unique Entity Identifier number issued by the Federal Government (including through SAM.gov) as the unique entity identifier for such Person.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, material supply shortages, 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 Bonds**” means, collectively, each “WIFIA Bond” as defined in Section 1 (Definitions) of each WIFIA Loan Agreement.

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

“**WIFIA Debt Service**” means with respect to each WIFIA Loan, for any Payment Date occurring on or after the Debt Service Payment Commencement Date for such WIFIA Loan, 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 applicable 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** (*Master Program Terms*), or if designated as “Not Applicable” in such **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** (*Master Program Terms*), or if designated as “Not Applicable” in such **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** (*Master Program Terms*), or if designated as “Not Applicable” in such **Schedule I**, means a separate debt service reserve requirement shall not be applicable with respect to the WIFIA Loan hereunder.

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

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

“**WIFIA Loan Agreement**” means, for each WIFIA Loan, a loan agreement in the form of Exhibit J (*Form of WIFIA Loan Agreement*) entered into by the Borrower and the WIFIA Lender in respect of the relevant Project.

“**WIFIA Loan Agreement Effective Date**” has, for each WIFIA Loan Agreement, the meaning provided in **Part A of Schedule I** (*WIFIA Loan Specific Terms*) to the applicable WIFIA Loan Agreement.

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

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

“**WIFIA Loan Commitment Amount**” has the meaning provided in Section 3(a) (*WIFIA Loans Under the Master Program*).

“**WIFIA Loan Disbursement Schedule**” means the disbursement schedule set forth in **Schedule III** (*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(c) (*Disbursement Conditions*).

“**WIFIA Loan Documents**” means this Agreement, the WIFIA Bonds, the WIFIA Loan Agreements, the WIFIA Supplemental Ordinance, and the other Ordinance Documents.

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

“**WIFIA Supplemental Ordinance**” has the meaning ascribed to such term in **Part E of Schedule I** (*Master Program 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 a portion of the purchase price of the WIFIA Bonds”.

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

(n) If any provision of this Agreement (or any other WIFIA Loan Document) conflicts with any provision of a WIFIA Loan Agreement, the provisions of such WIFIA Loan Agreement shall prevail.

## **ARTICLE II THE WIFIA LOANS**

### Section 3. WIFIA Loans Under the Master Program.

(a) Subject to the terms and conditions set forth in this Agreement and, with respect to each WIFIA Loan requested pursuant to the terms hereof, the terms and conditions set forth in the relevant WIFIA Loan Agreement (and Project Term Sheet related thereto), the Borrower may request WIFIA Loans for the Projects under the Master Program from time to time during the Master Availability Period in an aggregate principal amount for (i) the Master Program, not to exceed the Aggregate Master Program Amount and (ii) each Project component, not to exceed the applicable Maximum Principal Amount; provided that (x) the aggregate Maximum Principal Amounts with respect to all outstanding WIFIA Loans at any time shall not exceed the Aggregate Master Program Amount and (y) the availability of the WIFIA Loan for each Project shall be subject to the availability of budgetary authority at the time the WIFIA Loan Request is made, such availability of budgetary authority shall be determined by the WIFIA Lender in accordance with the Act and applicable law. WIFIA Loan proceeds to be drawn shall be disbursed from time to time to pay for Eligible Project Costs for the applicable Project in accordance with Section 4 (*Disbursement Conditions*), Section 11 (c) (*Conditions Precedent – Conditions Precedent to Disbursements*), and the terms of the applicable WIFIA Loan Agreement related thereto.

(b) Prior to the execution of the relevant WIFIA Loan Agreement, (i) any Project included in Part A and Part B of **Schedule II** (*Project Details*) to such WIFIA Loan Agreement may be replaced with one or more other Project and (ii) the Maximum Principal Amount for any Project may be adjusted as necessary, so long as, following such adjustment, (x) such revised Maximum Principal Amount, together with the amount of any other credit assistance provided under the Act to the Borrower for such Project, would not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs for such Project and (y) the aggregate Maximum Principal Amount does not exceed the Aggregate Master Program Amount. In connection with any such modification, the Borrower shall amend Part A and Part B of **Schedule II** (*Project Details*) to the applicable WIFIA Loan Agreement by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such modification, together with a detailed explanation of the reasons therefor. Such revised schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be granted in the WIFIA Lender's sole discretion.

### Section 4. Disbursement Conditions.

(a) From time to time after the Effective Date but in any event (x) not more than once every sixty (60) days and (y) no later than one hundred eighty (180) days prior to the end of the Master Availability Period, the Borrower may, with respect to each Project (including, for the avoidance of doubt, Eligible Project Costs that were initially funded with Interim Financing

proceeds), request that the WIFIA Lender enter into a WIFIA Loan Agreement and related WIFIA Loan Documents in respect of such Project by delivering to the WIFIA Lender a written notice in the form of **Exhibit K** (*Form of WIFIA Loan Request*) (a “**WIFIA Loan Request**”), which shall specify the Project to which such WIFIA Loan Request relates, together with (i) a description of the Project, (ii) the most recent Updated Financial Model/Plan delivered to the WIFIA Lender in accordance with **Part A of Schedule V** (*Reporting Requirements*), and (iii) such additional information relating to the Project as may be requested by the WIFIA Lender. For each Project, the WIFIA Lender and the Borrower shall, subject to the terms and conditions set forth herein and the applicable WIFIA Loan Agreement, promptly and in good faith, negotiate, finalize and enter into the Project Term Sheet, WIFIA Loan Agreement and the other WIFIA Loan Documents related to such Project.

(b) 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 applicable Project, including, for the avoidance of doubt, Eligible Project Costs that were initially funded with Interim Financing proceeds. Each Disbursement of any 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(c) (*Conditions Precedent to Disbursements*); provided, that no Disbursements shall be made after the Final Disbursement Date with respect to such WIFIA Loan.

(c) At the time of any Disbursement, the sum of all prior Disbursements of WIFIA Loan proceeds and the Disbursement then to be made shall not exceed the cumulative Disbursements through the end of the then-current Federal Fiscal Year set forth in the applicable WIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Subject to this Section 4, any scheduled Disbursement (as reflected in the applicable 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 applicable Final Disbursement Date, with the effect of automatically updating such WIFIA Loan Disbursement Schedule (and the applicable WIFIA Loan Amortization Schedule) without need for the WIFIA Lender’s approval. The Borrower may also amend such WIFIA Loan Disbursement Schedule by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender’s approval thereof, which approval shall be deemed granted if the WIFIA Lender has not objected within thirty (30) days from receipt of the revised schedule, and which approval shall have the effect of updating such WIFIA Loan Amortization Schedule to reflect such updated WIFIA Loan Disbursement Schedule. Notwithstanding the foregoing, the date of the first Disbursement for any WIFIA Loan shall not be earlier than the initial date of Disbursement set out in the applicable WIFIA Loan Amortization Schedule as of the applicable WIFIA Loan Agreement Effective Date.

Section 5. Term. The term of each WIFIA Loan shall extend from the applicable WIFIA Loan Agreement Effective Date to the Final Maturity Date of such WIFIA Loan or to such

earlier date as all amounts due or to become due to the WIFIA Lender under such WIFIA Loan Agreement have been irrevocably paid in full in immediately available funds.

Section 6. Interest Rate. With respect to each WIFIA Loan, the Borrower shall pay interest on the applicable WIFIA Loan Balance at the relevant WIFIA Interest Rate; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the applicable WIFIA Loan Balance at the Default Rate, (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment of the overdue amount of principal of the WIFIA Loan and accrued interest thereon and (b) in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement and the relevant WIFIA Loan Agreement or waived by the WIFIA Lender and (ii) the applicable WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. Interest shall (x) accrue on each WIFIA Loan commencing on the date of the first disbursement of each WIFIA Loan, (y) be payable commencing on the applicable Debt Service Payment Commencement Date and (z) be computed on the applicable 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 each 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; provided that solely in respect of any WIFIA Loan or any other amounts owed to the WIFIA Lender pursuant to the WIFIA Loan Documents, the lien and pledge of the Ordinance Documents in favor of the WIFIA Lender shall be deemed to exclude any portion of the Pledged Collateral consisting of subsidies or payments to the Borrower payable by the federal government of the United States of America or any agency thereof. 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 Senior Obligations and (ii) senior in right of payment and right of security to the Lien on the Pledged Collateral in favor of the Subordinated Obligations. As evidence of the Borrower's obligation to repay each 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 for the applicable WIFIA Loan. Each such WIFIA Bond shall be a Senior Bond under the General Ordinance entitled to all of the benefits of a Senior Bond under the Ordinance 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 in respect of any WIFIA Loan shall be due or payable prior to the Debt Service Payment Commencement Date for such WIFIA Loan. 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 for the applicable WIFIA Loan, 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 or under the applicable WIFIA Loan Agreement; 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, with respect to each WIFIA Loan, the applicable WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the applicable Final Maturity Date.

(iii) With respect to each WIFIA Loan, if a Capitalized Interest Period is applicable as set forth in **Part C of Schedule I** (*WIFIA Loan Specific Terms*) to the applicable WIFIA Loan Agreement, during the applicable Capitalized Interest Period, no payment of principal or interest on such WIFIA Loan will be required to be made. On each Interest Payment Date occurring during such Capitalized Interest Period (including the day immediately following the end of such Capitalized Interest Period), interest accrued and not paid on such WIFIA Loan during each such six (6) month period shall be capitalized and added to the applicable WIFIA Loan Balance, as set forth in the corresponding WIFIA Loan Amortization Schedule. Within thirty (30) days after the end of such Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower stating the applicable WIFIA Loan Balance as of the close of business on the last day of such 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 for each WIFIA Loan 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) With respect to each WIFIA Loan, if an Interest Only Period is applicable as set forth in **Part C of Schedule I** (*WIFIA Loan Specific Terms*) to the applicable WIFIA Loan Agreement, during the Interest Only Period, the applicable 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 applicable WIFIA Loan Balance, and no payment of principal on such WIFIA Loan will be due and payable during the Interest Only Period.

(v) Any defeasance of a WIFIA Loan in accordance with Section 10 (*Revenue Refunding Bonds or Notes*) of the Authorizing Act and any other applicable law shall not be deemed a repayment or prepayment of any 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 each 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 for each WIFIA Loan, together with all accrued interest, fees and expenses with respect thereto.

(b) Manner of Payment. Payments under the WIFIA Loan Agreements (and the corresponding WIFIA Bonds, 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. The WIFIA Lender may, from time to time, modify the WIFIA Loan Amortization Schedule included in **Schedule III** (*WIFIA Loan Amortization Schedule*) to any WIFIA Loan Agreement to reflect (i) any change to the WIFIA Loan Balance for the applicable WIFIA Loan, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower hereunder or under the corresponding WIFIA Loan Agreement in accordance therewith, (iii) any mathematical corrections as the WIFIA Lender may determine are necessary, and (iv) with the consent of the Borrower (not to be unreasonably withheld), such other information as the WIFIA Lender may determine is necessary for administering such WIFIA Loan or such WIFIA Loan Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to such WIFIA Loan Amortization Schedule as a result of a decrease in such WIFIA Loan Balance shall be applied to reduce future payments due on the corresponding WIFIA Loan in the inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(b) (*General Prepayment Instructions*). If any WIFIA Loan Amortization Schedule is modified pursuant to this Section 8(c), the WIFIA Lender shall provide the Borrower with a copy of such revised WIFIA Loan Amortization Schedule, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents. The WIFIA Lender may also, from time to time or when so requested by the Borrower, advise the Borrower by written notice of the amount of the WIFIA Loan Balance for the applicable WIFIA Loan as of the date of such notice. Absent manifest error, the WIFIA Lender's determination of the applicable WIFIA Loan Balance and all matters as set forth on the corresponding WIFIA Loan Amortization Schedule shall be deemed conclusive evidence thereof absent manifest error; provided, that neither the failure to make any such determination, modification, or recordation nor any error in such determination, modification, or recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

Section 9. Prepayment.

(a) Optional Prepayments. The Borrower may prepay any WIFIA Loan, without penalty or premium, (i) in full on any date or (ii) in part on any Payment Date (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, that such prepayment shall be in 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 a WIFIA Loan pursuant to this Section 9(a) shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice, signed by the Borrower's Authorized Representative and delivered to the WIFIA Lender not less than thirty (30) days prior to the requested date of prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 9(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement or the applicable WIFIA Loan 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 with respect to any WIFIA Loan and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the corresponding 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 any WIFIA Loan, the WIFIA Lender may make a notation on the applicable 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 such 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 applicable WIFIA Loan Balance in any order of maturity as directed by written notice given by the Borrower to the WIFIA Lender at or prior to such prepayment, and in the absence of any such written direction from the Borrower, such that the remaining scheduled principal payments for the applicable WIFIA Loan set out in the corresponding 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 such WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in the applicable WIFIA Loan Agreement.

Section 10. Fees and Expenses.

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

(i) a Servicing Set-Up Fee for each WIFIA Loan Agreement, 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 related WIFIA Loan);

(ii) a Construction Period Servicing Fee for each WIFIA Loan Agreement, 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 WIFIA Loan Agreement Effective Date through (and including) the end of the Federal Fiscal Year during which the applicable 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 related WIFIA Loan); and

(iii) an Operating Period Servicing Fee for each WIFIA Loan Agreement, 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 applicable Substantial Completion Date occurs, until (and including) the applicable Final Maturity Date; provided, that any Operating Period Servicing Fee due and payable with respect to any Federal Fiscal Year during which such 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 such Final Maturity Date.

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

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

(d) The obligations of the Borrower under Section 10(c) (*Fees and Expenses – Expenses*) 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 of this Agreement. 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 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) each Ordinance Document in effect as of the Effective Date, together with any amendments, supplements, waivers or modifications thereto (but excluding any Supplemental Ordinance that solely provides for the issuance or incurrence of Additional Obligations, hedging obligations or Interim Financing) and (B) each Related Document that has been entered into 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 transactions contemplated hereby (if any) have been fulfilled.

(iii) The Borrower shall have delivered to the WIFIA Lender all further instruments and documents (including any resolutions, ordinances), other than any Supplemental Ordinances and the WIFIA Loan Documents, as are necessary for the Borrower to execute and deliver, and to perform its obligations under, this Agreement and to consummate and implement the transactions contemplated by this Agreement, including the filing of a UCC-3 financing statement with the Department of State of the State in form and substance reasonably satisfactory to the WIFIA Lender.

