



Santa Clara Valley Water District Public Facilities Financing Corporation Meeting

HQ Boardroom
5700 Almaden Expressway
San Jose, CA 95118

Alternative Meeting Location:
40 Presidential Drive, Simi Valley, CA 93065

SPECIAL MEETING AGENDA

**Tuesday, December 6, 2022
1:00 PM**

District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.

SANTA CLARA VALLEY WATER
DISTRICT
PUBLIC FACILITIES FINANCE
CORPORATION

Members:
David Vanni, President
Steve M. Mullen, Vice President
Dean Chu
Spencer Horowitz

Carolyn M. Bauer **Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.**

**Santa Clara Valley Water District
Public Facilities Financing Corporation**

**SPECIAL MEETING
AGENDA**

Tuesday, December 6, 2022

1:00 PM

HQ Boardroom

*****IMPORTANT NOTICES AND PARTICIPATION INSTRUCTIONS*****

Santa Clara Valley Water District (Valley Water) Board of Directors/Board Committee meetings are held as a “hybrid” meetings, conducted in-person as well as by telecommunication, and is compliant with the provisions of the Ralph M. Brown Act.

To maximize public safety while still maintaining transparency and public access, members of the public have an option to participate by teleconference/video conference or attend in-person. To observe and participate in the meeting by teleconference/video conference, please see the meeting link located at the top of the agenda. If attending in-person, you are required to comply with **Ordinance 22-03 - AN ORDINANCE OF THE SANTA CLARA VALLEY WATER DISTRICT SPECIFYING RULES OF DECORUM FOR PARTICIPATION IN BOARD AND COMMITTEE MEETINGS** located at <https://s3.us-west-2.amazonaws.com/valleywater.org.if-us-west-2/f2-live/s3fs-public/Ord.pdf>

In accordance with the requirements of Gov. Code Section 54954.3(a), members of the public wishing to address the Board/Committee at a video conferenced meeting, during public comment or on any item listed on the agenda, should use the “Raise Hand” tool located in the Zoom meeting link listed on the agenda, at the time the item is called. Speakers will be acknowledged by the Board Chair in the order requests are received and granted speaking access to address the Board.

- Members of the Public may test their connection to Zoom Meetings at: <https://zoom.us/test>
- Members of the Public are encouraged to review our overview on joining Valley Water Board Meetings at: <https://www.youtube.com/watch?v=TojJpYCxXm0>

Valley Water, in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in Valley Water Board of Directors/Board Committee meetings to please contact the Clerk of the Board’s office at (408) 630-2711, at least 3 business days before the scheduled meeting to ensure that Valley Water may assist you.

This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Sections 54950 et. seq. and has not been prepared with a view to informing an investment decision in any of Valley Water’s bonds, notes or other obligations. Any projections, plans or other forward-looking statements included in the information in this agenda are subject to a variety of

uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by Valley Water on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at <https://emma.msrb.org/> and <https://www.valleywater.org/how-we-operate/financebudget/investor-relations>, respectively.

Under the Brown Act, members of the public are not required to provide identifying information in order to attend public meetings. Through the link below, the Zoom webinar program requests entry of a name and email address, and Valley Water is unable to modify this requirement. Members of the public not wishing to provide such identifying information are encouraged to enter "Anonymous" or some other reference under name and to enter a fictional email address (e.g., attendee@valleywater.org) in lieu of their actual address. Inputting such values will not impact your ability to access the meeting through Zoom.

Join Zoom Meeting:

<https://valleywater.zoom.us/j/84058499422>

Webinar ID: 840 5849 9422

Join by Phone:

1 (669) 9009128, 84058499422#

Alternative Meeting Location:

40 Presidential Dr, Simi Valley, CA 93065

1. CALL TO ORDER:

1.1. Roll Call.

2. TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT ON THE AGENDA.

Notice to the Public: Members of the public who wish to address the Committee on any item not listed on the agenda should access the "Raise Hand" tool located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Committee Chair in order requests are received and granted speaking access to address the Committee. Speakers comments should be limited to three minutes or as set by the Chair. The law does not permit Committee action on, or extended discussion of, any item not on the agenda except under special circumstances. If Committee action is requested, the matter may be placed on a future agenda. All comments that require a response will be referred to staff for a reply in writing. The Committee may take action on any item of business appearing on the posted agenda.

3. APPROVAL OF MINUTES:

3.1. Approval of Minutes. [22-1390](#)

Recommendation: **RECOMMENDATION:**

Approve the October 28, 22, Minutes.

Attachments: [Attachment 1: October 28, 2022, Minutes](#)

4. REGULAR AGENDA:

4.1. Elect Public Facilities Financing Corporation Board of Director Vice President. [22-1391](#)

Recommendation: **RECOMMENDATION:**

Nominate and elect a Board Vice President.

4.2. Adopt a Resolution of the Board of Directors of the Santa Clara Valley Water District Public Facilities Financing Corporation Authorizing the Execution and Delivery of Water Infrastructure Finance and Innovation Act (WIFIA) Master Agreement, WIFIA Loan Agreements, WIFIA Term Sheets and WIFIA Installment Purchase Agreements with Respect to the Water Utility and Authorizing Certain Actions in Connection Therewith, to obtain WIFIA Loans of Up to Two Billion Five Hundred Million Dollars (\$2,500,000,000) for certain Water Utility Enterprise Projects

22-1336

Recommendation: **RECOMMENDATION:**

- A. Adopt a Resolution authorizing the EXECUTION AND DELIVERY OF WIFIA MASTER AGREEMENT, WIFIA LOAN AGREEMENTS, WIFIA TERM SHEETS AND WIFIA INSTALLMENT PURCHASE AGREEMENTS WITH RESPECT TO THE WATER UTILITY AND authorizing certain actions in connection therewith, to obtain WIFIA loans for up to \$2.5 billion dollars for certain Water Utility Projects; and
- B. Authorizing President, Vice President, Chief Executive Officer or the Chief Financial Officer (or any acting or interims of such positions) and the Secretary (each an "Authorized Officer"), District Counsel, and the Clerk of the Board to execute and deliver any and all documents necessary to consummate the execution and delivery of all required WIFIA Loan Program documents

Attachments:

[Attachment 1: Resolution](#)
[Attachment 2: PowerPoint](#)
[Attachment 3: WIFIA Loan Program Information.pdf](#)
[Attachment 4: WU Installment Purchase Agreement](#)
[Attachment 5a: WU WIFIA Master Agreement](#)
[Attachment 5b: WU WIFIA Loan Agreement](#)
[Attachment 5b: WU WIFIA Loan Agreement](#)

5. ADJOURN

Santa Clara Valley Water District



File No.: 22-1390

Agenda Date: 12/6/2022

Item No.: 3.1.

 Valley Water <small>SANTA CLARA VALLEY WATER DISTRICT</small>	SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION	
	Meeting Date:	12/06/22
	Item No.	3.1
	Unclassified Manager:	Michele King

SUBJECT:

Approval of Minutes.

RECOMMENDATION:

Approve the October 28, 22, Minutes.

SUMMARY:

A summary of Public Facilities Financing Corporation (PFFC) discussions, and details of all actions taken during all open and public meetings is transcribed and submitted for review and approval.

Upon approval, minutes transcripts are finalized and entered into the District's historical records archives and serve as historical records of the PFFC meetings.

ATTACHMENTS:

Attachment 1: October 28, 2022, Minutes

DRAFT MINUTES
SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING CORPORATION
October 28, 2022
(Paragraph numbers coincide with agenda item numbers)

A Regular Meeting of the Santa Clara Valley Water District Public Facilities Financing Corporation (PFFC) was held at 3:00 p.m. on October 28, 2022, at 5750 Almaden Expressway, San Jose, California.

1.1 Roll Call: PFFC Board of Director members in attendance were Carolyn Bauer, Dean Chu, and Steve Mullen, constituting a quorum. Director Spencer Horowitz was absent.

PFFC Corporate Officer present via teleconference: Michele King, Corporate Secretary.

District staff present: Aaron Baker, Carlos Orellana, Steve Peters, Charlene Sun, Darin Taylor, and Tina Yoke.

Outside Counsel Present: Mr. Doug Brown, Bond Counsel, Stradling, Yocca Carlson and Rauth, and Mr. Ed Soong, Public Resources Advisory Group.

Santa Clara Valley Water District Board Members present: Barbara Keegan, Director District 2, and Nai Hsueh, Director District 5.

2.1 Time Open for Public Comment on Any Subject Not on the Agenda: There was no one present who wished to speak.

3.1 Approval of Minutes of November 2, 2021, PFFC Meeting. It was moved by Director Bauer, seconded by Director Chu, and unanimously carried, that the November 2, 2021, minutes be approved as presented.

4.1 Elect Public Facilities Financing Corporation Board of Director President. Vice President Mullen opened the nomination process for PFFC President. It was moved by Director Chu to nominate Director Mullen, seconded by Director Bauer, and unanimously carried that Director Mullen be elected PFFC President.

4.2 Resolution of the Board of Directors of the Santa Clara Valley Water District Public Facilities Financing Corporation Authorizing the Execution and Delivery of Water Infrastructure Finance and Innovation Act (WIFIA) Master Agreements, WIFIA Loan Agreement, WIFIA Term Sheets and WIFIA Installment Purchase Agreements with Respect to the Valley Water Safe, Clean Water and Natural Flood Protection Program and Authorizing Certain Acts In Connection Therewith, to Obtain Loans for Up to One Hundred Sixty Five Million Dollars (\$165,000,000) for certain Safe, Clean Water and Natural Flood Protection Program Projects. Charlene Sun, Treasury and Debt Manager, reviewed the information on this item per the agenda memo and Attachment 2. Staff and outside counsel answered questions presented by the Directors.

It was moved by Director Chu, seconded by Director Bauer, and unanimously approved by roll call vote, to adopt Resolution 22-02 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION AUTHORIZING THE EXECUTION AND DELIVERY OF WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) MASTER AGREEMENTS, WIFIA LOAN AGREEMENT, WIFIA TERM SHEETS AND WIFIA INSTALLMENT PURCHASE AGREEMENTS WITH RESPECT TO THE VALLEY WATER SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM AND AUTHORIZING CERTAIN ACTS IN CONNECTION THEREWITH, TO OBTAIN LOANS FOR UP TO ONE HUNDRED SIXTY FIVE MILLION DOLLARS (\$165,000,000) FOR CERTAIN SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM PROJECTS, and Authorizing President, Vice President, Chief Executive Officer or the Chief Financial Officer (or any acting or interims of such positions) and the Secretary (each an "Authorized Officer"), District Counsel, and the Clerk of the Board to execute and deliver any and all documents necessary to consummate the execution and delivery of all required WIFIA Loan Program documents.

4.3 Resolution of the Board of Directors of the Santa Clara Valley Water District Public Facilities Financing Corporation Authorizing the Issuance of Not To Exceed \$165 million Interim Obligations and Revenue Certificates of Participation, Approving the Execution and Delivery of Certain Documents and Authorizing Certain Acts In Connection Therewith for the Safe, Clean Water Program; Resolution Authorizing the Issuance of Not To Exceed \$408 million Interim Obligations and Revenue Certificates of Participation, Approving the Execution and Delivery of Certain Documents and Authorizing Certain Acts In Connection Therewith for the Water Utility Program. Charlene Sun, Treasury and Debt Manager, reviewed the information on this item per the agenda memo and Attachment 2. Staff and outside counsel answered questions presented by the Directors.

It was moved by Director Chu, seconded by Director Bauer, and unanimously approved by roll call vote, to adopt Resolution 22-03 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$165 MILLION INTERIM OBLIGATIONS AND REVENUE CERTIFICATES OF PARTICIPATION, APPROVING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS AND AUTHORIZING CERTAIN ACTS IN CONNECTION THEREWITH for the Safe, Clean Water Program; to adopt Resolution 22-02 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$408 MILLION INTERIM OBLIGATIONS AND REVENUE CERTIFICATES OF PARTICIPATION, APPROVING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS AND AUTHORIZING CERTAIN ACTS IN CONNECTION THEREWITH for the Water Utility Program; and Authorizing President, Vice President, Chief Executive Officer/General Manager or the Chief Financial Officer (or any acting or interims of such positions) and the Secretary (each an "Authorized Officer"), District Counsel, and the Clerk of the Board to execute and deliver any and all documents necessary to consummate the execution and delivery of all required financing documents.

5. *Adjourn:* It was moved by Director Bauer, seconded by Director Chu, and unanimously approved to adjourn the meeting at approximately 3:50 p.m.

Michele L. King, CMC
Corporate Secretary, PFFC

Date:



Santa Clara Valley Water District

File No.: 22-1391

Agenda Date: 12/6/2022

Item No.: 4.1.

 Valley Water SANTA CLARA VALLEY WATER DISTRICT	SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION	
	Meeting Date:	12/06/22
	Item No.	4.1
	Unclassified Manager:	M. King

SUBJECT:

Elect Public Facilities Financing Corporation Board of Director Vice President.

RECOMMENDATION:

Nominate and elect a Board Vice President.

SUMMARY:

Due to the election of Steve Mullen, former Vice President, to the Public Facilities Financing Corporation (PFFC) Board President on October 28, 2022, the Board must elect a new Vice President.

According to the PFFC By Laws the Vice President has the following responsibilities:

At the request of the President or in case of his or her absence or disability, the Vice President shall perform all duties of the President and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the President. In addition, the Vice President shall perform such other duties as may from time to time be assigned to that office by the Board of Directors or the President.

ATTACHMENTS:

None.



Santa Clara Valley Water District

File No.: 22-1336

Agenda Date: 12/6/2022

Item No.: 4.2.

 Valley Water SANTA CLARA VALLEY WATER DISTRICT	SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION	
	Meeting Date:	12/06/22
	Item No.	4.2
	Unclassified Manager:	D. Taylor

SUBJECT:

Adopt a Resolution of the Board of Directors of the Santa Clara Valley Water District Public Facilities Financing Corporation Authorizing the Execution and Delivery of Water Infrastructure Finance and Innovation Act (WIFIA) Master Agreement, WIFIA Loan Agreements, WIFIA Term Sheets and WIFIA Installment Purchase Agreements with Respect to the Water Utility and Authorizing Certain Actions in Connection Therewith, to obtain WIFIA Loans of Up to Two Billion Five Hundred Million Dollars (\$2,500,000,000) for certain Water Utility Enterprise Projects

RECOMMENDATION:

- A. Adopt a Resolution AUTHORIZING THE EXECUTION AND DELIVERY OF WIFIA MASTER AGREEMENT, WIFIA LOAN AGREEMENTS, WIFIA TERM SHEETS AND WIFIA INSTALLMENT PURCHASE AGREEMENTS WITH RESPECT TO THE WATER UTILITY AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH, to obtain WIFIA loans for up to \$2.5 billion dollars for certain Water Utility Projects; and
- B. Authorizing President, Vice President, Chief Executive Officer or the Chief Financial Officer (or any acting or interims of such positions) and the Secretary (each an "Authorized Officer"), District Counsel, and the Clerk of the Board to execute and deliver any and all documents necessary to consummate the execution and delivery of all required WIFIA Loan Program documents

SUMMARY:

Board approval of staff recommendations will allow the Santa Clara Valley Water District (Valley Water) to implement the WIFIA Loan Program to provide up to \$2.5 billion to fund certain Water Utility (WU) capital projects, including the Pacheco Reservoir Expansion Project, Anderson Dam Seismic Retrofit and Coyote Percolation Dam Projects (Anderson Projects)(together, the “WU Projects”).

Board approval of the Resolution (Attachment 1) would authorize Valley Water to enter into WU WIFIA Master Agreement and execute up to ten (10) WIFIA Loans over an eight-year period after the execution date of the WIFIA Master Agreement. The total WIFIA Loan amount for all loans executed under the WIFIA Master Agreement shall not exceed \$2.5 billion for the WU Projects. A PowerPoint Presentation summarizing the WU WIFIA Loans is provided in Attachment 2.