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

(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-1** (*Form of Closing Certificate*) (the "**Closing Certificate**")

(x) designating the Borrower's Authorized Representative, (y) confirming such person's position and incumbency and (z) certifying as to the satisfaction of certain conditions precedent (and, if requested by the WIFIA Lender, shall have provided evidence satisfactory to the WIFIA Lender of such satisfaction), including the following:

(A) the aggregate of all funds committed to the development and construction of the Projects under the Master Program as set forth in the Base Case Financial Model and in the Master Program Budget is sufficient to carry out the Master Program, pay all Total Project Costs anticipated for the Master Program and achieve Substantial Completion for each Project component by its Projected Substantial Completion Date;

(B) the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Projects during their useful lives;

(C) the Borrower has (x) obtained a FEIN, (y) obtained a UEI Number, and (z) registered with, and obtained confirmation of active registration status from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov));

(D) 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 in all material respects 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 in all material respects as of such earlier date; and

(E) 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 Application Receipt Date.

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

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

(b) Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement. Notwithstanding anything in this Agreement to the contrary, no WIFIA Loan Agreement shall 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 (A) a WIFIA Loan Request for the applicable WIFIA Loan that complies with the provisions of Section 4(a) (Disbursement Conditions), (B) a Project Term Sheet with respect to the applicable Project and (C) the WIFIA Loan Agreement and each other WIFIA Loan Document with respect to such Project, in each case in form and substance satisfactory to the WIFIA Lender.

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

(iii) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender copies of any Ordinance Document issued after the Effective Date, together with any amendments, supplements, waivers or modifications thereto that have been entered into on or after the Effective Date, along with a certification in the applicable Project Closing Certificate that each such document is complete, fully executed and in full force and effect.

(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 General 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 to Borrower*)), in each case for the relevant Project.

(v) The Borrower shall have delivered to the WIFIA Lender (A) a Project Budget for the relevant Project and (B) a revised Master Program Budget reflecting such Project Budget.

(vi) 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-2** (*Form of Project Closing Certificate*) (the "**Project Closing Certificate**"), designating the Borrower's Authorized Representative, confirming such person's position and incumbency, and certifying as to the satisfaction of certain conditions precedent (and, if requested by the WIFIA Lender, shall have provided evidence satisfactory to the WIFIA Lender of such satisfaction), including the following:

(A) the aggregate of all funds committed to the development and construction of such Project as set forth in

the applicable Project Budget and the related revised Master Budget, as applicable, are sufficient to carry out such Project, pay all Total Project Costs anticipated for such Project and achieve Substantial Completion for such Project by the applicable Projected Substantial Completion Date;

(B) the Borrower has obtained all Governmental Approvals required to have been obtained as of the applicable WIFIA Loan Agreement Effective Date (x) in connection with such Project and (y) to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(C) as of the applicable WIFIA Loan Agreement Effective Date, (1) the Maximum Principal Amount of the relevant 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 the reasonably anticipated Eligible Project Costs for such Project; (2) the aggregate amount of Eligible Project Costs for such Project previously incurred prior to the applicable WIFIA Loan Agreement Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs for such Project; and (3) the total federal assistance provided to such Project, including the Maximum Principal Amount of the relevant WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs for such Project;

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

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

(F) the Borrower has maintained (1) the FEIN provided to the WIFIA Lender as a condition precedent to the Effective Date, (2) the UEI Number provided to the WIFIA Lender as a condition precedent to the Effective

Date, and (3) an active registration status with the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov));

(G) (1) with respect to the initial WIFIA Loan Agreement, the Borrower has obtained the WIFIA CUSIP Number for purposes of monitoring through EMMA, and (2) with respect to each other WIFIA Loan Agreement, the Borrower has (x) maintained such WIFIA CUSIP Number and (y) confirmed that the expiration date of such WIFIA CUSIP Number is no earlier than the Final Maturity Date of the relevant WIFIA Loan or extended the expiration date of the WIFIA CUSIP Number to be no earlier than the Final Maturity Date of the relevant WIFIA Loan;

(H) the representations and warranties of the Borrower set forth in the relevant 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 relevant WIFIA Loan Agreement Effective Date, 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;

(I) the Borrower's Organizational Documents remain in full force and effect and, except for supplements to the General Ordinance delivered from time to time to authorize the incurrence of indebtedness thereunder, no amendments or modifications have been made to the Organizational Documents since the Effective Date that have not been delivered to the WIFIA Lender;

(J) 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

(K) as of the relevant WIFIA Loan Agreement Effective Date, no Default or Event of Default and no event of default under any other Related Document shall have occurred and be continuing.

(vii) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction, on or 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 applicable WIFIA Loan, along with a certification in the Closing Certificate that no such rating has been reduced, revoked, withdrawn or suspended as of the applicable WIFIA Loan Agreement Effective Date.



(viii) The Borrower shall have delivered to the WIFIA Lender the most recent Updated Financial Model/Plan to be delivered to the WIFIA Lender in accordance with **Part A of Schedule V** (*Reporting Requirements*).

(ix) The Borrower shall have delivered to the WIFIA Lender the Public Benefits Report with respect to the relevant Project.

(x) The Borrower shall have delivered to the WIFIA Lender the Borrower's Financial Statements for the most recent Borrower Fiscal Year for which such Financial Statements are available.

(xi) The Borrower shall have provided the WIFIA Lender records of any Eligible Project Costs with respect to the relevant Project incurred prior to the relevant WIFIA Loan Agreement Effective Date in form and substance satisfactory to the WIFIA Lender.

(xii) To the extent not previously paid, 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 on or prior to the relevant WIFIA Loan Agreement 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 of the WIFIA Loan Documents.

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

(c) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender shall have no obligation to make any Disbursement of any WIFIA Loan to the Borrower (including the initial Disbursement hereunder) until each of the following conditions precedent with respect to such WIFIA Loan 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 hereunder 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 of such WIFIA Loan (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 such WIFIA Loan or (2) the amount of Eligible Project Costs with respect to the applicable Project 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 applicable Project as identified in the applicable Project Budget;

(E) (1) each of the Borrower and, to the best of the Borrower's knowledge, its contractors and subcontractors at all tiers with respect to the relevant 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 relevant 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 (including Section 12 (*Representations and Warranties of Borrower*)) and in each other WIFIA Loan Document are true and correct as of each date on which any disbursement of the applicable WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date);

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

(H) the amount being requested for Disbursement of the applicable WIFIA Loan 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 applicable 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.

(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 as of the date of Disbursement of the relevant WIFIA Loan 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(k) (*Credit Ratings*) and the first sentence of Section 12(m) (*Construction Contracts*), as of each date on which any Disbursement of a 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 other WIFIA Loan Documents, 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 Ordinance 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. Each of 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 Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with

its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated by the Related Documents, and the fulfillment of or compliance with the terms and conditions of all of the Related Documents, 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, each WIFIA Loan Agreement Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking, construction and completion by the Borrower of each Project and the operation and maintenance of the System, and to execute and deliver and perform its obligations under the Related 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 Related Documents and the consummation of any transaction contemplated thereunder, except as have been obtained or made and as are in full force and effect, or, if not required to be obtained or made as of the date of this representation and warranty is made, as can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(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, any Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents or that in any case could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. (i) The Ordinance 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 Ordinance 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; provided that solely in respect of any WIFIA Loan or any other amounts owed to the WIFIA Lender pursuant to the WIFIA Loan Documents, the lien and pledge of the Ordinance Documents in favor of the WIFIA Lender shall be deemed to exclude any portion of the Pledged Collateral consisting of subsidies or payments to the Borrower payable by the federal government of the United States of America or any agency thereof. 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 Senior Obligations. The Borrower is not in breach of any covenant set forth in the Ordinance Documents. As of the Effective Date, each WIFIA Loan Agreement Effective Date and 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 Bond Registrar/Fiscal Agent (for the benefit of the WIFIA Lender) to the extent contemplated by the Ordinance Documents, and (B) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Ordinance Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) (i) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters, (ii) is presently indicted for or otherwise criminally or civilly charged by a Governmental Authority with commission of any of the offenses listed in 2 C.F.R. § 180 or 2 C.F.R. § 1532; and (iii) has, 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 any 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 any WIFIA Loan, the Borrower has completed and submitted to the WIFIA Lender Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(j) Compliance with Laws.

(i) The Borrower, and to its actual knowledge, based solely on representations and agreements made in writing by each of its contractors and subcontractors at all tiers with respect to each 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 each 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 each Project) relating to environmental, health or safety matters.

(k) Credit Ratings. Each WIFIA Loan and the Senior Obligations of each Project then Outstanding have 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. As of any WIFIA Loan Agreement Effective Date, **Part C of Schedule II** (*Project Details*) to the applicable WIFIA Loan Agreement sets forth a list of (i) the Existing Construction Contracts, each of which is in full force and effect, and (ii) all Additional Construction Contracts that are expected to be entered into, in each case with respect to the corresponding Project.

(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 delivered to the WIFIA Lender in accordance with **Part A of Schedule V** (*Reporting Requirements*), 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 Master Program, any Project, the Project 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*) presents fairly, in all material respects, the financial condition of the City of Philadelphia Water Department as of the respective dates of the balance sheets included therein and the results of operations of the City of Philadelphia Water Department for the respective periods covered by the statements of income included therein. The Annual Comprehensive Financial Report 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 City of Philadelphia Water Department as of the respective dates of the balance sheets included therein and the results of operations of the City of Philadelphia Water Department 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 General Ordinance 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 each WIFIA Loan, when combined with all other funds committed for the development and construction of the applicable Project as set forth under the various sources of funds in the Project Budget, will be sufficient to carry out such Project, pay all Total Project Costs anticipated for the development and construction of such Project and achieve Substantial Completion with respect to such Project by the Projected Substantial Completion Date with respect to such Project. The total federal assistance provided to each Project, including the Maximum Principal Amount of the applicable WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs for such Project. 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 Project Revenues (excluding subsidies or payments payable by the Federal Government) are sufficient to meet each WIFIA Loan Amortization Schedule. The Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining, and repairing each Project for so long as the Loan is outstanding.

(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 applicable 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 each WIFIA Bond and all of the obligations of the Borrower under this Agreement and each WIFIA Loan 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, filings (including the filing of any financing statements under the Uniform Commercial Code of the State) 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 Ordinance Documents, or intended so to be



granted pursuant to the Ordinance Documents, or which the Borrower may become bound to grant; provided that solely in respect of any WIFIA Loan or any other amounts owed to the WIFIA Lender pursuant to the WIFIA Loan Documents, the lien and pledge of the Ordinance Documents in favor of the WIFIA Lender shall be deemed to exclude any portion of the Pledged Collateral consisting of subsidies or payments to the Borrower payable by the federal government of the United States of America or any agency thereof. 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 Ordinance 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 Ordinance Documents and for the benefit of the WIFIA Lender 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 Loans 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 each Project and complete each Project in accordance with the Construction Schedule (and on or prior to the applicable Development Default Date), the Governmental Approvals in connection with such 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 each 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 each Project). The Borrower shall operate and maintain the System (including each Project) in accordance with Section 5.03 of the General Ordinance.

(f) Insurance.

(i) The Borrower shall at all times maintain or cause to be maintained insurance on the System and the construction of each Project, either with responsible insurers or through a system of self-insurance that is actuarially sound and adequately funded, in such amounts and against such risks (including damage to or destruction of the System) as are customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties, including insurance against public liability, property damage, workers' compensation, and builders' risk, casualty and liability, as appropriate, and otherwise in accordance with the Ordinance

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), if any, to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.

(g) Maintain Legal Structure. To the extent permitted by law, 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 Ordinance Documents. All Project Revenues received shall be deposited into the Revenue Fund in accordance with Section 4.05 of the General Ordinance. The Borrower shall not apply any portion of the Project Revenues in contravention of this Agreement or the Ordinance Documents.

(ii) If a WIFIA Debt Service Reserve Requirement is applicable to a WIFIA Loan as set forth in **Part D of Schedule I** (*Master Program Terms*), the Borrower shall maintain the WIFIA Debt Service Reserve Account in an amount equal to the WIFIA Debt Service Reserve Requirement for such WIFIA Loan in accordance with the provisions of the applicable Ordinance Documents. 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. 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 by written contract require its contractors and subcontractors at all tiers with respect to each 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 further such compliance, the Borrower shall include in all contracts with respect to each 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 Project 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 Project 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 UEI 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 UEI Number.

(l) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the System (including any 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 in accordance with Section 5.06 of the General Ordinance.

(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) Project 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 Projects, and other sources of funding for the Projects (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 and the General Ordinance, including, with respect to the WIFIA Loans,

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 Projects or the WIFIA Loans, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(o) Access; Records.

(i) So long as any WIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after such 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 relevant Project and its operations, to examine books of account and records of the Borrower relating to such Project, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts relating to such 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 Master Program and the WIFIA Loans, as may be necessary for the WIFIA Lender to facilitate an effective and accurate audit and performance evaluation of any 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 Loan Agreements and corresponding WIFIA Bonds (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Master Program, the WIFIA Loans, the WIFIA Loan Agreements 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 Master Program 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 each WIFIA Bond and all of the obligations of the Borrower under this Agreement and each WIFIA Loan 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 shall not create, incur or suffer to exist any Obligations (1) the payments with respect to which are senior or prior in right of payment by the Borrower of any 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. The Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Pledged Collateral, including Permitted Debt, without the prior written consent of the WIFIA Lender, while an Event of Default relating to a Payment Default or a Bankruptcy Related Event has occurred and is continuing, which consent shall not be unreasonably withheld.

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

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i) extinguish the Rate Covenant; (ii) extinguish or impair the Liens on the Pledged Collateral or any dedicated source of repayment of any WIFIA Loan or any other Obligations (the proceeds of which are applied to fund Total Project Costs), in each case granted pursuant to the General Ordinance, (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 any Project, the Pledged Collateral, the Project 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 Ordinance Documents for the benefit of the WIFIA Lender.

(d) Restricted Payments and Transfers. The Borrower shall not permit Project Revenues or other assets of the System, or any funds in any accounts held under the General Ordinance, to be paid or transferred or otherwise applied for purposes other than as expressly permitted pursuant to the General Ordinance. The Borrower shall not pay any amounts of WIFIA Debt Service or any other amounts to the WIFIA Lender in respect of obligations under the WIFIA

Loan Documents with any subsidies or payments to the Borrower payable by the Federal Government.

(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 5.06 or Section 9.01 of the General Ordinance.

(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 (A) the Project Revenues or other elements of the Pledged Collateral or (B) the availability of the Project Revenues for the payment and security of the obligations of the Borrower under this Agreement and the other Related Documents; 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 General Ordinance, the Borrower shall not enter into any swap or hedging transaction in connection with which there may arise any obligations payable from Pledged Revenues, 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 and each WIFIA Loan 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 or any WIFIA Loan 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 any 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, any WIFIA Loan Agreement, any WIFIA Bond or on any 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 Obligation, or any such Obligation shall not be paid in full upon the final maturity thereof.