Approval of the WIFIA Master Agreement and related agreements does not commit Valley Water to a definite course of action with regard to any particular project and does not limit Valley Water in exercising any discretion following California Environmental Quality Act (CEQA) review of the project, including (i) considering other feasible alternatives and mitigation measures to avoid or minimize project impacts, (ii) making modifications deemed necessary to reduce project impacts, or (iii) determining not to proceed with one or more component of a project.

Approval of the WIFIA Master Agreement and related agreements does not obligate Valley Water to approve the construction of any of the projects and WIFIA loan funds will not be drawn to fund construction costs until after the Board approves the construction contract of each subject project. To remain eligible for WIFIA loan funding, the bid plans and specifications and construction contracts for each subject project must include the federal compliance requirements outlined in Attachment 3.

WIFIA Loan Program

The WIFIA Loan Program is administered by the United States Environmental Protection Agency (EPA) and provides a low-cost source of financing for up to 49% of eligible project costs. The interest rate for each WIFIA Loan is set at each loan closing and is equal to the US Treasury rate of a similar maturity plus 0.01%. The EPA allows very flexible WIFIA Loan debt service schedule, and Valley Water has negotiated for interest and principal payments to be postponed until after construction completion to reduce the financial burdens for the Water Utility fund. WIFIA Loans are secured by a pledge of the WU revenues on a subordinate lien basis, but would spring to senior lien in a bankruptcy related event. Additional information regarding the benefits of WIFIA Loans is provided in Attachment 3.

Good Faith Estimated Costs

Pursuant to California Government Code Section 5852.1, the good faith estimates with respect to the WU WIFIA Loans are as follows: (1) the “true interest cost” is currently estimated to be 4.911%; (2) the “finance charge” (which means the sum of all fees and charges paid to third parties) is estimated

to be \$1,740,000; (3) the “amount of proceeds” received by Valley Water (which is net of the finance charge) is estimated to be \$2,027,076,251; and (4) the “total payment amount” (which means the sum of all debt service payments to the final maturity) is estimated to be \$6,158,305,321.

The WU WIFIA Loan Program is projected to save Valley Water \$764.8 million over the life of the loans, compared to issuing Certificates of Participation which Valley Water would otherwise have to issue to finance these projects.

Estimates are based on market conditions as of October 28, 2022, plus 0.75%. Actual results will differ depending on market conditions on the WIFIA Loan closing date, currently anticipated by December 30, 2022.

Financing Documents

The following forms of financing documents are attached for Board review and consideration:

Attachment 4: Water Utility Installment Purchase Agreement

Attachment 5a-c: Water Utility WIFIA Master Agreement, Loan Agreement and Term Sheet

Issuance Costs

The estimated total costs of issuance for the WU Loans in the amount of \$1,740,000 will be paid by Valley Water upon or shortly after closing:

Description	Estimate
EPA Fees	\$450,000
WIFIA Consultant	\$135,000
Rating Fee (Fitch or Moody's)	\$669,776
Bond Counsel	\$168,000
Municipal Advisor	\$115,000
Trustee	\$75,000
Contingency	\$127,224
Total	<u>\$1,740,000</u>

Financing Schedule

The WIFIA Master Agreement is currently anticipated to be closed by December 30, 2022, but the timing may change depending on the EPA's internal approval process.

Financing Disclosure Regarding Allegations by the Stop the Pacheco Dam Coalition

In September 2022, the Stop the Pacheco Dam Project Coalition (Coalition) sent a letter to the EPA asking the EPA to deny WIFIA funding for the Pacheco Reservoir Expansion Project. In the letter, the Coalition alleges that, among other matters, Valley Water provided inaccurate information to the EPA with respect to the project, including incorrect information regarding project feasibility and timing, misleading information about water quantity and quality, exaggerated benefits to affected fish species and unfounded claims regarding minimization of greenhouse gases. In addition, the Coalition alleges that Valley Water is improperly circumventing the National Environmental Protection Act (NEPA) and has failed to obtain a NEPA lead agency.

In a separate letter sent to the California Water Commission (CWC) in July 2022, the Coalition alleges that the Pacheco Reservoir Expansion Project does not meet the public funding requirements under the State's Proposition 1 program, which authorized funding for water storage projects and is administered by the CWC. The Coalition claims that new cost and project information included in Valley Water's WIFIA application means that the Pacheco Reservoir Expansion Project does not meet the economic or financial feasibility requirements under the California Water Code, the CWC's regulations or the requirements of the Proposition 1 program.

Valley Water has analyzed the assertions in the foregoing letters and believes that the claims made therein are without merit. Valley Water can make no assurances that the Coalition or other parties will not take further actions to adversely affect Valley Water's ability to proceed with the Pacheco Reservoir Expansion Project.

Community Bank Investments

Valley Water Board has implemented an innovative financing approach which promotes small, local banks' participation in Valley Water's financing business. EL 4.7.7 requires that Valley Water only engage with banks that have an Environmental, Social, and Governance (ESG) rating from at least one professional ESG research company of at least average/medium (or its equivalent). Banks located within the nine Bay Area counties with total assets below \$10 billion are exempt from this limitation. As a result of this policy, the following banking arrangements have been established with institutions meeting these criteria:

- \$20 million in Revolving Lines of Credit from three small local California banks (Bank of San Francisco, Community Bank of the Bay and First Foundation Bank)
- \$45 million in investments in various small, local banks' various deposits that are secured by either the Federal Depository Insurance Corporation or collateralized by Letters of Credit from the Federal Home Loan Bank of San Francisco
- Three separate letters of credits issued by Technology Credit Union, based in San Jose, totaling \$841,000 to Valley Water to meet the U.S. Army Corps' financial assurance requirements for the operations of Upper Penitencia, Coyote Ridge, and Rancho Cañada de Pala Preserve watershed projects
- Valley Water underwriting pool is limited to US investment banks with ESG ratings of medium or better with preference for small, local California banks

The WIFIA Loan Program supports domestic businesses, which is demonstrated by the Board's innovative financing approach to promote community banks.

ENVIRONMENTAL JUSTICE IMPACT:

There are no direct Environmental Justice Impacts associated with this action. Any impacts from the projects to be financed are assessed and communicated to the Board by the project teams in conjunction with environmental planning, design and approval.

FINANCIAL IMPACT:

A portion of the \$1,740,000 estimated total costs of issuance for the WIFIA Loans in the amount of \$560,000, and annual EPA fees pursuant to the Master Agreement (approximately \$25,000) will be paid from funds included in the Board adopted FY 2023 Budget, project number 95993033 for the WU WIFIA Loan. Staff will propose that the remaining \$1,180,000 cost of issuance related to future WIFIA loans and the annual EPA fees for subsequent years shall be incorporated into the respective funds as part of the annual budget process.

Interest and principal payments due on the WU WIFIA Loans are currently projected to begin on June 1, 2037, and June 1, 2055, respectively. To the extent that any future Board actions result in a reduction in the WIFIA Loans, the debt service payment schedules would be proposed to be adjusted in a corresponding manner. Valley Water would not draw on any WIFIA Loans for the construction of any projects until after the Board has approved the construction contracts for such projects. The budget for debt service for the WIFIA Loans will be proposed for incorporation into the respective future budget planning processes.

The WU WIFIA Loan Program is projected to save Valley Water \$764.8 million over the life of the loans, compared to issuing Certificates of Participation which Valley Water would otherwise have to issue to finance these projects.

CEQA:

The recommended action does not constitute a project under California Environmental Quality Act (CEQA) because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment, as outlined in the State CEQA Guidelines, Section 15060(c)(2).

ATTACHMENTS:

Attachment 1: WU WIFIA Resolution

Attachment 2: PowerPoint

Attachment 3: WIFIA Loan Program Information

Attachment 4: WU Installment Purchase Agreement

Attachment 5a: WU WIFIA Master Agreement

Attachment 5b: WU WIFIA Loan Agreement

Attachment 5c: WU WIFIA Term Sheet

File No.: 22-1336

Agenda Date: 12/6/2022
Item No.: 4.2.

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 22-

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SANTA CLARA
VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION
AUTHORIZING THE EXECUTION AND DELIVERY OF WIFIA MASTER AGREEMENT, WIFIA
LOAN AGREEMENTS, WIFIA TERM SHEETS AND WIFIA INSTALLMENT PURCHASE
AGREEMENTS WITH RESPECT TO THE WATER UTILITY AND AUTHORIZING CERTAIN
ACTIONS IN CONNECTION THEREWITH**

WHEREAS, the Santa Clara Valley Water District Public Facilities Financing Corporation is a nonprofit public benefit corporation organized and existing under the laws of the State of California (the "Corporation") with the authority to assist in the planning, design, acquisition and/or construction of capital improvements and to assist in the reimbursement of certain costs previously expended on the acquisition and/or construction of capital improvements on behalf of the Santa Clara Valley Water District ("Valley Water"); and

WHEREAS, Valley Water has determined that it would be in the best interests of Valley Water and citizens of the community to authorize the entry into one or more installment purchase agreements with the Corporation (each such installment purchase agreement a "Water Utility WIFIA Installment Purchase Agreement") to plan, design, acquire and/or construct certain water utility system capital improvements (as more particularly described in the Water Utility WIFIA Master Agreement referred to below, the "Water Utility WIFIA Project"); and

WHEREAS, in order to fulfill its obligation to Valley Water under the Water Utility WIFIA Installment Purchase Agreements, the Corporation proposes to obtain one or more loans under the authority of the Water Infrastructure Finance and Innovation Act (each a "Water Utility WIFIA Loan") from the United States Environmental Protection Agency (the "WIFIA Lender"), pursuant to a master agreement among the Corporation, the WIFIA Lender and Valley Water (the "Water Utility WIFIA Master Agreement") and one or more loan agreements (each a "Water Utility WIFIA Loan Agreement") among the Corporation, the WIFIA Lender and Valley Water; and

WHEREAS, the terms of the initial Water Utility WIFIA Loan (the "2022 Water Utility WIFIA Loan") are set forth in a term sheet (the "2022 Water Utility WIFIA Term Sheet") and an initial Water Utility WIFIA Loan Agreement (the "2022 Water Utility WIFIA Loan Agreement"); and

WHEREAS, Valley Water has completed its environmental review for and approved some of the projects to be funded by a WIFIA loan in accordance with the California Environmental Quality Act ("CEQA"); and

WHEREAS, as to those other WIFIA-funded projects for which Valley Water has not yet completed its CEQA review or approved, adoption of this Resolution to authorize execution of the above-mentioned agreements and documents and implementation of actions necessary to accomplish the intention of this Resolution do not commit Valley Water to a definite course of action with regard to any particular project and do not limit Valley Water in exercising any discretion following CEQA review of the project, including (i) considering other feasible alternatives and mitigation measures to avoid or minimize project impacts, (ii) making modifications deemed necessary to reduce project impacts, or (iii) determining not to proceed with one or more component of a project.

Resolution of the Board of Directors of the Santa Clara Valley Water District Public Facilities Financing Corporation Authorizing the Execution and Delivery of WIFIA Master Agreement, WIFIA Loan Agreements, WIFIA Term Sheets and WIFIA Installment Purchase Agreements with Respect to the Water Utility and Authorizing Certain Actions in Connection Therewith

Resolution No. 22-

NOW, THEREFORE, the Board of Directors of the Santa Clara Valley Water District Public Facilities Financing Corporation does hereby resolve as follows:

Section 1. Water Utility WIFIA Master Agreement, 2022 Water Utility WIFIA Note, 2022

Water Utility WIFIA Loan Agreement and 2022 Water Utility WIFIA Term Sheet. The Water Utility WIFIA Master Agreement, the WIFIA Note attached to the Water Utility WIFIA Master Agreement (the “2022 Water Utility WIFIA Note”), the 2022 Water Utility WIFIA Loan Agreement and the 2022 Water Utility WIFIA Term Sheet, in each instance with respect to the portion of the Water Utility WIFIA Project described in the 2022 Water Utility WIFIA Installment Purchase Agreement, are on file with the Corporation. Such documents are hereby accepted and approved, subject to such changes, insertions and omissions as may be approved by any of the President, the Vice President, the Chief Executive Officer/General Manager or the Chief Financial Officer (or any acting or interim of such positions) and the Secretary (each an “Authorized Officer” and together the “Authorized Officers”) who are hereby individually authorized and directed to execute and deliver the Water Utility WIFIA Master Agreement, the 2022 Water Utility WIFIA Note, the 2022 Water Utility WIFIA Loan Agreement and the 2022 Water Utility WIFIA Term Sheet, said execution being conclusive evidence of such approval.

Section 2. Water Utility WIFIA Installment Purchase Agreements. An initial Water Utility WIFIA Installment Purchase Agreement with respect to the 2022 Water Utility WIFIA Loan Agreement (the “2022 Water Utility WIFIA Installment Purchase Agreement”) is on file with the Corporation. Such document is hereby accepted and approved, subject to such changes, insertions and omissions as may be approved by any of the Authorized Officers who are hereby individually authorized and directed to execute and deliver the 2022 Water Utility WIFIA Installment Purchase Agreement, said execution being conclusive evidence of such approval.

Section 3. Good Faith Estimate of Certain Costs. The Board acknowledges that the good faith estimates of certain costs required by Section 5852.1 of the California Government Code with respect to the Water Utility WIFIA Loan Agreements (and related documents) are disclosed in the staff report and are available to the public at the meeting at which this Resolution is approved.

Section 4. Additional Water Utility WIFIA Installment Purchase Agreements, Water Utility WIFIA Loan Agreements and Water Utility WIFIA Term Sheets. Each Authorized Officer is hereby authorized to execute future Water Utility WIFIA Loan Agreements, WIFIA Notes in the form attached to the Water Utility WIFIA Master Agreement, Water Utility WIFIA Term Sheets and Water Utility WIFIA Installment Purchase Agreements in accordance with the Water Utility WIFIA Master Agreement (including any amendments or supplements to the Water Utility WIFIA Master Agreement and documents and certifications necessary or advisable to effectuate Water Utility WIFIA Loans under such agreements) so long as the total principal amount of all Water Utility WIFIA Loans does not exceed \$2,500,000,000.

Section 5. Other Actions. The Authorized Officers, District Counsel and Bond Counsel and such other officers and staff of the Corporation are authorized and directed, acting singly, to do any and all things and to execute, deliver and implement any and all documents which such officers may deem necessary or advisable in order to consummate the execution and delivery of the Water Utility WIFIA Master Agreement, the 2022 Water Utility WIFIA Note, the 2022 Water

Resolution of the Board of Directors of the Santa Clara Valley Water District Public Facilities Financing Corporation Authorizing the Execution and Delivery of WIFIA Master Agreement, WIFIA Loan Agreements, WIFIA Term Sheets and WIFIA Installment Purchase Agreements with Respect to the Water Utility and Authorizing Certain Actions in Connection Therewith

Resolution No. 22-

Utility WIFIA Installment Purchase Agreement, the 2022 Water Utility WIFIA Loan Agreement and the 2022 Water Utility WIFIA Term Sheet (collectively, the “Initial Water Utility WIFIA Documents”), and otherwise effectuate the purposes of this Resolution and the Initial Water Utility WIFIA Documents, and such actions in connection therewith previously taken by such officers and staff are hereby ratified and confirmed.

The Authorized Officers, District Counsel and Bond Counsel and such other officers and staff of the Corporation are authorized and directed, acting singly, to do any and all things and to execute, deliver and implement any and all documents which such officers may deem necessary or advisable in order to consummate the execution and delivery of future Water Utility WIFIA Loan Agreements, WIFIA Notes in the form attached to the Water Utility WIFIA Master Agreement, Water Utility WIFIA Term Sheets and Water Utility Installment Purchase Agreements, and otherwise effectuate the purposes of this Resolution, and such actions in connection therewith previously taken by such officers and staff are hereby ratified and confirmed.