(iv) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; (B) any Ordinance 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 Bond Registrar/Fiscal Agent, 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, any 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 General Ordinance (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 a Related Document exercises remedies permitted thereunder for an event of default that has occurred and is continuing (and has not been cured or waived by the expiration of any applicable grace period), in respect of the performance of any covenant, agreement or obligation of the Borrower under such Related Document.

(viii) Material Adverse Judgment. Any final, non-appealable judgment related to the Pledged Collateral that results in the impairment of (A) the Borrower's ability to comply with any of its payment obligations under the WIFIA 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 and such failure continues for a period of ninety (90) days.

(b) Upon the occurrence of any Bankruptcy Related Event, all obligations of the WIFIA Lender hereunder and under the WIFIA Loan Agreements with respect to the Disbursement of any undisbursed amounts of any 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 and under each WIFIA Loan Agreement with respect to the Disbursement of any undisbursed amounts of such WIFIA Loan;

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

(iii) the WIFIA Lender may apply the Default Rate provisions of Section 6 (*Interest Rate*) hereunder with respect to each WIFIA Loan;

(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 under this Agreement, the relevant WIFIA Loan Agreement and corresponding WIFIA Bond or the other applicable 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 relevant WIFIA Loan Agreement and corresponding WIFIA Bond or the other applicable 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 relevant WIFIA Loan Agreement and corresponding WIFIA Bond or the other applicable WIFIA Loan Documents.

(d) At any time when the requirements under the General Ordinance and the Authorizing Act for acceleration of Obligations have been satisfied, the WIFIA Lender shall have the right to declare the unpaid principal amount of any WIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the relevant WIFIA Loan Agreement and corresponding WIFIA Bond or the other applicable WIFIA Loan Documents, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) No action taken pursuant to this Section 17 shall (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 Ordinance Documents, including Section 8.02 (*Remedies Not Exclusive; Effect of Delay in Exercise of Remedies*) and Section 8.03 (*Remedies to be Enforced Only Against Project Revenues*) of the General Ordinance.

## **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 any 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, the Master Program or the System (including each Project) or the existence, furnishing, functioning or use of any 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 Loans, and that no third-party creditor of the Borrower shall have any right against the WIFIA Lender with respect to any WIFIA Loan made pursuant to this Agreement.

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

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

Section 23. Servicer. The WIFIA Lender may from time to time designate another entity or entities to perform, or assist the WIFIA Lender in performing, the duties of the Servicer or specified duties of the WIFIA Lender under this Agreement and the WIFIA Loan Agreements and corresponding WIFIA Bonds. 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 or in the WIFIA Loan Agreements and corresponding WIFIA Bonds 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 Loan Agreements and corresponding WIFIA Bonds. 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 Loan Agreements and corresponding WIFIA Bonds shall in any event be effective without the prior written consent of each of the parties hereto and thereto. Notwithstanding the foregoing sentence, if the first Disbursement of any WIFIA Loan has not occurred on or prior to the Final Disbursement Date of such WIFIA Loan, the WIFIA Lender or the Borrower may terminate this Agreement and any corresponding WIFIA Loan Agreement upon no less than ten (10) Business Days' prior written notice to the other party. Once terminated, neither this Agreement nor such WIFIA Loan Agreement may be reinstated.

Section 25. Governing Law. This Agreement and the WIFIA Loan Agreements 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 Loan Agreements or the corresponding WIFIA Bonds 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, in the WIFIA Loan Agreements or the corresponding WIFIA Bonds 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 thereunder 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 Loan Agreements or the corresponding WIFIA Bonds 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 herein or therein. Every right and remedy given by this Agreement or under the WIFIA Loan Agreements, the corresponding WIFIA Bonds 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**  
(*Master Program Terms*)

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

Section 32. Indemnification. The Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender, the Servicer (if any), and any official, employee, agent, advisor or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement, any Construction Contract, or any Related Document, (b) the WIFIA Loans 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 Master Program; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnitee has the right to retain its own counsel, at the

Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the WIFIA Lender shall assert, and each of the Borrower and the WIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any Construction Contract, or any Related Document, the other transactions contemplated hereby and thereby, the WIFIA Loans 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 any 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 Loans. The WIFIA Lender shall not sell any WIFIA Loan at any time prior to the later of (a) the Substantial Completion Date of the Project relating to such WIFIA Loan and (b) other than with respect to a sale or transfer to another Governmental Entity within the Federal Government, the Final Disbursement Date of such Project. After such date, the WIFIA Lender may sell such WIFIA Loan to another entity or reoffer such 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 such 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 such 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 such 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 all WIFIA Loan Balances, 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 each 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 CITY OF PHILADELPHIA,  
PENNSYLVANIA,**  
by its authorized representative

By:   
Name: Rob Dubow  
Title: Director of Finance

*[Signature Page to City of Philadelphia Water Department First Water and Wastewater System  
Improvements – WIFIA Master Agreement]*

**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**

**MASTER PROGRAM TERMS**

| No.  | Item                                 | Master Program Terms   |
|--|--------------------------------------|--|
| <b><i>PART A. Key Borrower Metrics</i></b> |                                      |  |
| 1.   | Effective Date                       | January 18, 2023.  |
| 2.   | Borrower                             | THE CITY OF PHILADELPHIA, PENNSYLVANIA, a city of the first class organized and existing under the laws of the State.  |
| 3.   | Legal Entity                         | City.  |
| 4.   | State                                | Commonwealth of Pennsylvania.  |
| 5.   | Borrower FEIN                        | 23-6003047.  |
| 6.   | Borrower UEI Number                  | SDKJHXFFH5L8   |
| 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             | June 1, 2022.  |
| 9.   | System                               | The entire combined water system and wastewater system owned and operated by the Borrower (and of which the Project is a part), as further described in Section 2.01 of the General Ordinance.   |
| 10.  | Project Revenues                     | Has the meaning ascribed to such term in Section 2.01 of the General Ordinance.  |
| 11.  | Bond Registrar/Fiscal Agent          | U.S. Bank Trust Company, National Association.   |
| 12.  | Bond Registrar/Fiscal Agent Location | Two Liberty Place<br>50 South 16 <sup>th</sup> Street, Suite 2000<br>Philadelphia, PA 19102  |
| 13.  | Net Revenues                         | For any period, the Project Revenues collected during such period and deposited into the Revenue Fund plus (x) the amounts, if any, transferred from the Rate Stabilization Fund into the Revenue Fund during, or as of the end of, such period and (y) interest earnings during such period on moneys in any of the funds or accounts established thereunder to the extent such interest earnings are credited to the Revenue Fund pursuant to Section 4.16 of the General Ordinance minus the sum of |

| No.                                       | Item                      | Master Program Terms   |
|---|---------------------------|--|
|   |                           | (a) Operating Expenses incurred during such period and (b) the amounts, if any, transferred from the Revenue Fund to the Rate Stabilization Fund during, or as of the end of, such period.   |
| 14.                                       | Initial Deposit           | The initial, one time, deposit to be made by the Borrower from any source into the Rate Stabilization Fund upon the establishment of such Rate Stabilization Fund.   |
| 15.                                       | Operating Expenses        | For any period, all costs and expenses of the Water Department of THE CITY OF PHILADELPHIA, PENNSYLVANIA necessary and appropriate to operate and maintain the System in good operating condition, and shall include, without limitation, salaries and wages, purchases of services by contract, costs of materials, supplies and expendable equipment, maintenance costs, costs of any property or the replacement thereof or for any work or project, related to the System, which is not properly chargeable to property, plant and equipment, pension and welfare plan and worker's compensation requirements, provisions for claims, refunds and uncollectible receivables and for Interdepartmental Charges, all in accordance with generally accepted accounting principles consistently applied, but Operating Expenses shall exclude depreciation, amortization, interest and sinking fund charges. |
| 16.                                       | Interdepartmental Charges | The proportionate charges for services performed for the Water Department of THE CITY OF PHILADELPHIA, PENNSYLVANIA by all officers, departments, boards or commissions of the Borrower which are required by the Philadelphia Home Rule Charter to be included in the computation of operating expenses of such Water Department.   |
| 17.                                       | Authorizing Act           | The First Class City Revenue Bond Act, P.L. 955, Act No. 234 of the General Assembly of the Commonwealth of Pennsylvania, approved October 18, 1972.   |
| <b>PART B. [RESERVED]</b>                 |                           |  |
| 18.                                       | [Reserved]                | Not Applicable.  |
| <b>PART C. Key Master Program Metrics</b> |                           |  |

| No.  | Item                                   | Master Program Terms   |
|--|--|--|
| 19.  | Master Availability Period             | The period from the Effective Date until July 1, 2027.   |
| <b><i>PART D. Key Security Metrics</i></b> |  |  |
| 20.  | Lien priority                          | Senior lien.   |
| 21.  | Springing lien                         | Not Applicable.  |
| 22.  | Dedicated revenue source               | Project Revenues, provided that no payments in respect of any WIFIA Loan or any other amounts owed to the WIFIA Lender pursuant to the WIFIA Loan Documents shall be paid from subsidies or payments payable by the Federal Government.  |
| 23.  | Pledged Collateral                     | Each WIFIA Loan shall be secured by (a) the Project Revenues and (b) all amounts on deposit in or standing to the credit of the Water and Wastewater Funds (other than the Rebate Fund); provided that solely in respect of any WIFIA Loan or any other amounts owed to the WIFIA Lender pursuant to the WIFIA Loan Documents, the lien and pledge of the Ordinance Documents in favor of the WIFIA Lender shall be deemed to exclude any portion of the Pledged Collateral consisting of subsidies or payments to the Borrower payable by the federal government of the United States of America or any agency thereof. |
| 24.  | System Accounts                        | The Water and Wastewater Funds and the accounts established pursuant to the General Ordinance (other than the Rebate Fund).  |
| 25.  | Revenue Fund                           | Has the meaning ascribed to such term in Section 2.01 of the General Ordinance.  |
| 26.  | WIFIA Debt Service Account             | Not Applicable.  |
| 27.  | WIFIA Debt Service Reserve Account     | Not Applicable.  |
| 28.  | WIFIA Debt Service Reserve Requirement | Not Applicable.  |

| No. | Item          | Master Program Terms  |
|-----|---------------|---|
| 29. | Rate Covenant | <p>The rate covenant set forth in Section 5.01(a) of the General Ordinance, a copy as of the Effective Date of which is attached hereto for reference as <b>Annex A</b>, which for reference purposes as of the Effective Date is set out below:</p> <p>“(a) The City covenants with the Bondholders that it will, at a minimum, impose, charge and collect in each Fiscal Year such water and wastewater rents, rates, fees and charges as shall yield Net Revenues which shall be equal to at least:</p> <ul style="list-style-type: none"> <li>(i) 1.20 times the Debt Service Requirements for such Fiscal Year (excluding Debt Service Requirements in respect of Subordinated Bonds); and</li> <li>(ii) 0.90 times Debt Service Requirements for such Fiscal Year (excluding Debt Service Requirements in respect of Subordinated Bonds); provided that, for purposes of this clause (ii), Net Revenues shall be calculated to exclude therefrom any amounts transferred from the Rate Stabilization Fund to the Revenue Fund in, or as of the end of, such Fiscal Year; and</li> <li>(iii) 1.0 times (A) the Debt Service Requirements for such Fiscal Year (including Debt Service Requirements in respect of Subordinated Bonds); (B) amounts required to be deposited into the Debt Reserve Account during such Fiscal Year; (C) the principal or redemption price of and interest on General Obligation Bonds payable during such Fiscal Year; (D) the debt service requirements on Interim Debt payable during such Fiscal Year; and (E) the Capital Account Deposit Amount for such Fiscal Year (less any amounts transferred from the Residual Fund to the Capital Account during such Fiscal Year).”</li> </ul> <p>“‘Debt Service Requirements,’ with reference to a specified period, means:</p> <ul style="list-style-type: none"> <li>A. amounts required to be paid into any mandatory sinking fund established for the benefit of Bonds during the period;</li> </ul> |

| No. | Item                  | Master Program Terms   |
|-----|-----------------------|--|
|     |                       | <p>B. amounts needed to pay the principal or redemption price of Bonds maturing during the period and not to be redeemed at or prior to maturity through any sinking fund established for the Bonds;</p> <p>C. interest payable on Bonds during the period, with adjustments for capitalized interest or redemption through any sinking fund established for the benefit of Bonds; and</p> <p>D. all net amounts, if any, due and payable by the City under a Qualified Swap during such period.</p> <p>For purposes of estimating Debt Service Requirements for any future period, (i) any Option Bond outstanding during such period shall be assumed to mature on the stated maturity date thereof, except that the principal amount of any Option Bond tendered for payment and cancellation before its stated maturity date shall be deemed to accrue on the date required for payment pursuant such tender; and (ii) Debt Service Requirements on Bonds for which the City has entered into a Qualified Swap shall be calculated assuming that the interest rate on such Bonds shall equal the stated fixed or variable rate on the Qualified Swap or, if applicable and if greater such stated rate, the applicable rate for any Bonds issued in connection with the Qualified Swap adjusted, the case of a variable rate obligation, as provided in Section 5.01 hereof. Calculation of Debt Service Requirements with respect to Variable Rate Bonds and Balloon Bonds shall be subject to adjustment as permitted by Section 5.01(c) hereof.”</p> <p>Capitalized terms used in the foregoing “Rate Covenant” provisions and which are not otherwise defined in the WIFIA Master Agreement, shall have the meaning ascribed to such terms in the General Ordinance.</p> |
| 30. | Additional Bonds Test | <p>Certain requirements and conditions set forth in Section 5.04(a) and 5.04(b) of the General Ordinance, which pertain to the enactment of a Supplemental Ordinance that authorizes the incurrence of Additional Obligations, a copy as of the Effective Date of which is attached hereto as <b>Annex B</b>, which requirements and conditions</p>  |