Section 6. Definitions. Unless otherwise defined herein, all terms used herein and not otherwise defined shall have the meanings given to such terms in the Water Utility WIFIAG Master Agreement, unless the context otherwise clearly requires.

Section 7. Effect. This Resolution shall take effect immediately.

ADOPTED, SIGNED AND APPROVED this th day of December, 2022.

STEVE M. MULLEN
President of Santa Clara Valley Water District
Public Facilities Financing Corporation

(SEAL)

ATTEST:

Michele L. King, CMC,
Secretary of Santa Clara Valley Water District
Public Facilities Financing Corporation

STATE OF CALIFORNIA)
) SS.
COUNTY OF SANTA CLARA)

Resolution of the Board of Directors of the Santa Clara Valley Water District Public Facilities
Financing Corporation Authorizing the Execution and Delivery of WIFIA Master Agreement,
WIFIA Loan Agreements, WIFIA Term Sheets and WIFIA Installment Purchase Agreements
with Respect to the Water Utility and Authorizing Certain Actions in Connection Therewith

Resolution No. 22-

I, Michele L. King, CMC, Secretary of the Santa Clara Valley Water District Public Facilities Financing Corporation, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said Corporation at a special meeting held on the th day of December, 2022, and that it was so adopted by the following vote:

AYES: DIRECTORS

NOES: DIRECTORS

ABSENT: DIRECTORS

ABSTAIN: DIRECTORS

Secretary of Santa Clara Valley Water District
Public Facilities Financing Corporation

(SEAL)



Valley Water

Clean Water • Healthy Environment • Flood Protection

WU WIFI A Loan Programs

Presented by:

Mr. Darin Taylor, Chief Financial Officer

Ms. Charlene Sun, Treasury, Debt and Grants Officer

Disclaimer

The information contained herein have been prepared by Valley Water for information only. and have not been audited by the external auditor. These financial statements remain subject to change by Valley Water and remain subject to review by external auditor. Changes made by the external auditor, including changes in response to the outsider auditor's review, could be material. No party is authorized to disseminate these unaudited financial statements to the State Comptroller or any nationally recognized rating agency nor post these statements on EMMA or any similar financial reporting outlets or redistribute the information without the express written authorization of the Chief Financial Officer of Valley Water. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale Valley Water bonds, notes or other obligations and investors and potential investors should rely on information filed by Valley Water on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures, maintained on the World Wide Web at <https://emma.msrb.org/>.

Discussion Outline

- I. Recommendations**
- II. Financing Schedule**
- III. WIFIA Loan Program**
- IV. WIFIA Master Credit Agreement Key Terms**
- V. WU WIFIA Loan Assumptions, Legal Covenants**
- VI. Conclusion**

Recommendations

- A. Adopt Resolution to approve Up to \$2.5B for Water Utility (WU) Projects: Pacheco Reservoir Expansion; Anderson Dam Seismic Retrofit (ADSR) and Coyote Percolation Dam projects; and**

- B. Authorizing President, Vice President, Chief Executive Officer or the Chief Financial Officer (or any acting or interims of such positions) and the Secretary (each an “Authorized Officer”), District Counsel, and the Clerk of the Board to execute and deliver any and all documents necessary to consummate the execution and delivery of all required WIFIA Loan Program documents**

Financing Schedule¹

Description	WIFIA Loans
PFFC Meeting	12/6/22
VW Board Meeting	12/13/22
Ratings	12/12/22
Closing	12/30/22

1. Financing schedule is tentative, subject to change pending the EPA's credit approval process for the WIFIA loans.

WIFIA Loan Program

- Administered by the United States Environmental Protection Agency
- Funds up to 49% of eligible project costs (min \$20M project size)
 - Water, wastewater, desalination/recharge/water recycling projects
- Master Credit Agreement establishes terms and conditions for the WIFIA Loans that may be drawn down over time to match project design and construction schedule
- Interest rate is set at closing of each WIFIA Loan equal to US Treasury rate plus 0.01% of a similar maturity
- Loan repayment schedule is customizable:
 - Match debt service payment dates to anticipated revenues and expenses
 - Up to 35 years repayment period after project substantial completion
 - Defer payments up to 5 years after project substantial completion
 - Loans are immediately prepayable (no lock-out period)
 - Interest can be capitalized/deferred at loan rate
- Subordinate to senior debt (spring to senior in bankruptcy event)
- National Environmental Policy Act (NEPA), Davis-Bacon, American Iron and Steel, and all federal cross-cutter provisions apply.

WU WIFIA Master Credit Agreement Key Terms



#	Term	Description
3	WIFIA Loans Under the Master Credit Agreement (MCA)	<ul style="list-style-type: none"> • Fund up to 49% of eligible project costs. • Max Loan Amount (WU): Up to \$2.B (+0.5B estimated capitalized interest) • Max Draws (WU): up to 10 loans over 8 years
5	Interest Rate	Set at time of each loan closing; accrue based on Outstanding WIFIA Loan Balance
7	Security and Priority	Secured by Pledged Collateral on a subordinate basis; spring to senior if in default
9	Prepayment	Allowed with no fees in inverse order of maturity
10	Fees and Expenses	VW pays upfront costs of issuance for EPA's legal/financial expenses and ongoing annual servicing fees
17	Affirmative Covenants of the District	Senior Debt: 1.25x; Subordinate Debt: 1.1x
18	Additional Obligations Test (ABT)	Senior Debt: 1.25x; Subordinate Debt: 1.1x
20	Reporting Requirements	<ul style="list-style-type: none"> • Annual: Updated financial model (YE+180 days); audited annual financial statements (YE+180 days+90 days grace); Single Audit • Quarterly: Construction Monitoring Report; Eligible Project Costs • Periodic: Final Specifications (prior to bid advertisement); Public Benefits Report • Maintain all records for life of WIFIA Loan + 5 years
21	Events of Default and Remedy	<ul style="list-style-type: none"> • Payment; covenant, misrepresentation; adverse judgement, bankruptcy, etc. • Development default: (a) VW abandons work or fails to diligently prosecute work; or (b) VW fails to achieve Substantial Completion within 24 months after Projected Substantial Completion Date • Remedies include typical provisions similar to publicly sold debt, and also include full repayment of outstanding WIFIA loans and fees for development default

Water Utility WIFIA Loan Assumptions

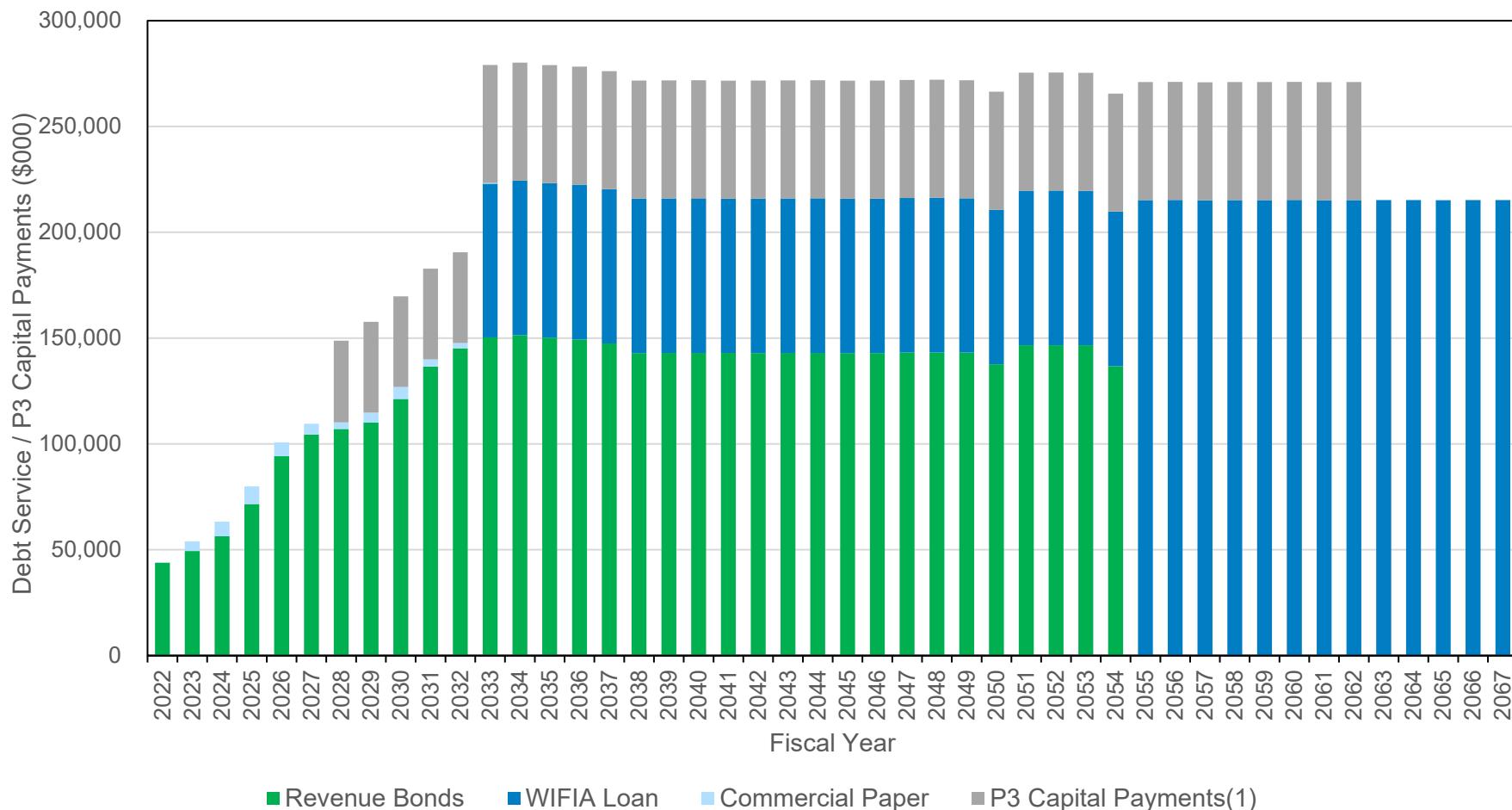
WIFIA	Loan #1	Loans 2-10*	Total
Purpose	Planning and design costs for Anderson Dam Seismic Retrofit and Coyote Percolation Dam (Anderson Projects)	Construction costs for Anderson Projects; planning, design and construction for Pacheco Reservoir Expansion	
Loan Amount	\$173M	\$1,856M	\$2,029M
Closing Date	12/30/2022	12/30/2023	
First Interest	6/1/2037	6/1/2037	
First Principal	6/1/2055	6/1/2055	
Final Principal	6/1/2067	6/1/2067	

* EPA requires all CEQA/NEPA and federal consultations (e.g., State Historic Preservation Officers (SHPO), National Marine Fisheries Service (NMFS), etc.) be completed prior to execution of the construction loan for each project.

Water Utility Projected Debt Profile

(Amounts in \$000)

Forecasted Debt Service



(1) The P3 Availability Payment Contract is expected to be drafted and negotiated in FY2023, subject to Board approval. Per Board direction, Valley Water is neither an obligor nor a guarantor of any P3 debt.

Water Utility Legal Structure

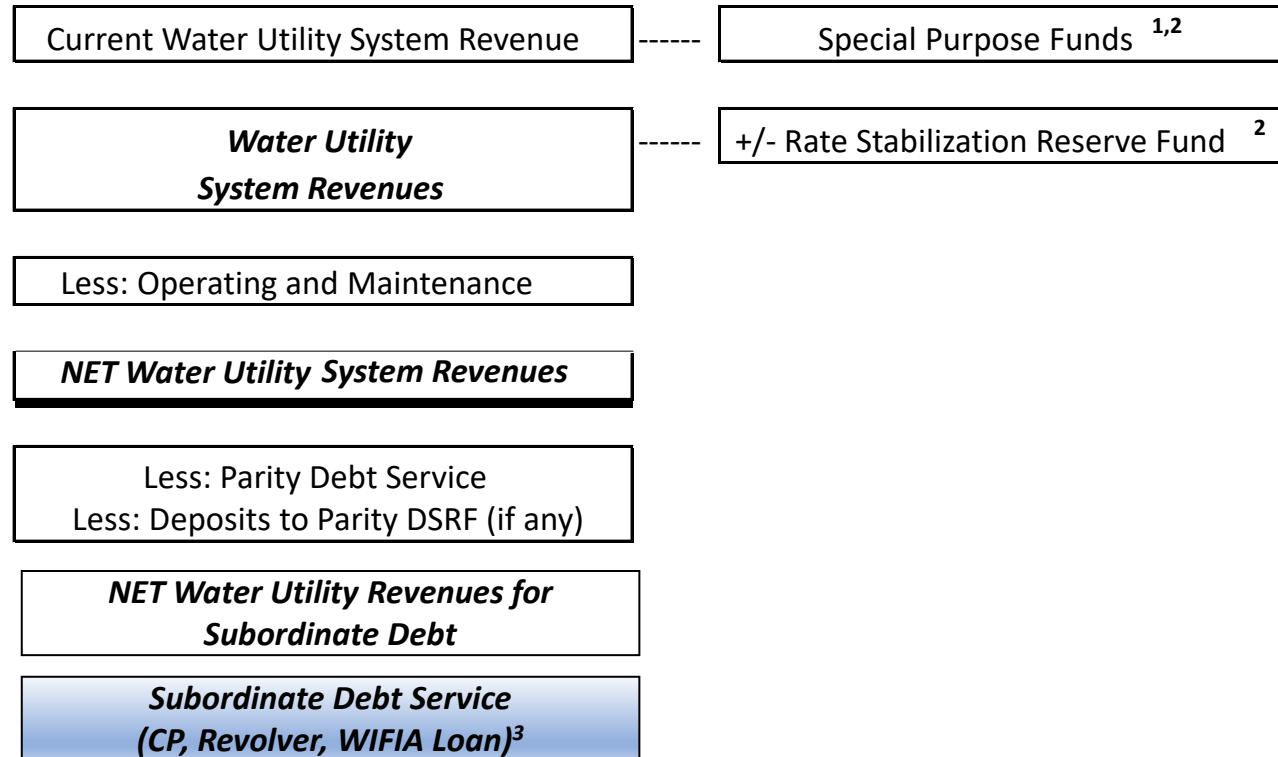
- **Parity Master Resolution**

- No Senior Lien (defeased on 6/1/2022)
- Defines “Net Water Utility System Revenue” as Water Utility System Revenues less O&M
- Rate Covenant – Net Water Utility System Revenue of no less than 125% of all outstanding debt service on a budget basis
- Parity Debt Test
 - (i) Net Water Utility System Revenue of no less than 125% of outstanding and proposed debt service for FY of issuance
 - (ii) estimated Net Water Utility System Revenues for the then current Fiscal Year and for each Fiscal Year thereafter to and including the first complete Fiscal Year after the latest Date of Operation of any uncompleted Parity Project shall produce a sum equal to at least 125% of the estimated Debt Service for each of such Fiscal Years, after giving effect to the execution of all Contracts and the issuance of all Bonds estimated to be required to be executed or issued to pay the costs of completing all uncompleted Parity Projects within such Fiscal Years
- No DSRF required

Water Utility Parity Master Resolution Flow of Funds



Parity Master Reso Flow of Funds



Notes:

- 1.) Requires Board resolution and limited to the amount of reduced Current Water Utility System Revenue as a result of non-routine expenditures resulting from extraordinary events.
- 2.) Transfers during or within 270 days after the end of the FY.
- 3.) WIFIA loan springs to parity lien in case of bankruptcy related event

Conclusion

- Approval of the financing plan allows Valley Water the flexibility to finance capital projects at low long-term costs
- Board not obligated to approve the construction of any of the projects
- No limit on Board's actions related to California Environmental Quality Act (CEQA) review:
 - Consider other feasible alternatives and mitigation measures
 - Make modifications to reduce project impacts
 - Take Board action not to proceed
- **Good Faith Estimate*:**

WU: (1) true interest cost 4.910%; (2) finance charge \$1,740,000; (3) proceeds \$2,027,076,251; (4) total payment amount \$6,158,305,321
- **WU WIFIA Loan programs projected to save \$764.8 million over life of the loan, compared to issuing Certificates of Participation to fund these projects**

*Estimates based on market rates on 10/28/22 + 0.75%, subject to change pending pricing in Dec 2022.

Recommendations

- A. Adopt Resolution to approve Up to \$2.5B for Water Utility (WU) Projects: Pacheco Reservoir Expansion; Anderson Dam Seismic Retrofit (ADSR) and Coyote Percolation Dam projects; and**

- B. Authorizing President, Vice President, Chief Executive Officer or the Chief Financial Officer (or any acting or interims of such positions) and the Secretary (each an “Authorized Officer”), District Counsel, and the Clerk of the Board to execute and deliver any and all documents necessary to consummate the execution and delivery of all required WIFIA Loan Program documents**

QUESTIONS





Valley Water

Clean Water • Healthy Environment • Flood Protection



The Water Infrastructure Finance and Innovation Act (WIFIA) program accelerates investment in our nation's water infrastructure by providing long-term, low-cost supplemental loans for nationally and regionally significant projects. Borrowers benefit from receiving low, fixed interest rate loans with flexible financial terms.

WIFIA LOANS OFFER A LOW, FIXED INTEREST RATE

A SINGLE FIXED RATE IS ESTABLISHED AT CLOSING. A borrower may receive multiple disbursements over several years at the same fixed interest rate.

RATE IS EQUAL TO THE U.S. TREASURY RATE OF A SIMILAR MATURITY. The WIFIA program sets its interest rate based on the U.S. Treasury rate on the date of loan closing. The rate is calculated using the weighted average (WAL) life of the loan rather than the loan maturity date. The WAL is generally shorter than the loan's actual length, resulting in a lower interest rate.

RATE IS NOT IMPACTED BY BORROWER'S CREDIT OR LOAN STRUCTURE. All borrowers benefit from the AAA Treasury rate, regardless of whether they are rated AA or BBB. The WIFIA program does not charge a higher rate for flexible financial terms.

WIFIA LOANS PROVIDE FLEXIBLE FINANCIAL TERMS

CUSTOMIZED REPAYMENT SCHEDULES. Borrowers can customize their repayments to match their anticipated revenues and expenses for the life of the loan. This flexibility provides borrowers with the time they may need to phase-in rate increases to generate revenue to repay the loan.

LONG REPAYMENT PERIOD. WIFIA loans may have a length of up to 35 years after substantial completion, allowing payment amounts to be smaller throughout the life of the loan.

DEFERRED PAYMENTS. Payments may be deferred up to 5 years after the project's substantial completion.

SUBORDINATION. Under certain circumstances, WIFIA may take a subordinate position in payment priority, increasing coverage ratios for senior bond holders.

WIFIA LOANS CAN BE COMBINED WITH VARIOUS FUNDING SOURCES. WIFIA loans can be combined with private equity, revenue bonds, corporate debt, grants, and State Revolving Fund (SRF) loans.

Example of a customized debt repayment structure for a \$100 million project



Attachment 3
1 of 51

WEBSITE: www.epa.gov/wifia

EMAIL: wifia@epa.gov

ANNOUNCEMENTS: Sign-up at <https://tinyurl.com/wifianews>



The WIFIA program accelerates investment in our nation's water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects. The WIFIA program was established by the Water Infrastructure Finance and Innovation Act of 2014.

ELIGIBILITY

Eligible borrowers

- Local, state, tribal, and federal government entities
- Partnerships and joint ventures
- Corporations and trusts
- Clean Water and Drinking Water State Revolving Fund (SRF) programs

WIFIA can fund development and implementation activities for eligible projects

- Wastewater conveyance and treatment projects
- Drinking water treatment and distribution projects
- Enhanced energy efficiency projects at drinking water and wastewater facilities
- Desalination, aquifer recharge, and water recycling projects
- Acquisition of property if it is integral to the project or will mitigate the environmental impact of a project
- A combination of eligible projects secured by a common security pledge or submitted under one application by an SRF program

FUNDING AVAILABILITY

EPA announces WIFIA funding availability and application process details in the Federal Register and on its website.

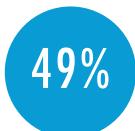
IMPORTANT PROGRAM FEATURES



Minimum project size for large communities.



Minimum project size for small communities (population of 25,000 or less).



Maximum portion of eligible project costs that WIFIA can fund.



Maximum final maturity date from substantial completion.



Maximum time that repayment may be deferred after substantial completion of the project.



Interest rate will be equal or greater to the US Treasury rate of a similar maturity.



Projects must be creditworthy.



NEPA, Davis-Bacon, American Iron and Steel, and all federal cross-cutter provisions apply.



STAY IN TOUCH

WEBSITE: www.epa.gov/wifia	EMAIL: wifia@epa.gov
Sign-up to receive announcements about the WIFIA program at https://tinyurl.com/wifianews	

Attachment 3
2 of 51



BORROWER GUIDE TO FEDERAL REQUIREMENTS

LAST UPDATED: OCTOBER 2021

DISCLAIMER

This document is intended as a guide for WIFIA borrowers to understand their general responsibilities for complying with federal requirements and is for informational purposes only. This document discusses a number of federal statutory and regulatory provisions and other federal requirements, but does not itself have legal effect, and is not a substitute for those provisions and any legally binding requirements that they may impose. It does not expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations or benefits to any person.

The information provided in this guide, including in any appendices, does not, and is not intended to, constitute legal advice. Users of this guide should not rely on this information to ensure compliance with federal requirements and should contact their legal counsel to obtain advice with respect to any particular legal matter, including such compliance. To the extent there is any inconsistency between this document and any legally binding federal requirements, the latter take precedence. EPA retains discretion to use or deviate from this document as appropriate.

This guide is subject to change without notice to address any new laws and regulations that impact the WIFIA program and its borrowers. The guide contains links to third-party websites. Such links are only for the convenience of the reader, and EPA does not recommend or endorse the content of the third-party sites.

VERSION HISTORY

Below documents substantive content updates to this Borrower Guide since its initial release.

October 2021:

- Added Table of Contents.
- Updated Environmental Authorities section, related to construction status of projects.
- Updated Economic and Miscellaneous Authorities section, related the Uniform Act and real property acquisition.
- Updated Labor Laws and Standards section, related to construction type generally used for water infrastructure projects.
- Updated hyperlinks to outside sources.

March 2021:

- Corrected hyperlinks to outside sources.

December 2020:

- Borrower Guide released.

TABLE OF CONTENTS

Disclaimer	i
Version History	ii
Introduction	1
Environmental Authorities	2
Economic and Miscellaneous Authorities	6
Debarment and Suspension and Prohibitions relating to violations of CWA and CAA with respect to Federal contracts, grants, or loans	6
New Restrictions on Lobbying	7
Uniform Relocation Assistance and Real Property Acquisition Policies Act	8
Demonstration Cities and Metropolitan Development Act	9
Drug-Free Workplace Act	9
Civil Rights, Nondiscrimination, and Equal Employment Opportunity Authorities	11
Age Discrimination Act, Section 504 of the Rehabilitation Act, and Title VI of the Civil Rights Act of 1964	11
Section 13 of the CWA	12
Equal Employment Opportunity	12
Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements	13
American Iron and Steel (AIS) Requirement	15
Labor Laws and Standards	18
Latest Updates on Federal Requirements	22
Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment	22
General Guidance on Compliance with Federal Requirements	24
Guiding principles for compliance	24
Co-Funding with Other Federal and State programs	25
State Laws and Regulations	25
Professional Service Contracts versus Construction Contracts	25
Appendix: WIFIA specifications Package	27

INTRODUCTION

Borrowers of loans provided under the Water Infrastructure Financing and Innovation Act (WIFIA), 33 U.S.C. § 3901 et seq., are required to comply with all federal laws and regulations. This document highlights important social and economic federal laws, regulations, and Executive Orders specifically listed in the WIFIA regulations (40 CFR Part 35 Subpart Q) as well as any relevant updates to the federal requirements. WIFIA borrowers have the prime responsibility for ensuring their staff and contractors comply with all federal requirements for a project. The project is subject to additional review of these federal requirements by the WIFIA Program during application processing and after loan execution.¹

This guide provides an overview of the following federal requirements and identifies key borrower responsibilities and additional resources that may be helpful to the borrower for implementing each requirement.

¹ Although the WIFIA program provides oversight on loans issued to state infrastructure financing authorities, the program does not conduct federal requirements reviews during application processing or loan monitoring for these borrowers. These requirements are monitored and managed through the individual SRF programs.

ENVIRONMENTAL AUTHORITIES

OVERVIEW

The **National Environmental Policy Act** (NEPA) and various environmental crosscutting authorities fall under the Environmental Authorities listed in the WIFIA regulations at 40 CFR Part 35 Subpart Q.

The NEPA of 1969, 42 U.S.C. § 4321, *et seq.* mandates that federal agencies consider the effects of their actions, including programs, regulations, policies, and grant-funded specific projects, on the quality of the human environment. The issuance of a loan under the WIFIA program constitutes an action that triggers an environmental review of the project scope covered by the loan. The status of NEPA determinations for WIFIA's loans is listed on the [WIFIA closed loan web page](#) under the environmental review status column.

Prior to issuing a loan, the WIFIA program must review the environmental impacts of the project and make an independent determination under NEPA. The Council of Environmental Quality has established NEPA implementing regulations at 40 CFR part 1500 for meeting these requirements and the WIFIA program is guided by EPA's implementing regulations at 40 CFR Part 6. The WIFIA program's environmental review considers project impacts and mitigation measures across various environmental crosscutting authorities, including but not limited to:

- Archaeological and Historic Preservation Act, as amended (54 U.S.C. §§ 312501-312508)
- Archaeological Resources Protection Act (16 U.S.C. § 470AA-MM)
- Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668C)
- Cleans Water Act (Section 404)
- Clean Air Act Conformity (42 U.S.C. § 7506(C))
- Coastal Zone Management Act (16 U.S.C. §§ 1451-1466)
- Coastal Barrier Resources Act (16 U.S.C. §§ 3501-3510)
- Endangered Species Act (16 U.S.C. §§ 1531-1599)
- Environmental Justice (Executive Order 12898)
- Essential Fish Habitat Consultation Process under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801-1891)
- Farmland Protection Policy Act (7 U.S.C. §§ 4201-4209)
- Fish and Wildlife Coordination Act (16 U.S.C. § 661, *et seq.*)
- Flood Plain Management (Executive Order 11988, as amended by Executive Order 12148)
- Marine Mammal Protection Act (16 U.S.C. §§ 1361-1407)
- Migratory Bird Treaty Act (16 U.S.C. §§ 703-712)
- National Historic Preservation Act (NHPA), as amended (54 U.S.C. § 300101, *et seq.*)
- Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001, *et seq.*)
- Protection of Wetlands (Executive Order 11990, as amended by Executive Order 12608)
- Rivers and Harbors Act (Section 10)
- Safe Drinking Water Act (42 U.S.C. § 300F-300J-26)
- Wild and Scenic Rivers Act (16 U.S.C. §§ 1271-1287)
- Wilderness Act (16 U.S.C. § 1131, *et seq.*)

WIFIA borrowers do not need to have a completed environmental review prior to submitting a letter of interest to the program or when applying for a WIFIA loan; however, borrowers can expect to provide available environmental assessments, consultations, or other documentation to support the WIFIA

program's review of environmental impacts and mitigation measures as part of application processing. WIFIA projects must comply with all environmental cross-cutting authorities. Compliance with cross-cutting authorities is reviewed and documented by the WIFIA program. The WIFIA program may conduct additional consultations related to federal cross-cutting authorities, as necessary for the environmental review. Compliance with the environmental cross-cutting authorities is particularly important for projects where construction is already in progress or will be starting prior to loan close. Experience has shown that successful and timely completion of consultations under Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act can be difficult when initiated too late in the project schedule. To document the completion of the NEPA environmental review, the WIFIA program will issue one of the following determinations for the loan:

- **Categorical Exclusion (CATEX):** EPA's list of actions that may be categorically excluded is available at 40 CFR 6.204. The issuance of a CATEX does not require a public comment period.
- **Finding of No Significant Impact (FONSI) under WIFIA's Programmatic Environmental Assessment (PEA):** The WIFIA program has analyzed the typical potential environmental impacts related to the issuance of credit assistance under WIFIA in the PEA and associated FONSI, related to certain WIFIA water and wastewater projects eligible under 33 U.S.C. § 3905 and described in Section 4 of the PEA. Based on information supplied by the WIFIA borrower and the borrower responses to the WIFIA PEA Questionnaire (included as an appendix to the WIFIA application), the WIFIA program will evaluate the applicability of the project under the PEA. An additional 30-day public comment period is not required for projects that fall under the PEA.
- **FONSI under Environmental Assessment (EA):** If the project does not qualify for a CATEX or the PEA because the environmental impacts or the significance of the impacts are unknown, the WIFIA borrower will be asked to submit an environmental information document (EID) with a scope and level of detail commensurate with the magnitude and significance of the project. If deemed sufficient and acceptable by the WIFIA program, the borrower may submit a draft EA and supporting documents in lieu of an EID, or the WIFIA program will draft an EA. A FONSI determination under an EA is subject to a 30-day public comment period before it is finalized. EPA's NEPA implementing regulations for environmental assessments are found at 40 CFR 6.205.
- **Environmental Impact Statement (EIS):** If significant impacts are anticipated for the project during the environmental assessment, the WIFIA borrower will partner with the WIFIA program to assist in the preparation of an EIS describing the environmental impacts and reasonable alternatives. EPA may enter into a third-party agreement with the applicant to hire a consulting firm to prepare the EIS. A draft EIS is subject to a 45-day public comment period and the final EIS is subject to a 30-day waiting period before it is finalized and a record of decision (ROD) is issued for the project. EPA's NEPA implementing regulations for environmental impact statements are found at 40 CFR 6.207.

WHAT TO EXPECT

The WIFIA program has the responsibility to conduct an environmental review and issue a determination for the project scope covered by a WIFIA loan and to ensure any monitoring requirements are being implemented by the WIFIA borrower prior to and through construction. The WIFIA program must conduct

Attachment 3

3

9 of 51

an environmental review prior to issuance of a WIFIA loan. When the WIFIA project is co-funded with other federal or state programs, the WIFIA program may work collaboratively with co-funding agencies to ensure compliance with environmental cross-cutting authorities. WIFIA borrowers should clearly communicate project construction schedules to ensure the environmental compliance requirements can be or have been met prior to conducting ground-disturbing activities or activities that may diminish or alter the character of historic properties. Components of the WIFIA project that do not or cannot comply with environmental cross-cutting authorities may be excluded from the WIFIA project. As part of its compliance monitoring activities, the WIFIA program will conduct periodic document reviews and site walk-throughs during project construction, where applicable, to ensure specific requirements outlined in the WIFIA environmental documentation are met.

Prospective borrowers are not required to submit environmental documentation or findings when submitting their letters of interest (LOI). However, as part of the WIFIA application, borrowers can expect to:

- ✓ Identify any consultations with cross-cutting agencies that have already been completed or are ongoing.
- ✓ Discuss the environmental review with the WIFIA program prior to submittal of the application. If it appears that the project may not qualify for a CATEX, the WIFIA program will request that the borrower submit a completed PEA Questionnaire along with the relevant supporting materials.