| No. | Item | Master Program Terms   |
|-----|------|--|
|     |      | <p>for reference purposes as of the Effective Date are set out below:</p> <p>The Borrower shall not issue or incur any Additional Obligations unless the conditions described below, in Section 15(a) (<i>Indebtedness</i>), and in the General Ordinance are satisfied:</p> <ul style="list-style-type: none"> <li>(i) (A) The Borrower, pursuant to such Supplemental Ordinance, has made a finding based on the report of the Director of Finance required by Section 8 of the Authorizing Act that Project Revenues pledged under the General Ordinance will be sufficient to comply with the Rate Covenant and also to pay all costs, expenses and payments required to be paid therefrom in the order and priority stated in Section 4.05 of the General Ordinance; and (B) such Supplemental Ordinance providing for issuance or incurrence of such Additional Obligations contains the covenant as to the payment of debt service required by Article IX, Section 10 of the Pennsylvania Constitution;</li> <li>(ii) The Director of Finance has executed and delivered a certificate (A) that there is no default in the payment of the principal of, interest on, or premiums, if any, payable in respect of, any Bonds; (B) that during the latest Fiscal Year, the City was in compliance with the Rate Covenant; and (C) that the City is currently in compliance with the Rate Covenant and all other covenants contained in the General Ordinance and all Supplemental Ordinances; and</li> <li>(iii) Concurrently with the delivery to City Council of the financial report and opinion required by Section 8 of the Authorizing Act, as a condition to enactment of such Supplemental Ordinance, a report of a Consulting Engineer setting forth the qualifications of such consulting Engineer shall be delivered and contain each of the following statements:</li> </ul> |

| No. | Item | Master Program Terms   |
|-----|------|--|
|     |      | <p>A. a statement, supported by appropriate schedules and summaries, that, on the basis of actual, if appropriate, and estimated future annual financial operations of the Project or Projects from which pledged Project Revenues are to be derived, the Project or Projects will, in the opinion, of the Consulting Engineer, yield pledged Project Revenues over the amortization period of the Bonds to be issued, sufficient to meet the payment or deposit requirements of (w) all expenses of operation, maintenance, repair and replacement of the Project, (x) all reserve funds required to be established out of such Project Revenues, (y) the principal or redemption price of and interest on Bonds, as the same become due and payable, for which such Project Revenues are pledged and (z) any state taxes assumed by the City to be paid on Bonds;</p> <p>B. a statement, supported by appropriate schedules and summaries, that the Net Revenues, on the basis of which the statements required by the foregoing clause (I) are made, are currently sufficient to comply with the Rate Covenant and are projected to be sufficient to comply with the Rate Covenant for each of the two (2) Fiscal Years following the Fiscal Year in which the Bonds are issued; provided that if interest on the Bonds or a portion thereof has been capitalized, the projection shall extend to the two (2) Fiscal Years following the Fiscal Year up to which interest has been capitalized on the Bonds or a portion thereof; and</p> <p>C. a statement that, in the opinion of the Consulting Engineer, the System is in good operating condition or that adequate steps are being taken to return it to good operating condition.</p> |

| No.  | Item                       | Master Program Terms  |
|--|----------------------------|---|
|  |                            | Capitalized terms used in the foregoing “Additional Bonds Test” provisions and which are not otherwise defined in the WIFIA Master Agreement, shall have the meaning ascribed to such terms in the General Ordinance. |
| 31.  | Flow of Funds              | The requirements and conditions specified in Sections 4.05(b), 4.05(c) and 4.06 of the General Ordinance, a copy of which as of the Effective Date is attached hereto as <b>Annex C</b> .                             |
| 32.  | Rate Stabilization Fund    | The Rate Stabilization Fund established in Section 4.04(d) of the General Ordinance.  |
| 33.  | Water and Wastewater Funds | The Revenue Fund, the Sinking Fund, the Subordinated Bond Fund, the Rate Stabilization Fund, the Residual Fund and the Construction Fund.   |
| 34.  | Sinking Fund               | The Sinking Fund established in Section 4.04(b) of the General Ordinance.   |
| 35.  | Subordinated Bond Fund     | The Subordinated Bond Fund established in Section 4.04(c) of the General Ordinance.   |
| 36.  | Rate Stabilization Fund    | The Rate Stabilization Fund established in Section 4.04(d) of the General Ordinance.  |
| 37.  | Residual Fund              | The Residual Fund established in Section 4.04(e) of the General Ordinance.  |
| 38.  | Construction Fund          | The Construction Fund established in Section 4.04(f) of the General Ordinance.  |
| 39.  | Rebate Fund                | The Rebate Fund established in Section 4.04(g) of the General Ordinance.  |
| <b><i>PART E. Other Key WIFIA Loan Documents</i></b> |                            |   |
| 40.  | General Ordinance          | That certain Restated General Water and Wastewater Revenue Bond Ordinance of 1989, as approved by the Mayor on June 24, 1993, and as supplemented and amended from time to time by any Supplemental                   |



| No.                                     | Item   | Master Program Terms  |
|---|--|---|
|   |  | Ordinance, including by the WIFIA Supplemental Ordinance.   |
| 41.                                     | WIFIA Supplemental Ordinance   | That certain Twenty-Sixth Supplemental Ordinance, as approved by the Mayor of THE CITY OF PHILADELPHIA, PENNSYLVANIA, on March 2, 2022 (the “ <i>Twenty-Sixth Supplemental Ordinance</i> ”), authorizing the execution, delivery and performance by the Borrower of each of this Agreement, the WIFIA Loan Agreements, the WIFIA Bonds, and certain related actions by the Borrower in connection with the issuance of any WIFIA Loan.  |
| <b>PART F. [Reserved]</b>               |  |   |
| <b>PART G. Borrower Related Notices</b> |  |   |
| 42.                                     | Borrower notice details  | <p>THE CITY OF PHILADELPHIA, PENNSYLVANIA<br/> 1401 John F. Kennedy Boulevard, Suite 640<br/> Philadelphia, PA 19102<br/> Attn: Jacqueline Dunn, Treasurer<br/> E-mail: Jacqueline.Dunn@Phila.gov</p> <p>PHILADELPHIA WATER DEPARTMENT<br/> 1101 Market Street, 5<sup>th</sup> Floor<br/> Philadelphia, PA 19107<br/> Attn: Lawrence Yangalay, Acting Deputy Water<br/> Commissioner for Finance<br/> E-mail: Lawrence.Yangalay@Phila.gov</p> <p>CITY OF PHILADELPHIA LAW DEPARTMENT<br/> One Parkway Building<br/> 1515 Arch Street, 17<sup>th</sup> Floor<br/> Philadelphia, PA 19102<br/> Attn: François A. Dutchie, Chief Deputy City Solicitor<br/> E-mail: Francois.Dutchie@Phila.gov</p> |
| 43.                                     | U.S. Bank Trust Company,<br>National Association<br>Global Corporate Trust<br>Two Liberty Place, Suite 2000<br>50 South Sixteenth Street<br>Philadelphia, PA 19102<br>Attn: Stacy Mitchell | U.S. Bank Trust Company, National Association,<br>as Fiscal Agent<br>Corporate Trust Administration<br>Two Liberty Place<br>50 South 16 <sup>th</sup> Street, Suite 2000<br>Philadelphia, PA 19102  |

## ANNEX A

Reference is made to Section 5.01(a) of the General Ordinance, and the requirements and conditions contained therein as of the Effective Date, which are set forth verbatim below. Capitalized terms used in this Annex A shall have the respective meanings assigned to such terms in the General Ordinance.

“(a) The City covenants with the Bondholders that it will, at a minimum, impose, charge and collect in each Fiscal Year such water and wastewater rents, rates, fees and charges as shall yield Net Revenues which shall be equal to at least:

- i. 1.20 times the Debt Service Requirements for such Fiscal Year (excluding Debt Service Requirements in respect of Subordinated Bonds); and
- ii. 0.90 times Debt Service Requirements for such Fiscal Year (excluding Debt Service Requirements in respect of Subordinated Bonds); provided that, for purposes of this clause (ii), Net Revenues shall be calculated to exclude therefrom any amounts transferred from the Rate Stabilization Fund to the Revenue Fund in, or as of the end of, such Fiscal Year; and
- iii. 1.0 times (A) the Debt Service Requirements for such Fiscal Year (including Debt Service Requirements in respect of Subordinated Bonds); (B) amounts required to be deposited into the Debt Reserve Account during such Fiscal Year; (C) the principal or redemption price of and interest on General Obligation Bonds payable during such Fiscal Year; (D) debt service requirements on Interim Debt payable during such Fiscal Year; and (E) the Capital Account Deposit Amount for such Fiscal Year (less any amounts transferred from the Residual Fund to the Capital Account during such Fiscal Year).”

## ANNEX B

Reference is made to Sections 5.04(a) and 5.04(b) of the General Ordinance, and the requirements and conditions contained therein as of the Effective Date, which are set forth verbatim below. Capitalized terms used in this Annex B shall have the respective meanings assigned to such terms in the Ordinance.

“(a) *Enactment of Supplemental Ordinance.* Prior to the issuance of any Series of Bonds (but only following the filing of the report and opinion required by Section 8 of the Act) the City shall enact a Supplemental Ordinance specifying the aggregate principal amount and authorizing the issuance of such Bonds; stating that such Bonds are issued for the purpose (i) of paying the costs of a Project relating to the System, (ii) of reimbursing any fund or account of the City from which such costs shall have been paid or advanced, (iii) of funding any such costs for which the City shall have outstanding bond anticipation notes or other obligations, (iv) of refunding any Bonds or bonds of the City issued for the foregoing purposes or (v) of financing other costs relating to the System permitted under the Act, as amended from time to time; making a finding based on the report of the Director of Finance required by Section 8 of the Act that Project Revenues pledged hereunder will be sufficient to comply with the Rate Covenant and also to pay all costs, expenses and payments required to be paid therefrom in the order and priority stated in Section 4.05 hereof; and containing the covenant as to the payment of debt service required by Article IX, Section 10 of the Pennsylvania Constitution. Such Supplemental Ordinance may specify a particular method of sale; may authorize a Credit Facility, Qualified Swap or Exchange Agreement or authorize such agreements to be included in the Determination; may specify the terms upon which, or the prices for which, the Bonds are to be sold or exchanged, including, if applicable, competitive bidding specifications; and may contain such amendments to this Ordinance, including amendments or modifications of the covenants herein contained, and may contain or authorize such further covenants and agreements, including such covenants as may be appropriate under existing law and regulations so that the Bonds may not be deemed to be “arbitrage bonds,” as such term is defined in the Code and applicable regulations, all as City Council may deem appropriate and proper and as shall be authorized or permitted by the Act and permitted by Section 10.01 hereof.

(b) *Filing of Transcript.* Prior to the issuance of any Series of Bonds, the Director of Finance shall, in addition to the filing requirements of Section 12 of the Act, file with the Fiscal Agent a transcript of the proceedings authorizing the issuance of such Series of Bonds which shall include (i) a certified copy of this Ordinance (unless previously so filed); (ii) a certified copy of the Supplemental Ordinance and the Determination specifying terms of the Series of Bonds; (iii) an executed or certified copy of the report of the Director of Finance required by Section 8 of the Act; (iv) an executed copy of the opinion of the City Solicitor required by Section 8 of the Act; (v) an executed or certified copy of the Consulting Engineer's report required by subparagraph (c) of this Section; (vi) if the Series of Bonds has been structured so that interest on such Bonds will not be excluded from the gross income of the Holders thereof for the purpose of calculating federal income tax (not taking into account collateral tax consequences associated with the holding of tax-exempt bonds) an opinion of Bond Counsel to the effect that issuance of such Series of Bonds will not adversely affect the exemption from federal income tax of interest on other Series of Bonds issued hereunder; (vii) a certificate of the Director of Finance that there is no default in the payment of the principal of, interest on, or premiums, if any, payable in respect of, any Bonds; that the

report for the latest completed Fiscal Year required to be filed pursuant to Section 5.05 hereof has been filed, provided that for the Fiscal Year ended June 30, 1993 the report shall comply with the Prior Ordinance and need not comply with Section 5.05 hereof; that during such Fiscal Year the City was in compliance with the Rate Covenant; and that the City is currently in compliance with the Rate Covenant and all other covenants contained in this Ordinance and all Supplemental Ordinances; and (viii) the opinions required by subparagraph (d) of this Section 5.04. Thereupon the proper officers of the City and the Fiscal Agent shall be authorized to execute and deliver the Bonds so authorized, to receipt for the purchase price thereof and to execute and deliver on behalf of the City dosing statements, affidavits and certificates.”

(c) *Delivery of Consulting Engineer’s Report.* Concurrently with the delivery to City Council of the financial report and opinion required by Section 8 of the Act as a condition to enactment of a Supplemental Ordinance authorizing a Series of Bonds, there shall be delivered to City Council a report of a Consulting Engineer setting forth the qualifications of the Consulting Engineer and containing: (i) a statement supported by appropriate schedules and summaries, that, on the basis of actual, if appropriate, and estimated future annual financial operations of the Project or Projects from which pledged Project Revenues are to be derived, the Project or Projects will, in the opinion of the Consulting Engineer, yield pledged Project Revenues over the amortization period of the Bonds to be issued, sufficient to meet the payment or deposit requirements of (A) all expenses of operation, maintenance, repair and replacement of the Project, (B) all reserve funds required to be established out of such Project Revenues, (C) the principal or redemption price of and interest on Bonds, as the same become due and payable, for which such Project Revenues are pledged and (D) any state taxes assumed by the City to be paid on Bonds; (ii) a statement, supported by appropriate schedules and summaries, that the Net Revenues, on the basis of which the statements required by the foregoing clause (i) are made, are currently sufficient to comply with the Rate Covenant and are projected to be sufficient to comply with the Rate Covenant for each of the two (2) Fiscal Years following the Fiscal Year in which the Bonds are issued; provided that if interest on the Bonds or a portion thereof has been capitalized, the projection shall extend to the two (2) Fiscal Years following the Fiscal Year up to which interest has been capitalized on the Bonds or a portion thereof; and (iii) a statement that, in the opinion of the Consulting Engineer, the System is in good operating condition or that adequate steps are being taken to return it to good operating condition.

## ANNEX C

Reference is made to Sections 4.05(b), 4.05(c) and 4.06 of the General Ordinance, and the requirements and conditions contained therein as of the Effective Date, which are set forth verbatim below. Capitalized terms used in this Annex C shall have the respective meanings assigned to such terms in the General Ordinance.

### Section 4.05(b)

“(b) The City shall cause all Project Revenues received by it on any date to be deposited into the Revenue Fund upon receipt thereof by the City and the Fiscal Agent shall, upon receipt of Project Revenues, deposit such Project Revenues into the Revenue Fund. The City and Fiscal Agent also shall cause to be deposited into the Revenue Fund such portion of proceeds of Bonds as designated by Supplemental Ordinance or Determination and any other funds directed to be deposited into the Revenue Fund by the City. The Fiscal Agent shall, at the written direction of the City, disburse from the Revenue Fund the amounts and at the times specified in Section 4.06 hereof.”