After the application is submitted, WIFIA applicants may be asked to:

- ✓ Provide additional materials relevant to the project environmental review, including project description and location, project maps, any reports, assessments, or consultations conducted for the project, NEPA determinations by other federal agencies or State Revolving Fund (SRF) programs, or other relevant documentation to support the environmental review.
- ✓ If an EA or EIS is required, consult with the WIFIA program to determine the scope and level of detail for the documentation, indicate any public meetings or hearings required as part of the process, and support the WIFIA program in responding to comments if the NEPA determination is subject to a public comment period.
- ✓ Verify accuracy of environmental review documents prepared by the WIFIA program and provided to the applicant at the completion of the environmental review. The signatory of the WIFIA application, or equivalent authority, must sign the Environmental Review Verification Memorandum to confirm the applicant's concurrence with the environmental documentation.

Environmental monitoring and reporting requirements prior to and during project construction will be outlined in the environmental review documents or the loan agreement. The WIFIA program has the responsibility to conduct checks on the borrower's environmental requirements during compliance monitoring activities.

Key borrower responsibilities for implementation include:

- ✓ Execute the requirements outlined in the environmental review documents or specified in the loan agreement. These requirements vary based on the scope of the project and may include

activities like submittal of approved environmental permits; use of construction methods to mitigate potential environmental impacts; environmental training for employees; submittal of biological assessments; or other requirements identified through consultations with other federal agencies.

- ✓ Notify the WIFIA program if the scope of activities under the existing environmental determination is modified and provide supporting documentation for the WIFIA program to initiate additional federal agency consultations, as needed, to maintain the borrower's environmental compliance with the project.

RESOURCES

- [CEQ Regulations for Implementing NEPA](#) (40 CFR part 1500)
- [EPA Procedures for Implementing NEPA and Assessing Environmental Effects](#) (40 CFR Part 6)
- [PEA for the WIFIA Program](#)
- [WIFIA PEA Questionnaires](#) for WIFIA Credit Assistance Projects and SRF Programs

ECONOMIC AND MISCELLANEOUS AUTHORITIES

The following federal requirements fall under the Economic and Miscellaneous Authorities listed in the WIFIA regulations at 40 CFR Part 35 Subpart Q.

DEBARMENT AND SUSPENSION AND PROHIBITIONS RELATING TO VIOLATIONS OF CWA AND CAA WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Executive Order 12549 provides for a governmentwide system for debarment and suspension. A person or business who is debarred or suspended is excluded from activities in which grants, cooperative agreements, contracts of assistance, loans, and loan guarantees are being used to fund the activity. Borrowers must ensure their contractors and subcontractors are not suspended or debarred prior to issuing contracts. For prime contractors, registration under the governmentwide System for Award Management (SAM) is required and borrowers must check their registration under SAM. For lower tier contracts (i.e., subcontracts), OMB guidance under 2 CFR Part 180 Subpart C allows the borrower to verify whether subcontractors are debarred or suspended from government-funded activities using one of three options: (1) check subcontractor status on SAM; (2) collect a certification from the subcontractor; or (3) add a clause or condition to the covered transaction with the subcontractor.

Additionally, Section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), as implemented by Executive Order 11738 (1973), prohibit performance of Federal assistance agreements at facilities disqualified due to certain violations of the CAA or CWA. As described in the respective CAA and CWA sections, a person or entity who has been convicted of a criminal offense or has a serious pattern of civil violations may be barred from receiving Federal government contracts, loans, and grants. Statutory debarments occur by operation of law following criminal conviction under CWA (Section 508) or CAA (Section 306). The ineligibility lasts until the Debarring Official certifies that the condition giving rise to conviction has been corrected.

WHAT TO EXPECT

The WIFIA program has the responsibility to check that its borrowers are not debarred or suspended from receiving federal funds.

In its LOI submittal, WIFIA prospective borrowers are asked to:

- ✓ Disclose to EPA if they are currently debarred or suspended; proposed for debarment or suspension; or indicted, convicted, or had a civil judgment rendered against it for any of the offenses listed in the regulations governing debarment and suspension at 2 CFR Part 180 and Part 1532; or declared ineligible or excluded from participating in federal contracts or contracts paid for with federal funds. This disclosure is completed as part of the certification submitted with the LOI.

During application processing, WIFIA applicants are asked to:

- ✓ Disclose their debarment and suspension status as part of the WIFIA application and prior to loan closing.

For all contracts used on the project, WIFIA borrowers are expected to:

- ✓ Communicate to potential contractors the requirement to certify that the contractor is not debarred or suspended and to require their subcontractors to similarly certify. This is generally provided in bid advertisements and executed contracts. Although no specific contract language is required, sample contract language in the WIFIA specifications package is available for use by the borrower (see Resources below).
- ✓ Verify that the contractor and its subcontractors are not debarred or suspended. For prime contractors, access SAM to verify the awarded prime contractor is not disqualified or excluded. For lower tier contracts, ensure the prime contractor has verified their subcontractors are not suspended or debarred either by (1) checking exclusions in SAM, (2) collecting a signed certification from the subcontractor, or (3) including a clause or condition for the covered transaction with the subcontractor.

RESOURCES

- [Debarment and Suspension \(EO 12549\)](#)
- [Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants, or loans \(EO 11738\)](#)
- [OMB Guidelines to Agencies on Governmentwide Debarment and Suspension \(2 CFR Part 180\)](#)
- [Non-procurement Debarment and Suspension \(2 CFR part 1532\)](#)
- [System for Award Management \(SAM\)](#)
- Sample Contract Language in [WIFIA Specifications Package](#)

NEW RESTRICTIONS ON LOBBYING

Recipients of federal grants, cooperative agreements, contracts, and loans are prohibited by 31 U.S.C. § 1352 from using federal funds to pay any person for influencing or attempting to influence any officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of any of these instruments. This requirement also applies to the WIFIA program, which follows the EPA implementing regulations on lobbying restrictions prescribed at 40 CFR part 34.

WIFIA borrowers are required to certify that (1) they have not made, and will not make, such a prohibited payment, (2) they will be responsible for reporting the use of non-federal funds for such purposes, and (3) they will include these requirements in subsequent contracts and subcontracts that exceed \$100,000 and obtain necessary certifications from those entities.

WHAT TO EXPECT

The WIFIA program has the responsibility to check that its borrowers are not making prohibited payments related to lobbying using federal funds.

During application processing and prior to issuing a loan, WIFIA applicants are asked to:

- ✓ Provide completed “Certification Regarding Lobbying” (EPA Form 6600-06) form and if applicable, the “Disclosure of Lobbying Activities” (SF-LLL) form, which are included in the WIFIA Application. Use the WIFIA Loan ID as the EPA Project Control Number.

Attachment 3

7 13 of 51

- ✓ Provide evidence of borrower communication to contractors and subcontractors of the need to also comply with restrictions on lobbying. This is generally provided in bid advertisements and executed contracts. Although no specific contract language is required, sample contract language in the WIFIA specifications package is available for use by the borrower (see Resources below).

Once a WIFIA loan is executed, key borrower responsibilities for implementation include:

- ✓ Continue to comply with and communicate to contractors and subcontractors of the need to comply with restrictions on lobbying. The WIFIA program will check advertised bids and executed construction contracts, which are a general reporting requirement of the loan, for this type of communication to contractors.

RESOURCES

- [Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions](#) (31 U.S.C 1352)
- [New Restrictions on Lobbying](#) (40 CFR part 34)
- [Certification regarding lobbying](#) (EPA Form 6600-06)
- [Disclosure of Lobbying Activities](#) (SF-LLL)
- Sample Contract Language in [WIFIA Specifications Package](#)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT

This authority applies to WIFIA borrowers who have acquired or will acquire real property, whether temporary or permanent, for the purpose of completing the WIFIA project. The acquisition itself does not need to be federally funded. If federal funds are used in any phase of the program or project, this statute applies.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), 42 U.S.C 61, establishes a uniform policy for just compensation of acquired real property and for fair and equitable treatment of persons who are displaced from their homes, farms, or businesses to make way for federal or federally assisted projects. It provides basic guidelines for negotiating the acquisition of real property by the federal government. The URA also requires agencies to reimburse individuals for actual and reasonable expenses incident to relocation, such as moving costs, direct loss of tangible personal property associated with moving or discontinuing a business, and expenses involved in searching for a replacement home or business site. 49 CFR Part 24 is the government-wide regulation that implements the URA.

WHAT TO EXPECT

The WIFIA program has the responsibility to check that its borrowers comply with the requirements of the URA if land acquisition is relevant to the project.

During application processing and once the WIFIA loan is executed, WIFIA borrowers are asked to:

- ✓ Disclose to the WIFIA program if land acquisition has occurred or will occur.

- ✓ Certify that the acquisition complies with or will comply with the URA. This disclosure is completed as part of the certification submitted with the LOI and loan application and as part of disbursement requests to the WIFIA program.
- ✓ Provide evidence that URA requirements are met, if requested, which may include initial notification to the landowner, appraisal and appraisal reviews, and offer of just compensation related to the acquisition.

RESOURCES

- [URA implementing regulations for Department of Transportation](#), incorporated by reference in EPA regulations (49 CFR Part 24)
- [Guidance on Acquisition and Appraisal: Acquiring Real Property for Federal and Federal-Aid Programs and Projects](#), Federal Highway Administration Office of Real Estate Services
- [Federal-Aid Essentials for Local Public Agencies: Right of Way Requirements](#), Federal Highway Administration

DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT

Executive Order 12372 and Section 204 of the Demonstration Cities and Metropolitan Development Act, 42 U.S.C 3301 *et seq.*, aim to foster an intergovernmental partnership between federal, state, tribal, and local governments. The executive order encourages federal coordination with local officials on the planning and construction of public facilities within their jurisdiction.

WHAT TO EXPECT

The WIFIA program is not identified as a program requiring intergovernmental review under this Executive Order.

The WIFIA program does not conduct compliance monitoring activities related to this Act after loan execution.

RESOURCES

- [Intergovernmental Review of Federal Programs](#) (Executive Order 12372)
- [EPA Financial Assistance Programs Subject to Executive Order 12372](#)

DRUG-FREE WORKPLACE ACT

Under the Drug-free Workplace Act of 1988, 41 U.S.C. § 8101 *et seq.*, federal contractors or any program receiving federal grants is required to establish a drug-free workplace policy. Governmentwide implementation of the Act is prescribed at 2 CFR Part 182, Subparts A through F.

WHAT TO EXPECT

The WIFIA program is a federal loan program and therefore is not covered by this Act.

The WIFIA program does not conduct compliance monitoring activities related to this Act after loan execution.

RESOURCES

- [Drug-free workplace programs](#), Substance Abuse and Mental Health Services Administration
- [Governmentwide requirements for Drug-free Workplace](#) (2 CFR Part 182)

CIVIL RIGHTS, NONDISCRIMINATION, AND EQUAL EMPLOYMENT OPPORTUNITY AUTHORITIES

The following federal requirements fall under the Civil Rights, Nondiscrimination, and Equal Employment Opportunity Authorities listed in the WIFIA regulations at 40 CFR Part 35 Subpart Q.

AGE DISCRIMINATION ACT, SECTION 504 OF THE REHABILITATION ACT, AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Three important laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, handicap or age, in programs or activities receiving federal financial assistance. These laws are:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, as amended, states that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, as amended and supplemented by Executive Orders 11914 and 11250, states that “(n)o otherwise qualified individual with a disability in the United States...shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance...,” and
- The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, as amended, states that “(n)o person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance...”

Borrower compliance with these laws is not limited to the project funded by the WIFIA program. These laws apply to the WIFIA borrower and its operations in its entirety.

WHAT TO EXPECT

The WIFIA program has the responsibility to check that its borrowers are complying with civil rights laws and are developing projects, programs, and activities on a non-discriminatory basis.

During application processing and prior to issuing a loan, WIFIA applicants are asked to:

- ✓ Provide a completed “Pre-Award Compliance Review Report” (EPA Form 4700-4), which is included in the WIFIA Application, and if requested, additional information on any outstanding civil actions against the applicant.
- ✓ Provide evidence of communication to contractors and subcontractors of the need to also comply with civil rights laws. This is generally provided in bid advertisements and executed contracts. Although no specific contract language is required, sample contract language in the WIFIA specifications package is available for use by the applicant (see Resources below).

Once a WIFIA loan is executed, key borrower responsibilities for implementation include:

- ✓ Continue to comply with and communicate to contractors and subcontractors of the need to comply with civil rights laws and regulations. The WIFIA program will check advertised bids and executed construction contracts, which are a general reporting requirement of the loan, for this type of communication to contractors.
- ✓ Notify the WIFIA program of new civil suits that have been filed against the borrower that may have material adverse effect.

RESOURCES

- [Civil Rights Pre-Award Compliance Review Report](#) (EPA Form 4700-4)
- [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#) (40 CFR Part 5)
- [Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency](#) (40 CFR Part 7)
- Sample Contract Language in [WIFIA Specifications Package](#)

SECTION 13 OF THE CWA

As codified in 42 U.S.C. § 1251, Section 13 provides that “No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” EPA implementing regulations for this provision of the CWA is prescribed in 40 CFR part 7 and enforced similarly to those already established for racial and other discrimination under Title VI of the Civil Rights Act of 1964.

WHAT TO EXPECT

The WIFIA program has similar borrower expectations outlined in *Age Discrimination Act, Section 504 of the Rehabilitation Act, and Title VI of the Civil Rights Act of 1964* for implementing CWA Section 13.

RESOURCES

- [Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency](#) (40 CFR Part 7)

EQUAL EMPLOYMENT OPPORTUNITY

Through a series of Executive Orders, and a decision by the Equal Employment Opportunity Commission, the federal government established a national policy related to discrimination based on race, color, sex, religion, and national origin to enhance hiring, training, and promotion opportunities for minorities and women in construction programs financed, in part, by federal dollars.

Chief among these directives is Executive Order 11246, which requires all federal contracting agencies to include certain nondiscrimination and "affirmative action" provisions in all contracts and to require the recipients of federal contracts to include these provisions in subcontracts. The provisions apply to WIFIA borrowers, contractors and subcontractors who receive more than \$10,000 in federal dollars a year and commit these entities to maintaining a policy of non-discrimination in the treatment of employees, to

Attachment 3

12

18 of 51

make this policy known to employees, and to recruit, hire, and train employees without regard to race, color, sex, religion, or national origin.

Section 301 of Executive Order 11246 requires that WIFIA borrowers undertake and agree to incorporate into contracts and subcontracts specific language outlining the eight principals and directives found in Section 202 of the Executive Order.

Implementing guidelines can be found in the Department of Labor's regulations at 41 CFR Part 60. Compliance with Executive order 11246 is based on implementation of the Equal Opportunity Clause, and specific affirmative action obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

WHAT TO EXPECT

The WIFIA program has the responsibility to check that its borrowers are complying with laws and regulations related to Equal Employment Opportunity.

During application processing and once the WIFIA loan is executed, WIFIA borrowers are asked to:

- ✓ Provide executed construction contracts (active and completed) that include specified EEO language. EEO law require specific language from Section 202 of Executive Order 11246 be included in bid documents and contracts. The specific language is included in the WIFIA specifications package, which is available for use by the borrower (see Resources below).
- ✓ In bid solicitations, provide an additional “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity” as described at 41 CFR Part 60-4. The specific language is included in the WIFIA specifications package.
- ✓ Prominently post “Equal Opportunity is the Law” posters where it is accessible to all applicants for employment, employees, contractors, and subcontractors.
- ✓ Notify the Department of Labor’s Office of Federal Contract Compliance Programs within 10 working days of award of a construction contract or subcontract in excess of \$10,000.

RESOURCES

- [Equal Employment Opportunity posters](#)
- [Executive Order 11246 and amendments](#)
- [DOL Construction Contract Technical Assistance Guide](#)
- [DOL Construction Contract Award Notification](#)
- Sample Contract Language in [WIFIA Specifications Package](#)

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN PROCUREMENT UNDER ENVIRONMENTAL PROTECTION AGENCY (EPA) FINANCIAL ASSISTANCE AGREEMENTS

The Disadvantaged Business Enterprise (DBE) Program is an EPA outreach, education, and goal program designed to increase and encourage the utilization and participation of DBEs in procurements funded by EPA assistance programs (73 FR 15904). The implementing regulations can be found at 40 CFR Part 33.

Attachment 3

13

19 of 51

WIFIA borrowers are required to seek and encouraged to use small, minority and women-owned businesses for their procurement needs using EPA's six good faith efforts when contracting. The borrower must also ensure that its prime contractor(s) follow the same rules when subcontracting. The six good faith efforts include:

- Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State, and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- Make information on forthcoming opportunities available to DBEs, arrange time frames for contracts, and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State, and Local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- If the prime contractor awards subcontracts, require the prime contractor to take the steps in items 1 through 5.

There are no specific requirements for implementing each of the efforts as long as the effort is shown. Aside from these efforts, WIFIA borrowers do not have other administrative or reporting requirements of the DBE program under a WIFIA loan.

WHAT TO EXPECT

In implementing EPA's DBE program, WIFIA borrowers are asked to:

- ✓ Apply the six good faith efforts when in the process of seeking a prime contractor and ensure that its prime contractors apply the six good faith efforts when in the process of seeking subcontractors.
- ✓ Maintain proper records demonstrating that the six good faith efforts were applied during contract procurement.

RESOURCES

- [DBE Implementing regulations](#) (40 CFR part 33)
- [DBE Program resources and fact sheets](#)
- Sample Contract Language in [WIFIA Specifications Package](#)

AMERICAN IRON AND STEEL (AIS) REQUIREMENT

OVERVIEW

This requirement is specified in the WIFIA statute at 33 U.S.C. § 3914 and implementation of the federal requirement mirrors Clean Water and Drinking Water SRF programs.

WIFIA borrowers must install iron and steel products that are produced in the U.S. for the project. Products covered under the AIS requirement include:

- Lined or unlined pipes and fittings
- Manhole covers and other municipal castings
- Hydrants
- Tanks
- Flanges
- Pipe clamps and restraints
- Valves
- Structural steel
- Reinforced precast concrete
- Construction materials

If the listed products are permanently incorporated into the project and are primarily iron and steel material, then borrowers should obtain and keep record of the manufacturer's certification of AIS compliance for that product. If a product does not fall within one of the listed product categories, it does not need to comply with the AIS requirements.

The WIFIA statute allows EPA to grant project waivers in specific circumstances: (1) if the requirement is inconsistent with the public interest; (2) if the products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) if the products will increase the cost of the project by 25% or more. **WIFIA borrowers can seek guidance from the program on waivers at any phase in project design and implementation to discuss borrower-specific circumstances and explore options to ensure compliance.**

Product availability waiver requests are most common because not all items covered under the AIS requirement may be produced in the U.S. Borrowers should notify the WIFIA program when product availability issues are identified and prior to product procurement and installation to ensure that the project maintains compliance with the AIS requirement. Although not required, identifying products during project design can help the borrower assess market availability and initiate a timely waiver process, where needed. The waiver process involves:

1. Independent product research. Before availability waivers are considered, the WIFIA program will conduct independent market review based on the borrower's technical specifications of the product.
2. Borrower assessment. The WIFIA program will notify the borrower of the results and confirm unavailability of the products or identify additional domestically available options for the borrower to assess against their project requirements. If there are feasible options, no further steps are taken.

3. Preparation and submission of waiver request package. If there are no feasible options, borrowers will prepare a waiver request package. The WIFIA program reviews the request for adequacy and submits the package for review and approval on the borrower's behalf.
4. Public comment period. Waiver requests are subject to a 15-day comment period and will be posted on the AIS webpage under [Waiver Requests Received by EPA](#).
5. Approval and notification. Once all comments have been addressed, an approval package will be routed for review and approval through the Office of Water management team. The WIFIA program will post the approved waiver on the AIS webpage under [Approved Project Waivers](#) and notify the borrower.

Waivers should only be sought when all avenues of procuring AIS-compliant products have been exhausted. In many cases, a borrower may find that an availability waiver is not needed.

Public interest and cost waivers are less common. Borrowers should initiate further discussions with the WIFIA program if they believe their project could qualify for a public interest or cost waiver. The waiver process is the same for these waivers except product research and assessment (Steps 1 and 2) do not apply.

There are also national waivers that are immediately available for borrower use and do not require additional approval. The National De Minimis Waiver can be used at the borrower's discretion for incidental and low-cost items; it is ultimately the borrower who decides which items to include under this national waiver. If there is any uncertainty, seek assistance from the WIFIA program.

WIFIA cannot close a loan with previously incurred construction costs that are not compliant with the AIS requirement.

WHAT TO EXPECT

The WIFIA program has the responsibility to check that its borrowers understand the AIS requirements and that those requirements are being properly implemented for the entire project. WIFIA will conduct periodic document reviews and site walk-throughs during project construction to check AIS implementation as part of its compliance monitoring activities.

During application processing, WIFIA applicants may be asked to:

- ✓ Provide evidence of communication on AIS requirements to contractors and subcontractors. Although not statutorily required, applicants can easily achieve this by including notification in advertised bids and executed contracts. Sample contract language in the WIFIA specifications package is available for use by the borrower (see Resources below).
- ✓ If a project has not yet executed contracts, provide a plan for communication on AIS requirements to contractors and subcontractors.
- ✓ If the project includes previously incurred costs for construction activities, provide additional documentation to help the WIFIA program check that incurred costs are compliant with this requirement. This request may include: (1) a list of iron or steel products purchased and installed; (2) a sample of AIS certifications for those items; (3) related project waivers; and/or (4) results of a third-party AIS audit.

Attachment 3

16

22 of 51

As a WIFIA program check on compliance, WIFIA borrowers are asked to periodically submit documentation to demonstrate continued compliance with the AIS requirement. Key borrower responsibilities for implementation include:

- ✓ Communicate AIS requirements to contractors and ensure contractors are communicating the requirements to its subcontractors. This is generally included in advertised bids and executed contracts that are a general reporting requirement of the loan and checked by WIFIA. If communication is not included in the contract documents, provide additional evidence that communication has taken place.
- ✓ Submit draft or executed prime construction contracts for WIFIA review to ensure that adequate compliance language is included. The WIFIA program does not generally review subcontracts unless there is cause for further review.
- ✓ Identify products that must comply with AIS requirements and determine whether they can be procured domestically. Communicate to the WIFIA program when products cannot be procured domestically to initiate the program's independent market review and determine whether there is a need for an availability waiver. Submit additional documentation, such as technical specifications and product information, to support the WIFIA program's review and approval process, as needed.
- ✓ Maintain up-to-date records or frequently check with prime contractors on AIS certifications for products purchased and installed on the project. This can help the borrower prevent non-compliant products from being permanently incorporated into the project and triggering a non-compliance event. The WIFIA Program requires AIS documentation to be maintained for three years after project completion. **The key to borrower compliance is collecting adequate AIS documentation for installed products that are covered by the requirement.**
- ✓ Report any issue with noncompliance to the WIFIA program based on the borrower's review of purchased and installed products on contracts and subcontracts that must comply with the AIS requirement.

RESOURCES

- [AIS Implementation Memoranda](#) (four documents)
- [National Waivers](#), including [National De Minimis Waiver](#). See also [AIS Online Webinar on De Minimis](#), June 2020
- [Project Waiver Request Checklist](#)
- Sample Contract Language in [WIFIA Specifications Package](#)
- Sample Certification Letter (available in the AIS Implementation Memorandum, dated March 2014). See also [AIS Online Webinar on AIS Certification Letters](#), July 2020.

LABOR LAWS AND STANDARDS

OVERVIEW

This requirement is included in the WIFIA statute at 33 U.S.C. § 3909(e) by reference to Section 513 of the Federal Water Pollution Control Act (33 U.S.C. § 1372) and primarily covers requirements under the ***Davis-Bacon and Related Acts*** and the ***Contract Work Hours Safety Standards Act***. Implementation of the federal requirements under these Acts are consistent with guidance provided to Clean Water and Drinking Water State Revolving Loan Programs.

Borrowers must comply with federal prevailing wage laws, commonly referred to as Davis-Bacon. While the Davis-Bacon Act itself only requires compliance for federal contracting, WIFIA falls under “related acts” that are also subject to Davis-Bacon requirements. For all prime contracts above the \$2,000 threshold, borrowers must enclose specific Davis-Bacon language into the prime contracts and ensure the prime contractor includes the same language in all associated subcontracts. Contracted laborers and mechanics are subject to wages at a rate no less than those determined by the U.S. Department of Labor (DOL).

Borrowers must obtain the wage determination for the locality in which a covered activity will take place prior to issuing requests for bids, proposals, quotes, or other methods for soliciting contracts for activities subject to Davis-Bacon. The wage determinations for water infrastructure projects generally fall under the “Heavy” construction type, although the “Building” construction type may also apply. The wage determinations shall be incorporated into solicitations and subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determinations incorporated into the prime contract.

Force Account laborers and mechanics employed by a governmental agency or political subdivision are not covered under this Act. Further, under the Contract Work Hours Safety Standards Act, borrowers must ensure contractors are receiving overtime pay for work in excess of forty hours for all contracts above the \$100,000 threshold. To ensure proper wages are paid, borrowers must collect certified payrolls from contractors and periodically conduct personnel interviews to verify proper wages are being paid under a contract.

Many states also have their own prevailing wage laws; however, state prevailing wage laws are not a substitute for federal prevailing wage laws. Requirements for both laws must be met and the greater of the two wages should be applied to the contracts (where equivalent state labor categories can be discerned). Where contracts include incorrect wage determinations, the borrower must take steps to reissue or amend the contract to retroactively incorporate the proper wage determination to the beginning of the contract and compensate for any increases in wages resulting from the wage determination correction.

WIFIA cannot close a loan that is not compliant or is not in remediation to return to compliance with this requirement.

WHAT TO EXPECT

The WIFIA program has the responsibility to check that its borrowers understand the Davis-Bacon requirements and that those requirements are being properly implemented for the entire project. The WIFIA program will conduct periodic document reviews and site walk-throughs during project construction to check for implementation of Davis-Bacon requirements as part of its compliance monitoring activities.

During application processing, WIFIA applicants may be asked to:

- ✓ Provide executed construction contracts (active and completed) that include specified Davis-Bacon contract language. DOL regulations require specific language and relevant wage determinations be included in bid documents and contracts. **Note that the specified language under 29 CFR §5.5 has been modified for the WIFIA program to also identify borrowers as authorized representatives to ensure compliance with the statute.** The modified language is included in the WIFIA specifications package, which is available for use by the applicant (see Resources below).
- ✓ Provide executed construction contracts (active and completed) that include relevant wage determinations. DOL publishes wage determinations that specify the minimum wage (including fringe benefits) for a given construction type, labor category, and locality in which the work is conducted. These wages are updated regularly on their website. If state prevailing wages also apply, show evidence that a comparison of labor wage rates and categories have been conducted and that the higher of the wages apply to the contract.
- ✓ If a project has not yet executed contracts, provide sample front-end documents that will be used in all relevant bids and contracts issued for the project.
- ✓ If the project includes previously incurred costs for construction activities, provide additional documentation to help the WIFIA program check that incurred costs are compliant with this requirement. This request may include: (1) results of a third-party Davis-Bacon audit of the project or specific contract(s); (2) a random sample of certified payroll reports and personnel interviews collected for the contract(s); and/or (3) other borrower evidence of compliance checks for reporting and paid wages (including fringe benefits).

As a WIFIA program check on compliance after loan execution, WIFIA borrowers are asked to periodically submit documentation to demonstrate continued compliance with the labor laws and standards. Key borrower responsibilities for implementation include:

- ✓ Communicate Davis-Bacon requirements to contractors and ensure contractors are relaying the requirements to their subcontractors. Statutorily, this communication is required in advertised bids and executed contracts that are a general reporting requirement of the loan and checked by WIFIA. While the WIFIA program may check borrower's prime contracts for this language, the onus is on borrowers and prime contractors to verify the same contract language is applied to all relevant subcontracts and that the subcontracts also comply with this requirement.

- ✓ Identify the proper wage rates to apply in advertised bids and subsequently in executed contracts. During advertisement, borrowers should monitor and update the bid with the latest applicable version of DOL's published wage determinations. Borrowers must award contracts within 90 days of bid close to "lock" the wage determinations included in the advertisement. Otherwise, an updated wage determination is required. Seek assistance from the WIFIA program on selecting proper wage determinations, as needed.
- ✓ For collaborative delivery contracts (e.g., Design-Build, Progressive Design-Build, Construction Management at Risk), there is "substantial and segregable amount[s] of construction work" that can be exercised using amendments or addenda to the contracts. These types of contracts should include a current wage determination at the time an amendment - with the purpose of initiating construction on a package or phase of a project - is exercised. See DOL's AAM157 guidance on 'Application of DBA to Contracts with Options.'
- ✓ Submit draft or executed prime construction contracts for WIFIA program review to ensure that adequate compliance language and the appropriate federal wage rates are included. The WIFIA program does not generally review subcontracts unless there is cause for further review.
- ✓ If a borrower encounters a unique situation at a site that presents uncertainties regarding Davis-Bacon applicability, the borrower must discuss the situation with EPA before authorizing work on that site. This includes any borrower requests for wage conformances for labor classifications that may not exist in the wage determinations. A conformance request must be initiated by the borrower, submitted by EPA, and approved by DOL.
- ✓ If state prevailing wages also apply, ensure that the certified payrolls reflect paid wages that are also, at a minimum, equal to the corresponding federal prevailing wage rates for the contract.
- ✓ Post proper Davis-Bacon signage and make readily available the applicable prevailing wage determinations at the construction site(s).
- ✓ Maintain up-to-date records for at least three years after project completion. Records should include:
 - Certified payrolls. Borrowers must collect certified payrolls from contractors weekly and check that payroll reports are accurate and paid wages are consistent with the contract's wage determination and overtime requirements.
 - Personnel interviews. Borrowers must conduct periodic interviews of workers to ensure proper wages are being paid and document the interviews by completing SF-1445: Labor Standards Interview. Although WIFIA does not require a specific number and frequency, interviews should occur throughout the course of construction and include a sufficient sample of job classifications represented on the job, as well as across various contracts.
 - Apprenticeship and Trainee Programs. Borrowers must confirm apprentice and trainee program registrations and check that ratio requirements under the approved program(s) are met.

RESOURCES

- [Davis-Bacon regulations](#) (29 CFR Part 5)
- [U.S. Department of Labor On-line Wage Determinations](#)
- [U.S. Department of Labor Guides, Forms, and Posters for Davis Bacon and Related Acts](#) (with additional resources)
- [AAM157 guidance on 'Application of DBA to Contracts with Options'](#)
- [Implementing Davis-Bacon Wage Rate Requirements: An EPA Guide for SRFs](#)
- Sample Contract Language in [WIFIA Specifications Package](#)

LATEST UPDATES ON FEDERAL REQUIREMENTS

The following federal requirements have been issued since the promulgation of the WIFIA implementation regulation (December 2016) and directly apply to EPA loan and grant programs, including WIFIA borrowers. The WIFIA program will periodically update this section with any notable laws and regulations and WIFIA's expectations for borrower compliance.

PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

In August 2018, the federal government enacted the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law, PL 115-232). Section 889(b)(1) of PL 115-232 prohibits an executive agency from obligating or expending loan or grant funds to procure or obtain or to enter into, extend, or renew a contract to procure or obtain "covered telecommunications equipment or services" that are substantial or essential to any system, or as critical technology to any system. Federal loan and grant programs are required to implement this requirement within two years of enactment.