### Section 4.05(c)

“(c) If at any time sufficient moneys are not available in the Revenue Fund to pay Operating Expenses and to make the transfers required by Section 4.06 hereof, then amounts on deposit in the Construction Fund, Rate Stabilization Fund and Residual Fund may be loaned temporarily, at the written direction of the City, to the Revenue Fund for the payment of such Operating Expenses to the extent of the deficiency, until such loaned amounts are required by the Water Department for purposes of the Fund making the loan. If a similar deficiency exists in the Construction Fund, amounts on deposit in the Revenue Fund, Rate Stabilization Fund and Residual Fund may be loaned temporarily, at the written direction of the City, to the Construction Fund, to the extent of the deficiency, until required by the Water Department for purposes of the Fund making the loan.”

### Section 4.06

“*Transfer from Revenue Fund to Other Funds and Accounts.* Amounts on deposit in the Revenue Fund shall be applied by the Fiscal Agent, at the written direction of the City, in the following manner and in the following order of priority:

- (a) to the City or its designees to pay such sums as are necessary to meet Operating Expenses in a timely manner;
- (b)(i) on or before the dates that the principal or redemption price of and interest on Bonds (other than Subordinated Bonds) or payments under a Swap Agreement or Credit Facility are due, to deposit in the Debt Service Account of the Sinking Fund the amount necessary to provide for the timely payment of the principal or redemption price of and interest on such Bonds (other than Subordinated Bonds), any payments under any Swap Agreement and any amounts under a Credit Facility to repay advances thereunder to pay any of the foregoing, and (ii) on or before the dates that other payments are due under any Credit Facility with respect to Bonds (other than Subordinated Bonds) to deposit in the Charges Account of the Sinking Fund the amount necessary to make such payments;
- (c) if the transfers in subparagraphs (a) and (b) are being made according to schedule, for deposit in the Debt Reserve Account, the amount, if any, required to eliminate any deficiency therein;

- (d) if the transfers in subparagraphs (a) and (b) are being made according to schedule, and following any transfer required pursuant to subparagraph (c), to deposit in any debt reserve account established within the Sinking Fund and not held for the equal and ratable benefit of all Bonds (other than Subordinated Bonds), the amount, if any, required to eliminate any deficiency therein;
- (e) if the transfers in subparagraphs (a) and (b) are being made according to schedule, and following any transfer then required to be made pursuant to subparagraphs (c) and (d), to deposit in the Subordinated Bond Fund the amount necessary to provide for the timely payment of the principal or redemption price of and interest on Subordinated Bonds, and forward to the paying agent in respect of bond anticipation notes (payable by exchange for, or out of the proceeds of the sale of Subordinated Bonds) the amount necessary to provide for the timely payment of interest thereon (to the extent not capitalized);
- (f) if the transfers in subparagraphs (a) and (b) are being made according to schedule, and following any transfer then required to be made pursuant to subparagraphs (c), (d) and (e) to pay to the City the amount necessary to provide for the timely payment of the principal or redemption price of and interest on General Obligation Bonds;
- (g) if the transfers in subparagraphs (a) and (b) are being made according to schedule, and following any transfer then required to be made pursuant to subparagraphs (c), (d), (e) and (f), to transfer to the Rate Stabilization Fund such amount as the Water Commissioner may determine, the first such determination to be made on the Effective Date and to include the balance on that date in the Renewal and Replacement Fund created under the Prior Ordinance and the unencumbered operating balance of the Water Department as of the end of the Fiscal Year immediately preceding the Effective Date;
- (h) if the transfers in subparagraphs (a) and (b) are being made according to schedule, and following any transfer then required to be made pursuant to subparagraphs (c), (d), (e), (f) and (g), to transfer to the Capital Account of the Construction Fund on June 20, of each Fiscal Year (or the first business day following June 20 if June 20 is not a business day) an amount equal to the sum of (i) the Capital Account Deposit Amount, (ii) the Debt Service Withdrawal for the preceding Fiscal Year and (iii) the Operating Expense Withdrawal for the preceding Fiscal Year, less any amounts transferred during the Fiscal Year to such Capital Account from the Residual Fund; and
- (i) if the transfers in subparagraphs (a) and (b) are being made according to schedule, and following any transfer then required to be made pursuant to subparagraphs (c), (d), (e), (f), (g) and (h) and after providing for the repayment of any inter-Fund loans, to transfer as of June 30 of each year all remaining amounts to the Residual Fund. Notwithstanding the foregoing, nothing herein shall prevent the City from directing the transfer of amounts on deposit in any fund or account established hereunder into the Rebate Fund in the amounts and at the time specified by Section 4.14 hereof.”

**SCHEDULE II**

**WIFIA MASTER PROGRAM DETAILS**

**PART A. Master Program Budget.**

| <b>SOURCES OF FUNDS</b>             | <b>AMOUNT (\$ USD)</b> | <b>PERCENTAGE (%)</b> |
|-------------------------------------|------------------------|-----------------------|
| WIFIA                               | \$341,596,102          | 49.00%                |
| Revenue Bonds                       | \$345,258,555          | 49.53%                |
| Cash                                | \$10,280,245           | 1.47%                 |
| <b>Total Sources of Funds</b>       | <b>\$697,134,902</b>   | <b>100.00%</b>        |
| <b>USES OF FUNDS</b>                | <b>AMOUNT (\$ USD)</b> | <b>PERCENTAGE (%)</b> |
| Construction                        | \$466,842,189          | 66.97%                |
| Construction Contingency            | \$134,467,856          | 19.29%                |
| Inflation Contingency               | \$74,667,514           | 10.71%                |
| Financing Costs                     | \$21,157,343           | 3.03%                 |
| <b>Total Uses of Funds</b>          | <b>\$697,134,902</b>   | <b>100.00%</b>        |
| <b>Total Eligible Project Costs</b> | <b>\$697,134,902</b>   | <b>100.00%</b>        |
| <b>Total Project Costs</b>          | <b>\$697,134,902</b>   | <b>100.00%</b>        |

“Aggregate Master Program Amount” means \$341,596,102.

**PART B. [RESERVED].**

**PART C. [RESERVED].**

**PART D. Master Program Description.**

The Master Program will consist of upgrades and expansion of the System as detailed below.

The Master Program consists of approximately eight components set out in the table below, that can be categorized into the following groups:

| <b>Project Component</b> | <b>Name / Description</b>   |
|--------------------------|---|
| 1.                       | Distribution Main Replacement: 11 water main replacement projects at various locations and various lead service line replacements |
| 2                        | Belmont High Service Pumping Station: motor, pump, and electrical equipment replacements  |
| 3                        | George’s Hill Pump Station: construction of a new pump station  |

|   |  |
|---|--|
| 4 | East Park Booster Pump Station: replacement of an existing pump station with a new facility  |
| 5 | Monument Road Storage: construction of new finished water storage on the Monument Road site  |
| 6 | Schuylkill River Crossing: construction of a new 60-inch transmission main between the Queen Lane WTP and Belmont WTP, crossing under the Schuylkill River, to supplement an existing 48-inch river crossing and allow for redundancy of the Schuylkill River supply system in the event the Baxter WTP, located on the Delaware River, is offline due to an emergency |
| 7 | Baxter Water Treatment Plant Storage: replace existing finished water storage basing with finished water storage tanks.  |
| 8 | Belmont Water Treatment Plant Storage: construction of new finished water storage on the Belmont WTP site  |

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**SCHEDULE III**  
**BORROWER DISCLOSURES**

**PART A. Existing Indebtedness.**

Outstanding  
as of January 1, 2023\*

| <u>Series of Bonds</u> | <u>Original Principal Amount</u> | <u>Outstanding Principal Amount</u> | <u>Year of Maturity</u> |
|------------------------|----------------------------------|-------------------------------------|-------------------------|
| Pennvest 2009B         | \$ 42,886,030                    | \$ 13,896,811                       | 2032                    |
| Pennvest 2009C         | 57,268,193                       | 23,876,506                          | 2032                    |
| Pennvest 2009D         | 84,759,263                       | 36,821,914                          | 2032                    |
| Pennvest 2010B         | 30,000,000                       | 17,492,886                          | 2033                    |
| 2013A                  | 170,000,000                      | 24,075,000                          | 2023                    |
| 2014A                  | 123,170,000                      | 35,285,000                          | 2026                    |
| 2015B                  | 141,740,000                      | 96,970,000                          | 2035                    |
| 2016A                  | 192,680,000                      | 161,865,000                         | 2035                    |
| 2017A                  | 279,865,000                      | 239,865,000                         | 2052                    |
| 2017B                  | 174,110,000                      | 155,495,000                         | 2034                    |
| 2018A                  | 276,935,000                      | 241,935,000                         | 2053                    |
| 2019A                  | 68,335,000                       | 67,280,000                          | 2040                    |
| 2019B                  | 250,660,000                      | 250,660,000                         | 2054                    |
| 2020                   | 127,740,000                      | 127,740,000                         | 2040                    |
| 2020A                  | 201,530,000                      | 200,880,000                         | 2050                    |
| 2020B                  | 95,025,000                       | 84,605,000                          | 2035                    |
| Pennvest 2021A         | 80,821,155                       | 20,858,151                          | 2044                    |
| 2021B                  | 368,720,000                      | 356,060,000                         | 2045                    |
| 2021C                  | 231,930,000                      | 231,930,000                         | 2051                    |
| Pennvest 2021D         | 5,794,470                        | 2,982,386                           | 2044                    |
| Pennvest 2022A         | 16,301,250                       | 698,299                             | 2041                    |
| Pennvest 2022B         | 35,861,985                       | 5,650,118                           | 2045                    |
| 2022C                  | 294,810,000                      | 294,810,000                         | 2052                    |
| Pennvest 2022D         | 106,929,660                      | 3,912,489                           | 2045                    |
| Pennvest 2022E         | 8,221,985                        | -                                   | 2042                    |
| Pennvest 2022F         | 7,545,605                        | -                                   | 2042                    |
| <b>TOTAL</b>           | <b>\$3,473,639,596</b>           | <b>\$2,695,644,560</b>              |                         |

\* Exclusive of any outstanding commercial paper notes.

**PART B. Litigation Disclosure.**

None.

**PART C. Environmental Matter Disclosure.**

None.

## SCHEDULE IV

### REQUISITION PROCEDURES

This **Schedule IV** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for any Disbursement of a 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 any WIFIA Loan Agreement during the term thereof. All capitalized terms used and not defined herein shall have the meanings set forth in the WIFIA Master Agreement and the applicable WIFIA Loan Agreement.

#### **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 Master 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 Master Agreement.

I 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 any WIFIA Loan Agreement; (3) fails to observe or comply with any applicable law, or any term or condition of any WIFIA Loan Agreement; (4) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(c) (*Conditions Precedent to Disbursements– Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*) of the WIFIA Master 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 Master Agreement and the applicable 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 relevant 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, provided, that the failure of the Borrower to deliver to the WIFIA Lender the Updated Financial Model/Plan required under Section 16 of the WIFIA Master Agreement during the period that is one hundred eighty (180) days after the end of the applicable Borrower Fiscal Year shall not constitute a Default or an Event of Default, so long as the Borrower provides such Updated Financial Model/Plan within ninety (90) days after the end of such 180-day period. 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 Project 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 each 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 income statement and balance sheet of the City of Philadelphia Water Department as of the end of such Borrower Fiscal Year and the related statements of operations and of cash flow of the City of Philadelphia Water Department for such Borrower Fiscal Year, (a) setting forth in each case in comparative form the figures for the previous fiscal year and (b) which shall be complete and correct in all material respects and shall be prepared in reasonable detail; provided, that the failure of the Borrower to deliver to the WIFIA Lender the financial statements required under Section 16 of the WIFIA Master Agreement during the period that is one hundred eighty (180) days after the end of the applicable Borrower Fiscal Year shall not constitute a Default or an Event of Default, so long as the Borrower provides such financial statements within ninety (90) days after the end of such 180-day period. 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 Annual Comprehensive Financial Report of the City of Philadelphia Water Department as of the end of such Borrower Fiscal Year, which report shall be audited, complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

**PART C. Construction Monitoring.**

(a) The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of each Project, including environmental compliance, design, and construction of such Project. The Borrower shall be responsible for administering construction oversight of each 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 each Project, through and until Substantial Completion of such 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 of any Project is a date different than the corresponding Projected Substantial Completion Date, the Borrower shall provide in the relevant 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 relevant 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 Master 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*) of the WIFIA Master Agreement.

(d) Final Specifications. The Borrower shall deliver to the WIFIA Lender, prior to bid advertisement for any Project (including each sub-project or component, if applicable), a copy of the final specifications relating to the development and construction of such Project (or

such sub-project or component, as the case may be), demonstrating compliance with all applicable federal requirements and including a summary of the scope of work thereunder.

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

#### **PART D. Public Benefits Report.**

The Borrower shall deliver to the WIFIA Lender the Public Benefits Report (a) no later than the applicable WIFIA Loan Agreement Effective Date, (b) within ninety (90) days following the applicable Substantial Completion Date and (c) within ninety (90) days following the fifth (5<sup>th</sup>) anniversary of such 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 of each Project, 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 material impairment of (A) the Borrower's ability to comply with any of its payment obligations under any WIFIA Bond, this Agreement or any WIFIA Loan 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 any Projected Substantial Completion Date) set forth in any 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 any Project or the Master Program 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 and any applicable WIFIA Loan 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 any Project or the Master Program;

(x) Ratings Changes: any change in the rating assigned to any 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 and any applicable WIFIA Loan 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 documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement and any applicable WIFIA Loan Agreement;

(xiv) SAM / UEI: any change in the Borrower's SAM registration status (including any exclusions, expiration or inactive registration) or UEI 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 and any applicable WIFIA Loan 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 any applicable WIFIA Loan 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 any 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, any Project or the Project 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 or any WIFIA Loan 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**

**[RESERVED]**

**EXHIBIT A**

\$[\_\_\_\_\_]

RA-[\_\_]

**UNITED STATES OF AMERICA  
COMMONWEALTH OF PENNSYLVANIA**

**THE CITY OF PHILADELPHIA, PENNSYLVANIA**

**WATER AND WASTEWATER REVENUE BOND, SERIES [\_\_\_\_]  
(WIFIA Master Agreement First Water and Wastewater System Improvements (Phase  
[\_\_\_\_]),  
WIFIA Loan No. [\_\_\_\_] – [\_\_\_\_\_])**

| <b>INTEREST RATE</b>  | <b>FINAL MATURITY<br/>DATE</b>  | <b>DATED DATE</b> | <b>CUSIP</b>     |
|---|---|-------------------|------------------|
| <b>[____]%, subject to the<br/>Default Rate (as defined and<br/>in accordance with the<br/>WIFIA Master Agreement<br/>and the WIFIA Loan<br/>Agreement)</b> | <b>[_____], subject to<br/>adjustment as set forth in<br/>the WIFIA Master<br/>Agreement and the<br/>WIFIA Loan Agreement</b> | <b>[_____]</b>    | <b>717893Z95</b> |

**REGISTERED OWNER:**

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

**MAXIMUM PRINCIPAL  
AMOUNT (excluding capitalized  
interest, if any):**

[\_\_\_\_\_]

**THE CITY OF PHILADELPHIA, PENNSYLVANIA**, a city organized and existing under the laws of the Commonwealth of Pennsylvania (the “**City**”), 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 City (the “**WIFIA Loan Agreement**”). All capitalized terms used in this Bond (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 and that certain WIFIA Master Agreement, dated January 18, 2023, by and between the WIFIA Lender and the City (the “**WIFIA Master Agreement**”) (which WIFIA Loan Amortization Schedule may be revised from time to time in accordance with the WIFIA Loan Agreement and the WIFIA Master 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 City thereunder and otherwise in accordance with the terms of the WIFIA Master Agreement and 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 City’s obligations hereunder or under any other WIFIA Loan Document.

Interest shall (a) accrue on this WIFIA Bond commencing on the date of the first Disbursement of the applicable WIFIA Loan, (b) be payable commencing on the applicable Debt Service Payment Commencement Date and (c) be computed on the applicable WIFIA Loan Balance on the basis of 360-day year of twelve 30-day months.

The principal of and interest on this WIFIA Bond and the premium, if any, payable upon redemption are payable at the principal corporate trust office of U.S. Bank Trust Company, National Association, as successor to U.S. Bank National Association, Fiscal Agent of the City (the “Fiscal Agent”), in Philadelphia, Pennsylvania, or at the principal office of any successor Fiscal Agent appointed under the General Ordinance.

Payments hereon are to be made in accordance with Section 8(b) (*Repayments - Manner of Payment*) and Section 31 (*Notices*) of the WIFIA Master 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 City 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 shall be subject to mandatory prepayment on the terms and conditions set forth in the WIFIA Loan Agreement.

This WIFIA Bond may be prepaid at the option of the City in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), without penalty or premium, and otherwise in accordance with the WIFIA Loan Agreement.

This WIFIA Bond has been executed under and pursuant to the General Ordinance, the Supplemental Ordinance and the other WIFIA Loan Documents and is issued to evidence the obligation of the City under the WIFIA Loan Documents to repay the loans made by the WIFIA Lender in connection with the WIFIA Loan Agreement and any other payments of any kind required to be paid by the City under the WIFIA Loan Agreement or the other WIFIA Loan Documents referred to therein. Reference is made to the WIFIA Loan Agreement for details relating to the City's obligations hereunder.

This WIFIA Bond is subject to the provisions of the General Ordinance. In the General Ordinance, the City pledges for the payment of all bonds subject thereto or issued thereunder all the rents, rates, fees and charges imposed or charged by the City for the use of or services rendered by the System (as defined in the General Ordinance) and all amounts on deposit in or standing to the credit of funds and accounts (other than the Rebate Fund) established by the General Ordinance together with interest earnings thereon.

The City covenants, so long as this WIFIA Bond shall remain outstanding, to make payments of interest on the indebtedness represented by this WIFIA Bond out of the Sinking Fund established under the General Ordinance, in the amounts required on each interest payment date of this WIFIA Bond and to pay, upon surrender thereof, from the Sinking Fund on the maturity date hereof or, if this WIFIA Bond be selected for mandatory or optional redemption, on the applicable redemption date, the principal amount hereof with applicable redemption premium, if any.

Reference is hereby made to the General Ordinance for a statement of terms and conditions under which this WIFIA Bond is issued and under which additional bonds will be issued, the nature, extent and manner of enforcement of the security, the terms and conditions under which the General Ordinance may be amended or modified, and the rights of the holders or registered owners of the Bonds with respect to such security, to all of which terms and conditions the registered owner from time to time of this WIFIA Bond, by acceptance of this WIFIA Bond, assents.

The City hereby represents to and covenants with the registered owner of this WIFIA Bond that no water and wastewater revenue bonds of the City have been or will be issued for the payment of which the holder has or shall have a prior lien on or security interest in the revenues pledged under the General Ordinance for the payment of this WIFIA Bond or a prior right to payment therefrom and that all water and wastewater revenue bonds which have been or will be equally and ratably secured by such pledged revenues have been and will be issued in accordance with the provisions of the General Ordinance. However, nothing herein contained shall be construed to

prevent the City from financing water and wastewater projects by the issuance of its general obligation bonds or by the issuance of subordinated water and wastewater revenue bonds under the General Ordinance or authorization other than the General Ordinance for the payment of which revenues of the Water and Wastewater Systems may be pledged subject and subordinate in each fiscal year to the prior payments during such fiscal year under the General Ordinance.

The City and the Fiscal Agent may treat the person in whose name this WIFIA Bond is registered as the absolute owner hereof for all purposes whether or not this WIFIA Bond or any installment of interest be overdue, and neither the City nor the Fiscal Agent shall be affected by any notice to the contrary. All payments of the principal, or premium upon redemption, if any, of this WIFIA Bond or of interest hereon to such registered owner in the manner herein and in the General Ordinance set forth shall be valid and effectual to satisfy and discharge the liability upon this WIFIA Bond to the extent of the sum or sums so paid whether or not notation of the same be made hereon, and any consent, waiver or other action taken by such registered owner pursuant to the provisions of the General Ordinance shall be conclusive and binding upon such registered owner, his heirs, successors or assigns, and upon all transferees hereof whether or not notation thereof be made hereon or on any bond issued in exchange or transfer hereof.

In case an event of default, as defined in the General Ordinance, shall occur, the principal of all Bonds then outstanding under the General Ordinance may be declared or may become due and payable and any such declarations may thereafter be annulled, all upon the conditions and in the manner and with the effect provided in the General Ordinance and in The First Class City Revenue Bond Act, P.L. 955, Act No. 234 of the General Assembly of the Commonwealth of Pennsylvania, approved October 18, 1972 (the "Revenue Bond Act").

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.

This WIFIA Bond is a special obligation of the City payable solely from the pledged rentals, revenues and monies of the Water and Wastewater Systems and neither the credit nor the taxing power of the City is pledged for the payment of the principal of or interest on this WIFIA Bond, nor shall this WIFIA Bond be deemed to be a general obligation of the City.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Revenue Bond Act and under the General Ordinance precedent to and in the issuance of this WIFIA Bond, exist, have happened and have been performed, and that the issuance and delivery of this Bond have been duly authorized by a valid and enforceable ordinance of the City.

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 CITY OF PHILADELPHIA, PENNSYLVANIA, has caused this WIFIA Bond to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Dated Date set forth above.

**THE CITY OF PHILADELPHIA,  
PENNSYLVANIA**

(SEAL)

**By: U.S. BANK TRUST COMPANY,  
NATIONAL ASSOCIATION, Fiscal Agent**

Authorized Officers:

\_\_\_\_\_  
\_\_\_\_\_

Countersigned and Attested by:

By: \_\_\_\_\_  
Acting City Controller

**CERTIFICATE OF AUTHENTICATION**

This WIFIA Bond is a Bond described in the within-mentioned General Ordinance.

**U.S. BANK TRUST COMPANY,  
NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Authorized Signer



**FORM OF ASSIGNMENT**

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

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

the within WIFIA Bond and all rights thereunder.

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

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

## EXHIBIT B-1

### FORM OF CLOSING CERTIFICATE

Reference is made to that certain WIFIA Master Agreement, dated as of January 18, 2023 (the “**WIFIA Master Agreement**”), by and among THE CITY OF PHILADELPHIA, PENNSYLVANIA (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 Master Agreement.

In connection with Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness of this Agreement*) of the WIFIA Master 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 Master 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 Master Agreement;
- (b) pursuant to Section 11(a)(ii) of the WIFIA Master Agreement, the Borrower has delivered to the WIFIA Lender copies of (i) the General Ordinance, together with any amendments, supplements, waivers or modifications thereto (but excluding any document that solely provides for the issuance or incurrence of Additional Obligations, hedging Obligations 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 Master Agreement, the aggregate of all funds committed to the development and construction of the Projects under the Master Program as set forth in the Base Case Financial Model and in the Master Program Budget is sufficient to carry out the Master Program, pay all Total Project Costs anticipated for the Master Program and achieve substantial completion for each Project component by its Projected Substantial Completion Date;
- (d) pursuant to Section 11(a)(v)(B) of the WIFIA Master Agreement, the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Projects during their useful lives;

- (e) pursuant to Section 11(a)(v)(C) of the WIFIA Master 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 UEI Number, in each case as set forth on Part A of Schedule I (*Master Program Terms*) to the WIFIA Master 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 Master Agreement, the representations and warranties of the Borrower set forth in the WIFIA Master Agreement and in each other WIFIA Loan Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (g) pursuant to Section 11(a)(v)(E) of the WIFIA Master 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.

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

**THE CITY OF PHILADELPHIA,  
PENNSYLVANIA,**  
by its authorized representative

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

## EXHIBIT B-2

### FORM OF PROJECT CLOSING CERTIFICATE

Reference is made to that certain WIFIA Master Agreement, dated as of January 18, 2023 (the “**WIFIA Master Agreement**”), by and among THE CITY OF PHILADELPHIA, PENNSYLVANIA (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”) that certain WIFIA Loan Agreement, dated as of January 18, 2023 (the “**WIFIA Loan Agreement**”), by and between the Borrower and 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, or if not defined therein, the WIFIA Master Agreement.

In connection with Section 11(b) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*) of the WIFIA Master Agreement and Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*), 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(b)(vi) of the WIFIA Master 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 Master Agreement;
- (b) pursuant to Section 11(b)(ii) of the WIFIA Master Agreement, attached hereto as Annex [●] are copies of each Existing Construction Contract with respect to the Project, together with any amendments, waivers or modifications thereto, and each such document is complete, fully executed, and in full force and effect;
- (c) pursuant to Section 11(b)(iii) of the WIFIA Master Agreement, [no Ordinance Document has been entered into after the Effective Date] [attached hereto as Annex [●] are copies of each Ordinance Document entered into after the Effective Date, and each such document is complete, fully executed and in full force and effect];
- (d) pursuant to Section 11(b)(v)(A) of the WIFIA Master Agreement, the aggregate of all funds committed to the development and construction of the Project as set forth in the Project Budget and the related revised Master Budget, as applicable, are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion for the Project by the Projected Substantial Completion Date;
- (e) pursuant to Section 11(b)(v)(B) of the WIFIA Master Agreement, the Borrower has obtained all Governmental Approvals required to have been obtained as of the WIFIA Loan Agreement Effective Date (i) in connection with the Project and (ii)

to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

- (f) pursuant to Section 11(b)(v)(C) of the WIFIA Master Agreement, (i) the Maximum Principal Amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of the reasonably anticipated Eligible Project Costs for the Project, (ii) the aggregate amount of Eligible Project Costs for the Project previously incurred prior to the WIFIA Loan Agreement Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs for the Project, and (iii) 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 WIFIA Master Agreement), does not exceed eighty percent (80%) of Total Project Costs for the Project;
- (g) pursuant to Section 11(b)(v)(D) of the WIFIA Master 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 [and attached hereto as Annex [●] is a true, accurate and complete copy of the NEPA Determination with respect to the Project (and any supplements thereto), which NEPA Determination is in full force and effect and has not been withdrawn or materially amended];
- (h) pursuant to Section 11(b)(v)(E) of the WIFIA Master Agreement, the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;
- (i) pursuant to Section 11(b)(v)(F) of the WIFIA Master Agreement, the Borrower has maintained (i) the Borrower's FEIN provided to the WIFIA Lender as a condition precedent to the Effective Date, (ii) the Borrower's UEI Number provided to the WIFIA Lender as a condition precedent to the Effective Date, and (iii) an active registration status with the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov));
- (j) pursuant to Section 11(b)(v)(G) of the WIFIA Master Agreement, [the WIFIA CUSIP Number is [\_\_\_]] [the Borrower (i) has maintained the WIFIA CUSIP Number and (ii) [confirms that the expiration date of the WIFIA CUSIP Number is no earlier than the Final Maturity Date] [has extended the expiration date of the WIFIA CUSIP Number to be no earlier than the Final Maturity Date]];
- (k) pursuant to Section 11(b)(v)(H) of the WIFIA Master Agreement, the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the WIFIA Loan Agreement Effective Date, except

to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date [and attached as Annex [●] is an updated version of Schedule III (*Borrower Disclosures*) to the WIFIA Master Agreement necessary to make the corresponding representation and warranty true and complete as of the WIFIA Loan Agreement Effective Date];

- (l) pursuant to Section 11(b)(v)(I) of the WIFIA Master Agreement, the Borrower's Organizational Documents remain in full force and effect, and no amendments or modifications have been made to the Organizational Documents since the Effective Date that have not been delivered to the WIFIA Lender;
- (m) pursuant to Section 11(b)(v)(J) of the WIFIA Master 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 Effective Date;
- (n) pursuant to Section 11(b)(v)(K) of the WIFIA Master Agreement, no Default or Event of Default and no event of default under any other Related Document has occurred and is continuing;
- (o) pursuant to Section 11(b)(vii) of the WIFIA Master Agreement, none of the ratings provided to the WIFIA Lender pursuant to such Section 11(b)(vii) has been reduced to a rating below Investment Grade, revoked, withdrawn or suspended as of the WIFIA Loan Agreement Effective Date; [and]
- (p) [*any other attachments and provision as may apply to the WIFIA Loan Agreement*].

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

**THE CITY OF PHILADELPHIA,  
PENNSYLVANIA,**  
by its authorized representative

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

**ANNEX A TO EXHIBIT B**

**INCUMBENCY CERTIFICATE**

The undersigned certifies that he/she is the [Secretary] of THE CITY OF PHILADELPHIA, PENNSYLVANIA, a city organized and existing under the laws of the Commonwealth of Pennsylvania, (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 [\_\_\_], 20[\_\_\_].

**THE CITY OF PHILADELPHIA,  
PENNSYLVANIA,**  
by its authorized representative

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

## EXHIBIT C

### FORM OF PUBLIC BENEFITS REPORT

Pursuant to [Section 11(b)(ix) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*) and] Part D of Schedule V (*Reporting Requirements*) of the WIFIA Master Agreement (as defined below), THE CITY OF PHILADELPHIA, PENNSYLVANIA (the “**Borrower**”) is providing this Public Benefits Report in connection with the [*Project name*] (WIFIA ID – [\_\_\_\_]). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement dated [\_\_\_\_] (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) days 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:**

[\_\_\_\_].