"Covered telecommunications equipment or services" (PL 115-232, Section 889(f)(3)) include:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The prohibition does not apply to:

- Procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.
- Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

Effective August 13, 2020, borrowers cannot submit these costs for WIFIA disbursement as they are no longer eligible costs and the WIFIA program, as a federal loan program, is prohibited from reimbursing for telecommunications equipment and services covered under this law.

WHAT TO EXPECT

To ensure compliance with this requirement, borrowers are asked to:

- ✓ Provide evidence of borrower communication to contractors and subcontractors of the need to comply with the prohibition. This is generally provided in bid advertisements and executed contracts. Although no specific contract language is required, sample contract language in the WIFIA specifications package is available for use by the borrower (see Resources below).
- ✓ Avoid procurement of “covered telecommunications equipment, services, and systems” on contracts that involve the use of federal funds. Access SAM to verify that entities providing telecommunications equipment, services, and systems on the WIFIA project are not listed on the exclusion list.

RESOURCES

- [John S. McCain National Defense Authorization Act for Fiscal Year 2019](#) (PL 115-232)
- [System for Award Management \(SAM\)](#)
- Sample Contract Language in [WIFIA Specifications Package](#)

GENERAL GUIDANCE ON COMPLIANCE WITH FEDERAL REQUIREMENTS

The WIFIA program is committed to supporting its borrowers with complying with federal requirements. In any case of uncertainty with implementation, the WIFIA borrower should seek timely clarification and assistance by contacting their respective WIFIA points of contact.

- For general inquiries on federal requirements for the WIFIA program, email: wifia@epa.gov
- For borrowers processing their loan applications, email the WIFIA engineering or environmental contact assigned to the transaction.
- For borrowers with executed loans, email: wifia_portfolio@epa.gov

GUIDING PRINCIPLES FOR COMPLIANCE

Below are guiding principles to support the borrower in ensuring compliance with federal requirements:

UNDERSTAND THE FEDERAL REQUIREMENTS. Reading through this Borrower Guide is a good first step towards understanding the federal requirements that apply to WIFIA borrowers. These requirements are very similar to those that would apply to other federal funding programs. If there is borrower uncertainty on the WIFIA program's expectations for compliance, seek clarifications by contacting the borrower's respective WIFIA point of contact. Borrowers may find that developing a plan for compliance with federal requirements early in project planning can ensure that potential issues are identified and remedied early or are avoided entirely.

IDENTIFY AND COMMUNICATE EARLY. Defining lines of communications and decision-making roles is also important. WIFIA borrowers are responsible for ensuring compliance with federal requirements and should be the ultimate decision-maker for the project. As frequently noted in this guide, the WIFIA program expects borrowers to communicate federal requirements as part of bid solicitations and in executed contracts when WIFIA funding is anticipated. This is particularly beneficial for construction-related work to avoid the need to retroactively address federal requirements with contractors. Timely communication between the borrower and the WIFIA program, as well as between the borrower and its contractors/subs, can help avoid issues of non-compliance. Throughout the course of the WIFIA project, borrowers should not hesitate to communicate potential issues with compliance to the WIFIA program and collectively explore available options and remedies with them.

MAINTAIN GOOD DOCUMENTATION. Good documentation is key to compliance. If there is no evidence that the borrower has complied with federal requirements, the WIFIA program finds it difficult to verify that the borrower is compliant. The WIFIA program does not require any specific software for borrowers to document compliance. There is no single approach to recordkeeping, and it can be as simple or complex as is appropriate for the project.

Borrowers may want to consider the following when establishing recordkeeping procedures:

1. The borrower is responsible for checking and ensuring compliance for their contractors and subcontractors. Organize documents such that they are easy to internally review against federal requirements.

2. The WIFIA program periodically requests review of documents to ensure compliance. This may include document requests for contracts, environmental monitoring reports, AIS certifications for specific items, and certified payrolls and wage determinations. Although the WIFIA program's review may not be inclusive of all contracts and subcontracts, documents should be easy to locate during compliance monitoring activities.
3. Some federal requirements have a minimum duration for maintaining project records, including AIS and Davis-Bacon. Local and state requirements may be longer or shorter. Be aware of recordkeeping requirements to ensure recordkeeping requirements are fully met.

CO-FUNDING WITH OTHER FEDERAL AND STATE PROGRAMS

As a supplementary financing program, WIFIA borrowers may also receive funds from other federally financed programs.

Some of these programs may have overlapping federal requirements; however, each program will have a separate responsibility (and monitoring procedures) to ensure their borrowers comply with the federal requirements outlined for that program. To the extent possible and reasonable, the WIFIA program will work with other federal programs that are co-funding its borrowers to share information on federal compliance activities that may be relevant across the programs. For example, WIFIA borrowers may also receive funding from their SRF program for a project. To help gain efficiencies for both programs, the WIFIA program might coordinate environmental reviews where there are overlapping elements with the state environmental review process. The WIFIA program might also work collaboratively with the state SRF on AIS-related matters.

On the other hand, some of these federally financed programs may have similar but different requirements. WIFIA borrowers should evaluate these separate requirements in its entirety such that implementation will satisfy both sets of requirements. For example, WIFIA borrowers may also receive financing from the Department of Transportation, which may trigger Buy American requirements. AIS and Buy American requirements are separate and distinct. One does not replace the other. WIFIA borrowers will have to satisfy both these requirements.

STATE LAWS AND REGULATIONS

Federal and state laws and regulations do not replace each other. WIFIA borrowers should evaluate federal and state requirements in their entirety such that implementation will satisfy both sets of requirements. For example, the Davis-Bacon Act requires that laborers and mechanics are at least paid the federal prevailing wage laws. If the state prevailing wage law provides higher wages than the federal prevailing wage for the locality and for an equivalent labor category, then the use of the state prevailing wage for that locality and equivalent labor category can satisfy both federal and state prevailing wage law requirements for paid wages. However, the use of higher state wage rates does not preclude the WIFIA borrower from having to comply with other requirements under the Davis-Bacon Act.

PROFESSIONAL SERVICE CONTRACTS VERSUS CONSTRUCTION CONTRACTS

All contracts issued for a project that is receiving a WIFIA loan are subject to a federal requirements review as part of the WIFIA program's compliance monitoring responsibilities. The review ensures that federal requirements are being communicated from borrower to contractors and from contractors to

Attachment 3

25

31 of 51

subcontractors. During compliance monitoring, WIFIA targets this review on prime construction contracts as an initial assessment of the borrower's compliance; however, additional contracts may be requested if warranted.

Not all federal laws and regulations listed in this document apply to professional services contracts. In particular, contract language for American Iron and Steel requirements, Davis Bacon and Related Acts, and Equal Employment Opportunity (EEO), Executive Order 11246, do not apply to professional services contracts. On the other hand, professional services contracts do require reference to the economic and miscellaneous authorities listed in this document.

All contracts must abide by the civil rights and non-discrimination laws, whether they are referenced in contracts or not.

APPENDIX: WIFIA SPECIFICATION PACKAGE AND BID CONTRACT LANGUAGE

Last Updated: December 2020

The is a reference document that provides all necessary contract language for WIFIA funded projects. Please note that some of the contract language in this package is required and must be included verbatim and some is suggested. For *Suggested Contract Language*, you may use your own language so long as it still ensures that provisions are included to guarantee compliance with the federal requirements.

EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THE FEDERAL LANGUAGE PROVISIONS WITH RESPECT TO STATE OR LOCAL LAW.

ECONOMIC AND MISCELLANEOUS AUTHORITIES

DEBARMENT AND SUSPENSION AND PROHIBITIONS RELATING TO VIOLATIONS OF CWA AND CAA WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Suggested Contract Language:

Debarment and Suspension. Contractor certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act to participate in the [Project]. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

NEW RESTRICTIONS ON LOBBYING

Suggested Contract Language:

Federal Lobbying Restrictions (31 U.S.C 1352). Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit to the City the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

CIVIL RIGHTS, NONDISCRIMINATION, AND EQUAL EMPLOYMENT OPPORTUNITY AUTHORITIES

AGE DISCRIMINATION ACT, SECTION 504 OF THE REHABILITATION ACT, TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND SECTION 13 OF THE CLEAN WATER ACT

Suggested Contract Language:

CIVIL RIGHTS OBLIGATIONS. Contractor shall comply with the following federal non-discrimination requirements:

- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (42 U.S.C 2000D, *et. seq*)
- b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (29 U.S.C. 794, supplemented by EO 11914, 41 FR 17871, April 29, 1976 and EO 11250, 30 FR 13003, October 13, 1965)
- c. The Age Discrimination Act of 1975, which prohibits age discrimination. (42 U.S.C 6101 *et. seq*)
- d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- e. 40 CFR Part 7, as it relates to the foregoing.

EQUAL EMPLOYMENT OPPORTUNITY

Required Contract Language. This language must be included verbatim:

Equal Employment Opportunity (EEO). The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). (EO 11246, 30 FR 12319, September 28, 1965)

Contractor's compliance with Executive order 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices

Attachment 3

34 of 51

to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp.,

Attachment 3

A-3

35 of 51

Standard Federal Equal Employment Opportunity Construction Contract Specifications. (41 CFR 60-4.3)

- 1) As used in these specifications:
 - a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d) "Minority" includes:
 - i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- 3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area

Attachment 3

36 of 51

A-4

where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- 5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs

Attachment 3

A-5

37 of 51

funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

- f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o) Document and maintain a record of all solicitations of offers for subcontracts from minority and

Attachment 3

A-6

38 of 51

female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions

Attachment 3

A-7

39 of 51

hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Segregated Facilities. (41 CFR 60-1.8) The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

Required language in bid solicitations (or equivalent):

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) located at 41 CFR § 60-4.2:

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
	Insert goals for each year ¹	6.9% ²

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work

¹ Goals can be found at: <https://www.dol.gov/agencies/ofccp/construction>

² Nationwide goal for all covered areas

in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN PROCUREMENT UNDER EPA FINANCIAL ASSISTANCE AGREEMENTS

Note: The WIFIA program only requires use of the EPA DBE program's six good faith efforts during contract procurement. States may require additional DBE reporting.

Suggested Contract Language:

Disadvantaged Business Enterprises (DBE). The contractor must ensure that the DBE's six good faith efforts are used during the procurement of subcontractors for the [Project]. The six good faith efforts are found at: <https://www.epa.gov/grants/disadvantaged-business-enterprise-program-requirements#sixgoodfaitheadefforts>.

AMERICAN IRON AND STEEL (AIS) REQUIREMENT

Suggested Contract Language:

The Contractor acknowledges to and for the benefit of _____ ("Purchaser") and the United States Environmental Protection Agency ("EPA") that it understands the goods and services under this Agreement are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents, warrants and covenants to and for the benefit of the Purchaser and the EPA that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the EPA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or the EPA to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Purchaser). While the Contractor has no direct contractual privity with the EPA, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the EPA is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

LABOR LAWS AND STANDARDS

Note that the language below addresses Davis Bacon and Related Acts and incorporates the WIFIA borrower as an authorized representative, in accordance with the WIFIA loan agreement, to ensure compliance with this federal requirement.

Required Contract Language.

Compliance with Davis-Bacon and Related Acts.

(a) In any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, provided that such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be

Attachment 3

A-11

43 of 51

easily seen by the workers.

(ii)

- (A) The WIFIA assistance recipient, [name of WIFIA borrower], on behalf of the U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The WIFIA assistance recipient shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the WIFIA assistance recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent to the Administrator of the Wage and Hour Division (WHD Administrator), U.S. Department of Labor, Washington, DC 20210. The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the WIFIA assistance recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the WIFIA assistance recipient shall refer the questions, including the views of all interested parties and the recommendation of the WIFIA assistance recipient, to the WHD Administrator for determination. The WHD Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs

Attachment 3

A-12

44 of 51

reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (2) Withholding. [name of WIFIA borrower], shall upon written request of the WIFIA Director or an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WIFIA Director may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) Payrolls and basic records.
 - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
 - (ii) {no text here}

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to [name of WIFIA borrower] . The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms/wh347> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to [name of WIFIA borrower], for transmission to the EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to [name of WIFIA borrower]).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of [name of the borrower, EPA, or the Department of Labor, and shall permit such

Attachment 3

A-14

46 of 51

representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the EPA may, after written notice to the [name of WIFIA borrower], take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the WHD Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to

Attachment 3

47 of 51

A-15

and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the WHD Administrator determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and [name of WIFIA borrower], EPA, the U.S.

Attachment 3

A-16

48 of 51

Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section shall be inserted in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The [name of WIFIA borrower] shall upon its own action or upon written request of an authorized representative of the Department of Labor, or the EPA, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors

Attachment 3

A-17

49 of 51

to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the EPA shall cause or require the [name of WIFIA borrower] to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the [name of WIFIA borrower], EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

LATEST UPDATES ON FEDERAL REQUIREMENTS

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Suggested Contract Language:

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (Effective August 13, 2020). The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), at Section 889, prohibits EPA financial assistance recipients, including WIFIA borrowers, from expending loan funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in the Act, “covered telecommunications equipment or services” means:

- a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c) Telecommunications or video surveillance services provided by such entities or using such equipment.
- d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Act does not prohibit:

- a) Procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.
- b) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

INSTALLMENT PURCHASE AGREEMENT

by and between the

SANTA CLARA VALLEY WATER DISTRICT

and the

SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING CORPORATION

Dated as of December __, 2022

relating to

\$ _____
SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING CORPORATION
WATER UTILITY (WIFIA ID – 22115CA)

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
DEFINITIONS	
Section 1.1. Definitions	2
ARTICLE II	
REPRESENTATIONS AND WARRANTIES	
Section 2.1. Representations by Valley Water	4
Section 2.2. Representations and Warranties by the Corporation	5
ARTICLE III	
ACQUISITION AND/OR CONSTRUCTION, SALE AND CONVEYANCE OF THE PROJECT	
Section 3.1. Acquisition and/or Construction, Sale and Conveyance of the Project	5
Section 3.2. Sale and Purchase of Component B of the Project	6
Section 3.3. Purchase and Sale of the Project.....	6
Section 3.4. Title	6
Section 3.5. Project Acquisition Fund	6
ARTICLE IV	
INSTALLMENT PAYMENTS	
Section 4.1. Purchase Price.....	7
Section 4.2. Installment Payments.....	7
ARTICLE V	
WATER UTILITY SYSTEM REVENUES	
Section 5.1. Pledge.....	8
Section 5.2. Allocation.....	9
Section 5.3. Investments	9
Section 5.4. WIFIA Debt Service Account.....	9
ARTICLE VI	
COVENANTS OF VALLEY WATER	
Section 6.1. Compliance with Installment Purchase Agreement, Water Utility Parity System Master Resolution and the 2022 WIFIA Loan Agreement	10
Section 6.2. Against Encumbrances	10
Section 6.3. Compliance with Contracts.....	11

Section 6.4.	Protection of Security and Rights of the Corporation.....	11
Section 6.5.	Additional Protection for Officers of the Corporation.....	11
Section 6.6.	Further Assurances	11

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

Section 7.1.	Prepayment	11
Section 7.2.	Method of Prepayment.....	11

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF THE CORPORATION

Section 8.1.	Events of Default	12
Section 8.2.	Application of Water Utility System Revenues and Other Funds After Default	13
Section 8.3.	Other Remedies of the Corporation	13
Section 8.4.	Remedies of the WIFIA Lender.....	14
Section 8.5.	Non-Waiver	14
Section 8.6.	Remedies Not Exclusive	14

ARTICLE IX

MISCELLANEOUS

Section 9.1.	Liability of Valley Water Limited to Water Utility System Revenues.....	15
Section 9.2.	Benefits of Installment Purchase Agreement Limited to Parties	15
Section 9.3.	Amendment of Water Utility Parity System Master Resolution	15
Section 9.4.	Successor Is Deemed Included in all References to Predecessor	15
Section 9.5.	Waiver of Personal Liability	15
Section 9.6.	Article and Section Headings, Gender and References	16
Section 9.7.	Partial Invalidity	16
Section 9.8.	Assignment	16
Section 9.9.	Net Contract.....	16
Section 9.10.	California Law	16
Section 9.11.	Notices	16
Section 9.12.	Effective Date	17
Section 9.13.	Execution in Counterparts	17
Section 9.14.	Indemnification of Corporation	17
Section 9.15.	Amendments Permitted.....	17

EXHIBIT A	DESCRIPTION OF THE PROJECT	A-1
EXHIBIT B	PURCHASE PRICE	B-1

INSTALLMENT PURCHASE AGREEMENT

This INSTALLMENT PURCHASE AGREEMENT, made and entered into as of December __, 2022, by and between the SANTA CLARA VALLEY WATER DISTRICT, a special district created by the State Legislature, organized and existing under the laws of the State of California (“Valley Water”), and the SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the “Corporation”).