**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: [Insert name of project] (WIFIA ID – [\_\_\_\_])

Ladies and Gentlemen:

Pursuant to (i) Section 4 (*Disbursement Conditions*) and Schedule IV (*Requisition Procedures*) to the WIFIA Master Agreement, dated as of January 18, 2023 (the “**WIFIA Master Agreement**”), by and between THE CITY OF PHILADELPHIA, PENNSYLVANIA (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”) and (ii) Section 4 (*Disbursement Conditions*) of that certain WIFIA Loan Agreement by and between the Borrower and the WIFIA Lender, dated as of [●] (the “**WIFIA Loan Agreement**”), 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 Master Agreement and 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>                   | [____]               |
| 2. | <b>Borrower name</b>                  | City of Philadelphia |
| 3. | <b>WIFIA Loan ID</b>                  | [____]               |
| 4. | <b>Borrower UEI Number</b>            | [____]               |
| 5. | <b>Borrower FEIN number</b>           | [____]               |
| 6. | <b>Requisition number</b>             | [____]               |
| 7. | <b>Requested Disbursement amount</b>  | [\$[____]]           |
| 8. | <b>Requested date of Disbursement</b> | [____]               |

<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 Master Agreement and in each other WIFIA Loan Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date).
17. The Borrower has delivered all required deliverables under and in compliance with the requirements of Schedule V (*Reporting Requirements*), except as has been otherwise agreed by the WIFIA Lender.

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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.

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 Master 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>3</sup>

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

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

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

[BORROWER],  
by its authorized representative

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

Name:

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

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

<sup>4</sup> If seeking reimbursement for internal costs, enter "Internally financed activities."

<sup>5</sup> Vendor's number indicated on the invoice sent to the Borrower.

<sup>6</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>7</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>8</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.



## 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: [Insert name of project] (WIFIA ID – [\_\_\_\_])

Ladies and Gentlemen:

Pursuant to (i) Part C of Schedule V (*Reporting Requirements*) of the WIFIA Master Agreement, dated as of January 18, 2023 (the “**WIFIA Master Agreement**”), by and between THE CITY OF PHILADELPHIA, PENNSYLVANIA (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”) and (ii) Section 14 (*Covenants*) of that certain WIFIA Loan Agreement by and between the Borrower and the WIFIA Lender, dated as of [●] (the “**WIFIA Loan Agreement**”), 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 Master Agreement and 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:]

---

<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.

| 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> | WIFIA USE ONLY  |       |
|--|-----------------------------|--------------|--------------|----------------|----------------------------|--------------------------------------|-----------------|-------|
|  |                             |              |              |                |                            |                                      | 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 (i) Part C of Schedule V (*Reporting Requirements*) of the WIFIA Master Agreement and (ii) Section 14 (*Covenants*) of the WIFIA Loan Agreement 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 (i) Part C of Schedule V (*Reporting Requirements*) of the WIFIA Master Agreement and (ii) Section 14 (*Covenants*) of the WIFIA Loan Agreement.

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

**THE CITY OF PHILADELPHIA,  
PENNSYLVANIA<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: [*Project name*] (WIFIA ID – [\_\_\_\_])

This Construction Monitoring Report for the period of [*insert relevant quarterly period*] (the “**Quarterly Period**”) is provided pursuant to (i) Part D of Schedule V (*Reporting Requirements*) of the WIFIA Master Agreement, dated as of January 18, 2023 (the “**WIFIA Master Agreement**”), by and between THE CITY OF PHILADELPHIA, PENNSYLVANIA (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”) and (ii) Section 14 (*Covenants*) of that certain WIFIA Loan Agreement by and between the Borrower and the WIFIA Lender, dated as of [●] (the “**WIFIA Loan Agreement**”). Unless otherwise defined herein, all capitalized terms in this Construction Monitoring Report have the meanings assigned to those terms in the WIFIA Master Agreement and the WIFIA Loan Agreement.

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

|  |
|--|
|  |
|--|

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

|  |
|--|
|  |
|--|

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

|  |
|--|
|  |
|--|

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

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

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

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

**THE CITY OF PHILADELPHIA,  
PENNSYLVANIA**

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

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

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



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

**Option 1: Use for individual or combination of sub-projects**

| 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>      |                 |                  |                        |                     |                    |                                      |                                       |                          |                             |                              |

**Option 2: Use for program of sub-projects**

| Project Scope     |                |             |          |                           | Project Schedule |                        |                     |                    |                                      |                                       | Project Costs            |                             |                              |
|-------------------|----------------|-------------|----------|---------------------------|------------------|------------------------|---------------------|--------------------|--------------------------------------|---------------------------------------|--------------------------|-----------------------------|------------------------------|
| Project Component | Complete (Y/N) | Description | Location | Covered by existing NEPA? | 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

<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.

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

## 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:** *[Project Name]* (WIFIA ID – [\_\_\_\_])

Dear Director:

This Notice is provided pursuant to (i) Part E of Schedule V (*Reporting Requirements*) of that certain WIFIA Master Agreement (the “**WIFIA Master Agreement**”), dated as of January 18, 2023 by and between THE CITY OF PHILADELPHIA, PENNSYLVANIA (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through its Administrator (the “**WIFIA Lender**”) and (ii) Section 14 (*Covenants*) of that certain WIFIA Loan Agreement by and between the Borrower and the WIFIA Lender, dated as of [●] (the “**WIFIA Loan Agreement**”).

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

(Signature follows on next page)

**THE CITY OF PHILADELPHIA,  
PENNSYLVANIA**

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 a corporation and body politic organized and existing under the laws of the Commonwealth of Pennsylvania (the “**Commonwealth**”);

(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 Borrower has duly executed and delivered each WIFIA Loan Document to which it is a party and each such WIFIA Loan Document, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as enforcement thereof may be limited by laws relating to bankruptcy or insolvency or other similar laws or legal or equitable principles affecting the enforcement of creditors’ rights generally or general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity);

(d) 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;

(e) 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;

(f) the Borrower is not entitled to claim governmental immunity in any breach of contract action in connection with the WIFIA Master Agreement, any WIFIA Loan Agreement, any WIFIA Bond or any Ordinance Documents; and

(g) 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 each 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 the power under the Constitution and the laws of the Commonwealth of Pennsylvania (the “**Commonwealth**”) to perform its obligations under the General Ordinance, the Supplemental Ordinance, the Bond Committee Determination and the WIFIA Bond, and to enter into and perform the WIFIA Loan Documents.

(b) Under the Constitution and the laws of the Commonwealth, including the First Class City Revenue Bond Act, P.L. 955, Act No. 234 of the General Assembly of the Commonwealth of Pennsylvania, approved October 18, 1972 (the “**Authorizing Act**”), the Borrower is authorized to issue the WIFIA Bond, and the terms of the WIFIA Bond complies with the requirements of the Authorizing Act, the General Ordinance, the Supplemental Ordinance and the Bond Committee Determination.

(c) The purposes for which the WIFIA Bond has been issued are lawful purposes under the Authorizing Act and the General Ordinance.

(d) The General Ordinance and the Supplemental Ordinance have been duly enacted, and the Bond Committee Determination and the Loan Documents have been duly authorized, executed and delivered by the Borrower; and each is a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as the rights created thereunder and the enforcement thereof may be limited by bankruptcy, insolvency, moratorium or other laws or legal or equitable principles affecting the enforcement of creditors’ rights.

(e) The WIFIA Bond has been duly authorized, executed, authenticated, issued and delivered and is the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as enforcement may be limited as described in paragraph (d) above.

(f) Under the Authorizing Act and the General Ordinance, each WIFIA Bond constitutes a special obligation of the Borrower payable solely from Project Revenues and all amounts on deposit in or standing to the credit of the funds and accounts (other than the Rebate Fund) established pursuant to the General Ordinance, together with interest earnings, if any, on amounts in such funds and accounts (other than the Rebate Fund). The WIFIA Bond does not pledge the credit or taxing power or create any debt or charge against the tax or general revenues of the Borrower or create any lien against property of the Borrower other than all amounts on deposit in or standing to the credit of the funds and accounts (other than the Rebate Fund) established pursuant to the General Ordinance, together with interest earnings on amounts in such funds and accounts (other than the Rebate Fund).

(g) each WIFIA Bond constitutes a “**Bond**” as defined under the General Ordinance and ranks *pari passu* in right of payment and right of security with all other Bonds issued under the General Ordinance [and are senior in right of payment and right of security to all Subordinated Bonds issued under the General Ordinance, if any];

(h) all actions by the Borrower that are required for the application of Project Revenues as required under the General Ordinance, the WIFIA Master Agreement and each WIFIA Loan Agreement have been duly and lawfully made;

(i) the Borrower has complied with the requirements of State law to lawfully pledge the Pledged Collateral and use the Project Revenues (excluding subsidies or payments payable by the Federal Government) as required by the terms of the General Ordinance, the WIFIA Master Agreement and each WIFIA Loan Agreement; and

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

## EXHIBIT I

### FORM OF CERTIFICATE OF BOND REGISTRAR/FISCAL AGENT

[THE CITY OF PHILADELPHIA, PENNSYLVANIA]

With respect to the WIFIA Bond,  
[ ] Project  
(WIFIA ID – [ ])

The undersigned, [ ] (the “*Bond Registrar/Fiscal Agent*”), by its duly appointed, qualified and authorized representative below, certifies with respect to the above referenced bond (the “*WIFIA Bond*”) dated as of [ ], 20[ ], as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the General Ordinance (as defined below)):

1. That the Bond Registrar/Fiscal Agent is a national association duly organized and validly existing under the laws of the United States of America.

2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Bond Registrar/Fiscal Agent of its duties and obligations under the documents pertaining to the issuance of the WIFIA Bond in accordance with the requirements set forth pursuant to the General Ordinance [and Fiscal Agent Agreement] have been obtained by the Bond Registrar/Fiscal Agent and are in full force and effect.

3. That the documents pertaining to the issuance of the WIFIA Bond to which the Bond Registrar/Fiscal Agent is a party were executed by the Bond Registrar/Fiscal Agent and the WIFIA Bond was authenticated on behalf of the Bond Registrar/Fiscal Agent by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the WIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the WIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.

4. That the undersigned has the power and authority to act as Bond Registrar/Fiscal Agent and accept the trusts conveyed to it under the General Ordinance (“*Trusts*”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is not in violation of any provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.

5. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Bond Registrar/Fiscal Agent pursuant to Section 5.04 of that certain Restated General Water and Wastewater Revenue Bond Ordinance of 1989, as approved by the Mayor of the City of Philadelphia, Pennsylvania, on June 24, 1993, and as supplemented and amended from time to time (the “*General Ordinance*”).



6. That receipt is also acknowledged of that certain WIFIA Loan Agreement, dated as of [\_\_\_], 20[\_\_\_] (the “**WIFIA Loan Agreement**”), between the City of Philadelphia, Pennsylvania and the United States Environmental Protection Agency, acting by and through the Administrator.

7. That the Bond Registrar/Fiscal Agent accepts its appointment and agrees to perform the duties and responsibilities of Bond Registrar/Fiscal Agent for and in respect of the WIFIA Bond as set forth in the General Ordinance, the Fiscal Agent Agreement and the WIFIA Loan Agreement, including from time to time redeeming all or a portion of the WIFIA Bond as provided in Article VI of the General Ordinance. In accepting such duties and responsibilities, the Bond Registrar/Fiscal Agent shall be entitled to all of the privileges, immunities, rights and protections set forth in the Fiscal Agent Agreement.

Dated: [\_\_\_], 20[\_\_\_]

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

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

**EXHIBIT J**

**FORM OF WIFIA LOAN AGREEMENT**

*[See attached]*

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

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**WIFIA LOAN AGREEMENT**

**For Up to \$[\_\_\_\_\_]**

**With**

**THE CITY OF PHILADELPHIA, PENNSYLVANIA**

**For the**

**CITY OF PHILADELPHIA FIRST WATER AND  
WASTEWATER SYSTEM IMPROVEMENTS (PHASE [\_\_])  
(WIFIA – [\_\_\_\_\_])**

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

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Exhibit J

## WIFIA LOAN AGREEMENT

THIS **WIFIA LOAN AGREEMENT** (this “**Agreement**”), dated as of [\_\_\_\_], is by and between the Borrower (as defined in the WIFIA Master Agreement) 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 and the WIFIA Lender entered into or (concurrently with the execution and delivery of this Agreement) are entering into that certain WIFIA Master Agreement, dated as of January 18, 2023 (the “**WIFIA Master Agreement**”), pursuant to which the parties thereto have set forth certain common terms and conditions applicable to each prospective WIFIA financing;

WHEREAS, pursuant to the Application (as defined in the WIFIA Master Agreement), 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 in the WIFIA Master Agreement) for the Project (as defined herein);

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

WHEREAS, based on the Application, the WIFIA Master Agreement and the representations, warranties and covenants set forth herein and therein, the WIFIA Lender proposes to make funding available to the Borrower through the issuance of the WIFIA Bond (as defined herein) to be issued by the Borrower, upon the terms and conditions set forth herein and in the WIFIA Master Agreement;

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement, the WIFIA Bond in accordance with the terms and provisions of this Agreement, the WIFIA Master Agreement and 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, the WIFIA Master Agreement, 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 38. Definitions. Capitalized terms used in this Agreement (including in the recitals hereto) and not otherwise defined herein shall have the meaning assigned to such term in the WIFIA Master Agreement. Any term used in this Agreement (including in the recitals hereto) 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. In addition, as used in this Agreement (including in the recitals hereto), the following terms have the following meanings:

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

“**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.

“**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*) of the WIFIA Master Agreement.

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

“**Existing Construction Contract**” means, with respect to the Project, each Construction Contract of the Borrower in effect as of the applicable WIFIA Loan Agreement Effective Date, as set forth in **Part C of Schedule II** (*Project Details*).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**WIFIA Loan Disbursement Schedule**” means the disbursement schedule set forth in **Schedule III** (*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(c) (*Disbursement Conditions*) of the WIFIA Master Agreement.

Section 39. Interpretation.

(a) Except as otherwise expressly provided herein, the rules of interpretation set forth in Section 2 of the WIFIA Master Agreement shall apply herein, mutatis mutandis, as if set out in this Agreement in full (and as if each reference therein to “this Agreement” were a reference to this Agreement, and each reference to any “WIFIA Loan” or any “WIFIA Bond” were a reference, respectively, to the WIFIA Loan or the WIFIA Bond as such terms are defined in this Agreement).

(b) This Agreement is one of the WIFIA Loan Agreements referenced in the WIFIA Master Agreement.

## **ARTICLE II THE WIFIA LOAN**

Section 40. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed the Maximum Principal Amount. WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) hereof and Section 11(c) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Master Agreement.

Section 41. Disbursement Conditions. The WIFIA Loan shall be disbursed in accordance with Section 4 (*Disbursement Conditions*) of the WIFIA Master Agreement.

Section 42. [Reserved].

Section 43. Interest Rate. The Borrower shall pay interest on the applicable WIFIA Loan Balance at the WIFIA Interest Rate; provided, that, interest will accrue and be computed on the WIFIA Loan Balance from time to time pursuant to, and otherwise in accordance with, Section 6 (*Interest Rate*) of the WIFIA Master Agreement.

Section 44. Capitalized Interest Period. With respect to the Project, payment of the principal of or interest on the WIFIA Loan is not 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.

Section 45. Repayments.

(a) Payment of WIFIA Debt Service. Payments of WIFIA Debt Service shall be made by the Borrower on each Payment Date occurring on or after the First Payment Date as provided in Section 8(a) (Payment of Principal and Interest – Payment of WIFIA Debt Service) of the WIFIA Master Agreement.

(b) WIFIA Bond. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the WIFIA Loan Agreement Effective Date, the WIFIA Bond substantially in the form of Exhibit A (*Form of WIFIA Bond*) to the Master Agreement, having a principal amount not to exceed the Maximum Principal Amount.

Section 46. Prepayment. The Borrower may prepay the WIFIA Loan in accordance with Section 9(b) (Prepayment – Optional Prepayments) of the WIFIA Master Agreement.

Section 47. Fees and Expenses.

The Borrower shall pay to the WIFIA Lender, in each case pursuant to and in accordance with Section 10 (*Fees and Expenses*) of the WIFIA Master Agreement:

- (i) a Servicing Set-Up Fee;
- (ii) a Construction Period Servicing Fee;
- (iii) an Operating Period Servicing Fee; and
- (iv) any other applicable fees, costs, charges and expenses pursuant to, and otherwise in accordance with, Section 10 (*Fees and Expenses*) of the WIFIA Master Agreement.

### **ARTICLE III CONDITIONS PRECEDENT**

Section 48. Conditions Precedent.

(a) Conditions Precedent to Effectiveness of this Agreement. The effectiveness of this Agreement is subject to the satisfaction, or the WIFIA Lender's written waiver, as determined by the WIFIA Lender in its sole discretion, of each of the conditions precedent to the effectiveness of this Agreement set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*) of the WIFIA Master Agreement (each of which is incorporated by reference herein, *mutatis mutandis*, as if set out in this Agreement in full and as if each reference therein to any "Project," any "WIFIA Loan," any "WIFIA Bond," or any "WIFIA Loan Agreement" were a reference, respectively, to the Project, the WIFIA Loan, the WIFIA Bond, or this Agreement (as such terms are defined in this Agreement)).

(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 conditions precedent with respect to the WIFIA Loan set forth in Section 11(c) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Master Agreement (each of which is incorporated by reference herein, *mutatis mutandis*, as if set out in this Agreement in full and as if each reference therein to any "WIFIA Loan" or any "WIFIA Loan Agreement" were a reference, respectively, to the WIFIA Loan or this Agreement (as such terms are defined in this Agreement)) has been satisfied or waived in writing by the WIFIA Lender in its sole discretion.

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

Section 49. Representations and Warranties of Borrower. The representations and warranties set out in Section 12 (*Representations and Warranties of Borrower*) of the WIFIA Master Agreement shall be made on the WIFIA Loan Agreement Effective Date and as of each date on which any disbursement of the WIFIA Loan is requested or made, except as otherwise expressly provided in Section 12 of the WIFIA Master Agreement. Each such representation and warranty is incorporated by reference herein, *mutatis mutandis*, for the benefit of the WIFIA Lender as if set out in this Agreement in full (and as if each reference therein to "this Agreement" were a reference to this Agreement and as if each reference therein to (a) any "Project" or the "Master Program", (b) any "WIFIA Loan" or (c) any "WIFIA Bond" were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Bond (as such terms are defined in this Agreement)). The Borrower acknowledges that it makes such representations and warranties with the intention of inducing the WIFIA Lender to enter into this Agreement and the other WIFIA Loan Documents and to advance the WIFIA Loan to the Borrower, and that the WIFIA Lender has entered into this Agreement and the other WIFIA Loan Documents on the basis of, and in full reliance on, each such representation and warranty.

Section 50. Representations and Warranties of WIFIA Lender. The representations and warranties set out in Section 13 (*Representations and Warranties of WIFIA Lender*) of the WIFIA

Master Agreement shall be made on the WIFIA Loan Agreement Effective Date, *mutatis mutandis*, for the benefit of the Borrower as if set out in this Agreement in full (and as if each reference therein to any “WIFIA Loan” were a reference to the WIFIA Loan (as such term is defined in this Agreement)).

## **ARTICLE V COVENANTS**

Section 51. Covenants. The Borrower covenants and agrees until the date the WIFIA Bond and all of the obligations of the Borrower under this Agreement and each other WIFIA Loan Document with respect to the WIFIA Loan or the Project (other than contingent indemnity obligations) have been irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make Disbursements under this Agreement to the Borrower, unless the WIFIA Lender waives compliance in writing, to comply with each of the covenants set forth in the WIFIA Master Agreement, including Section 14 (*Affirmative Covenants*), Section 15 (*Negative Covenants*) and Section 16 (*Reporting Requirements*) of the WIFIA Master Agreement, which covenants are incorporated by reference herein *mutatis mutandis* as if fully set forth herein (and as if each reference therein to “this Agreement” were a reference to this Agreement and as if each reference therein to (a) any “Project” or the “Master Program,” (b) any “WIFIA Loan” or (c) any “WIFIA Bond” were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Bond (as such terms are defined in this Agreement)).

Section 52. [Reserved].

Section 53. [Reserved].

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

Section 54. Events of Default and Remedies.

(a) Each Event of Default set out in Section 17 (*Events of Default and Remedies*) of the WIFIA Master Agreement shall constitute an Event of Default under this Agreement, except as otherwise expressly provided in Section 17 (*Events of Default and Remedies*) of the WIFIA Master Agreement.

(b) Upon the occurrence of any Event of Default hereunder, the WIFIA Lender, by written notice to the Borrower shall have each of the rights and remedies to which it is entitled as provided in and with the same effect as described in Section 17 (*Events of Default and Remedies*) of the WIFIA Master Agreement.

## **ARTICLE VII MISCELLANEOUS**

Section 55. 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 56. Effectiveness. This Agreement shall be effective on the WIFIA Loan Effective Date.

Section 57. 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, this Agreement shall terminate, and the WIFIA Lender shall surrender the WIFIA Bond to the Borrower in accordance with Section 9(b) (*General Prepayment Instructions*) of the WIFIA Master Agreement; provided that the indemnification requirements of Section 32 (*Indemnification*) of the WIFIA Master Agreement, the reporting and record keeping requirements of Section 14(o) (*Access; Records*) of the WIFIA Master Agreement, in each case, as incorporated herein, and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such Sections.

Section 58. Miscellaneous. Article VII (*Miscellaneous*) of the WIFIA Master Agreement (other than Sections 25 (*Governing Law*), 34 (*Effectiveness*) and 35 (*Release of Lien*) of the WIFIA Master Agreement) shall be incorporated in this Agreement, *mutatis mutandis*, as if set out in this Agreement in full (and as if each reference therein to “this Agreement” were a reference to this Agreement and as if each reference therein to (a) any “Project” or the “Master Program”, (b) any “WIFIA Loan” or (c) any “WIFIA Bond” were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Bond (as such terms are defined in this Agreement)).

[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 CITY OF PHILADELPHIA,  
PENNSYLVANIA**  
by its authorized representative

By: \_\_\_\_\_  
Name: Rob Dubow  
Title: Director of Finance

**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><i>PART A. Key Borrower Metrics</i></b> |                                       |  |
| 44.  | WIFIA Loan Agreement Effective Date   | [_____]  |
| 45.  | WIFIA CUSIP Number                    | [_____], as the CUSIP number with respect to the WIFIA Loan for purposes of monitoring through EMMA.   |
| <b><i>PART B. Key Project Metrics</i></b>  |                                       |  |
| 46.  | Project                               | [_____]  |
| 47.  | Project Location                      | Philadelphia, Pennsylvania.  |
| 48.  | Projected Substantial Completion Date | [_____], as such date may be adjusted in accordance with <b>Part C of Schedule V</b> ( <i>Reporting Requirements</i> ) of the WIFIA Master Agreement.                        |
| 49.  | Development Default Date              | The date that falls 24 months after the Projected Substantial Completion Date.   |
| 50.  | NEPA Determination                    | [Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by EPA on [___], 20[___] in accordance with NEPA.                       |
| <b><i>PART C. Key Loan Metrics</i></b>     |                                       |  |
| 51.  | Maximum Principal Amount              | Principal amount up to \$[_____] (excluding interest that is capitalized in accordance with this Agreement).   |
| 52.  | WIFIA Interest Rate                   | [___]% per annum.  |
| 53.  | Default Rate                          | Interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 200 basis points.   |
| 54.  | Interest Payment Date                 | Each April 1 and October 1, beginning on the Debt Service Payment Commencement Date.   |
| 55.  | Capitalized Interest Period           | The period from (and including) the first Disbursement to (but excluding) the date that is six (6) months prior to the first Payment Date, subject to earlier termination as |



| No.   | Item                                      | WIFIA Loan Specific Term   |
|---|---|--|
|   |   | set forth in Section 8(a)(iii) ( <i>Payment of WIFIA Debt Service</i> ) of the WIFIA Master Agreement.   |
| 56.   | Interest Only Period                      | [The period commencing from (and including) the Debt Service Payment Commencement Date and ending on [____] (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).]   |
| 57.   | Principal Payment Date                    | Each April 1, beginning on [____].   |
| 58.   | Final Maturity Date                       | The earliest of (a) [____], (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. |
| <b>PART D. [RESERVED]</b>                     |   |  |
| <b>PART E. Other Key WIFIA Loan Documents</b> |   |  |
| 59.   | 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> ) to the WIFIA Master Agreement.   |
| 60.   | WIFIA Term Sheet                          | WIFIA term sheet, dated as of the WIFIA Loan Agreement Effective Date, between the Borrower and the WIFIA Lender.  |
| <b>PART F. Fees</b>                           |   |  |
| 61.   | Servicing Set-Up Fee                      | A servicing set-up fee equal to \$[____].  |
| 62.   | Construction Period Servicing Fee         | An annual construction period servicing fee equal to \$[____].   |
| 63.   | Initial Construction Period Servicing Fee | The initial Construction Period Servicing Fee in a pro-rated amount equal to \$[____].   |
| 64.   | Operating Period Servicing Fee            | An annual operating period servicing fee equal to [____].  |

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

**PART A. Project Budget.**

| <b>SOURCES OF FUNDS</b>             | <b>AMOUNT (\$ USD)</b> |  | <b>PERCENTAGE (%)</b> |
|-------------------------------------|------------------------|--|-----------------------|
| WIFIA                               |                        |  |                       |
| Revenue Bonds                       |                        |  |                       |
| Cash                                |                        |  |                       |
| <b>Total Sources of Funds</b>       |                        |  |                       |
| <b>USES OF FUNDS</b>                | <b>AMOUNT (\$ USD)</b> |  | <b>PERCENTAGE (%)</b> |
| Construction                        |                        |  |                       |
| Construction Contingency            |                        |  |                       |
| Inflation Contingency               |                        |  |                       |
| Financing Costs                     |                        |  |                       |
| <b>Total Uses of Funds</b>          |                        |  |                       |
| <b>Total Eligible Project Costs</b> |                        |  |                       |
| <b>Total Project Costs</b>          |                        |  |                       |

**PART B. Construction Schedule.**

Projected Substantial Completion Date: [\_\_\_\_\_]

| <b>PROJECT ELEMENT</b> | <b>DESIGN COMPLETION</b> | <b>CONSTRUCTION START</b> | <b>CONSTRUCTION END</b> |
|------------------------|--------------------------|---------------------------|-------------------------|
|                        |                          |                           |                         |
|                        |                          |                           |                         |
|                        |                          |                           |                         |
|                        |                          |                           |                         |
|                        |                          |                           |                         |
|                        |                          |                           |                         |
|                        |                          |                           |                         |
|                        |                          |                           |                         |
|                        |                          |                           |                         |
|                        |                          |                           |                         |

**PART C. Existing Construction Contracts.**

| <b>Contract Name</b> | <b>Effective Date</b> | <b>Amount</b> | <b>Parties</b> | <b>Description</b> |
|----------------------|-----------------------|---------------|----------------|--------------------|
|                      |                       |               |                |                    |
|                      |                       |               |                |                    |
|                      |                       |               |                |                    |

**PART D. Project Description.**

The Project is comprised of [\_\_\_\_\_]

|     | <b>Project Location</b> |
|-----|-------------------------|
| 1.  |                         |
| 2.  |                         |
| 3.  |                         |
| 4.  |                         |
| 5.  |                         |
| 6.  |                         |
| 7.  |                         |
| 8.  |                         |
| 9.  |                         |
| 10. |                         |

**SCHEDULE III**

**WIFIA LOAN AMORTIZATION SCHEDULE**

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

**EXHIBIT K**  
**FORM OF WIFIA LOAN REQUEST**

*[Letterhead of Borrower]*

[Date]<sup>18</sup>

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

**Project:** [●] Project (WIFIA – *[insert loan number]*)

Dear Director:

This loan request is provided pursuant to Section 4(a) (*Disbursement Conditions*) of that certain WIFIA Master Agreement, dated as of January 18, 2023 (the “**WIFIA Master Agreement**”), by and between THE CITY OF PHILADELPHIA, PENNSYLVANIA (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 loan request have the meanings assigned to those terms in the WIFIA Master Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby request that the WIFIA Lender, in accordance with, and subject to the terms and conditions of, the WIFIA Master Agreement, enter into a WIFIA Loan Agreement and related WIFIA Loan Documents with respect to [●] Project (the “**Project**”).

- (a) The Project consists of [*describe the Project*].
- (b) Attached hereto as Annex A is the most recent [Updated Financial Model] [financial plan] delivered to the WIFIA Lender.
- (c) [*Such additional information relating to the Project as may be requested by the WIFIA Lender.*]

**THE CITY OF PHILADELPHIA,  
PENNSYLVANIA**

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<sup>18</sup> To be dated no later than 180 days prior to the end of the Master Availability Period.

by its authorized representative

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

Name:

Title:

**ANNEX A TO EXHIBIT K**  
**[UPDATED FINANCIAL MODEL] [FINANCIAL PLAN]**