WITNESSETH:

WHEREAS, Valley Water owns and operates that certain Water Utility System as described in this Installment Purchase Agreement;

WHEREAS, on February 23, 2016, the Board of Directors of Valley Water adopted Resolution No. 16-10 entitled “A Resolution of the Board of Directors of the Santa Clara Valley Water District Providing for the Allocation of Water Utility System Revenues and Establishing Covenants to Secure the Payment of Obligations Payable from Net Water Utility System Revenues” as amended and supplemented from time-to-time (the “Water Utility Parity System Master Resolution”);

WHEREAS, Valley Water desires to plan, design, acquire and/or construct certain capital improvements within Valley Water’s Water Utility System and to reimburse itself for costs previously expended to finance certain equipment and facilities within Valley Water’s Water Utility System, as more particularly described in Exhibit A hereto (collectively, the “Project”);

WHEREAS, the Corporation has agreed to assist Valley Water in the acquisition of the Project;

WHEREAS, the Corporation, as borrower, Valley Water, as obligor, and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”), have entered into (a) a WIFIA Master Agreement dated as of December __, 2022 (the “WIFIA Master Agreement”) and (b) a WIFIA Loan Agreement (WIFIA ID – 22115CA dated as of December __, 2022 (the “2022 WIFIA Loan Agreement”), secured, *inter alia*, by the payments to be made by Valley Water to the Corporation under this Installment Purchase Agreement to finance the acquisition of the WIFIA Portion of the Project (as defined below); and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement; and

NOW, THEREFORE, IN CONSIDERATION OF THESE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 1.1. **Definitions.** Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein. Unless the context otherwise requires, all capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Water Utility Parity System Master Resolution or the 2022 WIFIA Loan Agreement.

Component

The term “Component” means Component A and Component B of the Project as more particularly described in Exhibit A attached hereto.

Component A

The term “Component A” means those components of the Project related to the planning, design, acquisition and/or construction of certain equipment and facilities within Valley Water’s Water Utility System as more particularly described in Exhibit A attached hereto.

Component B

The term “Component B” means those components of the Project related to reimbursement to Valley Water for costs previously expended by Valley Water to plan, design, acquire and/or construct certain equipment and facilities within Valley Water’s Water Utility System as more particularly described in Exhibit A attached hereto.

Corporation

The term “Corporation” means the Santa Clara Valley Water District Public Facilities Financing Corporation.

Event of Default

The term “Event of Default” means an event described in Section 8.1.

Installment Payment Date

The term “Installment Payment Date” means, as more particularly set forth in Exhibit B attached hereto, (a) with respect to the payment of interest, the fifth (5th) day prior to each June 1 and December 1 and (b) with respect to the payment of principal, the fifth (5th) day prior to each June 1, in each case if said date is not a Business Day, then the preceding Business Day.

Installment Payments

The term “Installment Payments” means the payments of interest and principal to be paid by Valley Water under and pursuant hereto.

Installment Purchase Agreement

The term “Installment Purchase Agreement” means this Installment Purchase Agreement, dated as of December __, 2022, by and between Valley Water and the Corporation, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

Law

The term “Law” means the Santa Clara Valley Water District Act, Chapter 1405 of Statutes of 1951 of the State of California, as amended, and all laws supplemental thereto.

Net Proceeds

The term “Net Proceeds” means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such proceeds.

Project

The term “Project” means those certain public facilities, consisting of Component A and Component B described in Exhibit A attached hereto, as such Project may be modified in accordance with the definition of “Project” in the 2022 WIFIA Loan Agreement.

Project Acquisition Fund

The term “Project Acquisition Fund” means the account by that name created and maintained by Valley Water in accordance with Section 3.5 hereof.

Purchase Price

The term “Purchase Price” means the amount to be paid by Valley Water to the Corporation for the purchase of the Project under the terms hereof, as provided in Section 4.1 hereof.

Subordinate Bond

The term “Subordinate Bond” means all revenue bonds or notes of Valley Water authorized, executed and delivered by Valley Water which are secured by a pledge of and lien on the Water Utility System Revenues in accordance with Section 2.1 of the Water Utility Parity System Master Resolution and are payable from Net Water Utility System Revenues in accordance with Section 2.2(h) of the Water Utility Parity System Master Resolution.

Subordinate Contract

The term “Subordinate Contract” means all installment purchase agreements or other contracts of Valley Water authorized and executed by Valley Water which are secured by a pledge of and lien on the Water Utility System Revenues in accordance with Section 2.1 of the Water Utility Parity System Master Resolution and are payable from Net Water Utility System Revenues in accordance with Section 2.2(h) of the Water Utility Parity System Master Resolution, but excluding contracts for Maintenance and Operation Costs.

2022 WIFIA Loan Agreement

The term “2022 WIFIA Loan Agreement” has the meaning provided in the fifth WHEREAS clause herein.

Water Utility Parity System Master Resolution

The term “Water Utility Parity System Master Resolution” shall have the meaning ascribed thereto in the second WHEREAS clause in this Installment Purchase Agreement.

WIFIA Amount

The term “WIFIA Amount” means the amount equal to the total disbursements of the WIFIA Loan under the 2022 WIFIA Loan Agreement.

WIFIA Debt Service Account

The term “WIFIA Debt Service Account” means the account by that name created and maintained by Valley Water in accordance with Section 5.4 hereof and the WIFIA Master Agreement.

WIFIA Lender

The term “WIFIA Lender” has the meaning provided in the fifth WHEREAS clause herein.

WIFIA Portion of the Project

The term “WIFIA Portion of the Project” means the portion of the Project financed by the Corporation from the proceeds of the WIFIA Loan, which portion shall be not more than 49% of the Eligible Project Costs of the Project.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations by Valley Water. Valley Water makes the following representations:

(a) Valley Water is a special district created by the State Legislature organized and existing under the laws of the State of California.

(b) Valley Water has full legal right, power and authority to enter into this Installment Purchase Agreement and carry out its obligations hereunder, to carry out and consummate all transactions contemplated by this Installment Purchase Agreement, and Valley Water has complied with the provisions of the Law and other applicable laws in all matters relating to such transactions.

(c) By proper action, Valley Water has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement.

(d) Valley Water has determined that it is necessary and proper within the terms of the Law that Valley Water plan, design, acquire and/or construct each Component of the Project in the

manner provided for in this Installment Purchase Agreement, to provide essential water services and facilities to the persons residing within the areas benefited by such improvements.

Section 2.2. Representations and Warranties by the Corporation. The Corporation makes the following representations and warranties:

(a) The Corporation is a nonprofit public benefit corporation validly organized and existing under the laws of the State of California.

(b) The Corporation has full legal right, power and authority to enter into this Installment Purchase Agreement and to carry out and consummate all transactions contemplated by this Installment Purchase Agreement, and the Corporation has complied with the provisions of applicable law in all matters relating to such transactions.

(c) By proper action, the Corporation has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement.

(d) The execution and delivery of this Installment Purchase Agreement and the consummation of the transactions herein contemplated will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement or other instrument to which the Corporation is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Corporation.

ARTICLE III

ACQUISITION AND/OR CONSTRUCTION, SALE AND CONVEYANCE OF THE PROJECT

Section 3.1. Acquisition and/or Construction, Sale and Conveyance of the Project. The Corporation hereby agrees to cause the Project to be planned, designed, and acquired and/or constructed by Valley Water as its agent, and to sell and convey each and all Components of the Project to Valley Water. In order to implement this provision, the Corporation hereby appoints Valley Water as its agent for the purpose of planning, designing, acquiring and/or constructing of all Components of the Project and, subject thereto, Valley Water hereby accepts such appointment and agrees to enter into such contracts and purchase orders as may be necessary, as agent for the Corporation, to provide for the planning, designing, acquisition and/or construction of the Project.

Valley Water hereby agrees that it will cause the planning designing, construction, acquisition and installation of the Project to be diligently performed. Valley Water agrees to deposit the WIFIA Amount (or the relevant portion thereof) (other than any funds to be applied to reimburse Valley Water for expenditures with respect to the WIFIA Portion of the Project or funds to be applied to prepayment or redemption of any interim financing with respect to the WIFIA Portion of the Project) into the Project Acquisition Fund. Subject to compliance with the California Environmental Quality Act, to the extent required, Valley Water agrees to use its best efforts to cause the planning, designing, construction, acquisition and installation of the Project to be substantially completed by the date set forth in the 2022 WIFIA Loan Agreement, unforeseeable delays due to the occurrence of any

Uncontrollable Force only excepted. It is hereby expressly understood and agreed that the Corporation shall be under no liability of any kind or character whatsoever for the payment of any cost of the Project and that all such costs and expenses shall be paid by Valley Water.

Section 3.2. Sale and Purchase of Component B of the Project. In consideration for the Corporation's assistance in financing Component B of the Project, Valley Water agrees to sell, and hereby sells, to the Corporation, and the Corporation agrees to purchase and hereby purchases, from Valley Water, Component B of the Project at the Purchase Price specified in Section 4.1 hereof and otherwise in the manner and in accordance with the provisions of this Installment Purchase Agreement.

Section 3.3. Purchase and Sale of the Project. In consideration for the Installment Payments as set forth in Section 4.2, the Corporation agrees to sell, and hereby sells, to Valley Water, and Valley Water agrees to purchase, and hereby purchases, from the Corporation, the Project at the Purchase Price specified in Section 4.1 hereof and otherwise in the manner and in accordance with the provisions of this Installment Purchase Agreement.

Section 3.4. Title. All right, title and interest in each Component B of the WIFIA Portion of the Project shall vest in Valley Water notwithstanding the execution and delivery of this Installment Purchase Agreement. All right, title and interest in each Component A of the WIFIA Portion of the Project shall vest in Valley Water immediately upon acquisition or construction thereof. Such vesting shall occur without further action by the Corporation or Valley Water and the Corporation shall, if requested by Valley Water or, if necessary to assure such automatic vesting, deliver any and all documents required to assume such vesting.

Section 3.5. Project Acquisition Fund. Valley Water shall establish, maintain and hold in trust a separate fund designated as the "Project Acquisition Fund." Valley Water shall deposit proceeds of the WIFIA Loan, to the extent not used to reimburse Valley Water for costs of the WIFIA Portion of the Project or the prepayment or redemption of any interim financing with respect to the WIFIA Portion of the Project, in the Project Acquisition Fund. The moneys in the Project Acquisition Fund shall be held by Valley Water in trust and applied by the Treasury, Debt and Grants Officer of Valley Water to the payment of the costs of planning designing, acquiring and constructing of the WIFIA Portion of the Project and of expenses incidental thereto.

Before any payment is made from the Project Acquisition Fund by the Treasury, Debt and Grants Officer, the Chief Financial Officer of Valley Water, acting as agent of the Corporation, shall cause to be filed with the Treasury, Debt and Grants Officer a certificate of Valley Water in the form set forth in Exhibit C to this Installment Purchase Agreement.

Upon receipt of each such certificate, the Treasury, Debt and Grants Officer will pay the amount that is set forth in such certificate as directed by the terms thereof or disburse funds to Valley Water for such payment as directed by Valley Water in such certificate. The Treasury, Debt and Grants Officer need not make any such payment if it has received notice of any lien, right to lien, attachment upon or claim affecting the right to receive payment of any of the moneys to be so paid, which has not been released or will not be released simultaneously with such payment.

When the WIFIA Portion of the Project shall have been constructed and acquired in accordance with this Installment Purchase Agreement, a statement of Valley Water stating the fact and date of such acquisition, construction and acceptance and stating that all of such costs of acquisition and incidental expenses have been determined and paid (or that all of such costs and expenses have been paid less

specified claims which are subject to dispute and for which a retention in the Project Acquisition Fund is to be maintained in the full amount of such claims until such dispute is resolved), shall be delivered to the Treasury, Debt and Grants Officer of Valley Water, the Corporation and the WIFIA Lender by the Chief Financial Officer of Valley Water. Upon the receipt of such statement, the Treasury, Debt and Grants Officer shall transfer any remaining balance in the Project Acquisition Fund (but less the amount of any such retention, which amount shall be certified to the Treasury, Debt and Grants Officer by the Chief Financial Officer of Valley Water) to the WIFIA Debt Service Account.

ARTICLE IV

INSTALLMENT PAYMENTS

Section 4.1. Purchase Price.

(a) The Purchase Price to be paid by Valley Water hereunder to the Corporation is the sum of the principal amount of Valley Water's obligations hereunder plus the interest to accrue on the unpaid balance of such principal amount from the effective date hereof over the term hereof, subject to prepayment as provided in Article VII.

(b) The principal amount of the Installment Payments to be made by Valley Water hereunder and the applicable Installment Payment Dates are set forth in Exhibit B hereto.

(c) The interest to accrue on the unpaid balance of such principal amount is as specified in Section 4.2 and Exhibit B hereto. Such interest shall be equal to the interest payable with respect to the WIFIA Loan as provided in the 2022 WIFIA Loan Agreement, and shall be paid by Valley Water and constitute interest paid on the principal amount of Valley Water's obligations hereunder.

(d) The Corporation and Valley Water acknowledge and agree that the Installment Payments set forth in Exhibit B hereto are initially equal to the payments of principal and interest set forth on the WIFIA Loan Amortization Schedule in Exhibit A (*WIFIA Loan Amortizations Schedule*) to the 2022 WIFIA Loan Agreement in all respects, other than with respect to the relevant payment dates. The Corporation and Valley Water agree that (i) upon any modification to Exhibit A (*WIFIA Loan Amortizations Schedule*) to the 2022 WIFIA Loan Agreement, Exhibit B hereto shall be deemed modified *mutatis mutandis*, (ii) Valley Water will provide to the Corporation a revised Exhibit B which the Corporation and Valley Water agree will replace the then current Exhibit B (such replacement being a ministerial act and not an amendment or supplement to this Installment Purchase Agreement), (iii) no modification to Exhibit B hereto shall otherwise be made without the consent of the WIFIA Lender and (iv) Valley Water's failure to provide or delay in providing the Corporation with such revised Exhibit B shall not affect the modifications deemed to be made thereto or the obligation of Valley Water to make the Installment Payments as so modified.

Section 4.2. Installment Payments.

(a) Valley Water shall, subject to any rights of prepayment provided in Article VII, pay to the Corporation, from available Net Water Utility System Revenues as provided in Section 4.1 hereof the Purchase Price in Installment Payments to such date in the amounts and on the Installment

Payment Dates as set forth herein, in each case (i) during any period when a Bankruptcy Related Event has not occurred, pursuant to Section 2.2(h) of the Water Utility Parity System Master Resolution and (ii) following the occurrence of a Bankruptcy Related Event, pursuant to Section 2.2(d) of the Water Utility Parity System Master Resolution.

(b) Each Installment Payment shall be paid to the Corporation in lawful money of the United States of America. In the event Valley Water fails to make any of the payments required to be made by it under this section, such payment shall continue as an obligation of Valley Water until such amount shall have been fully paid, and, in such case, Valley Water agrees to pay interest on the outstanding amount of the Purchase Price at the Default Rate from (and including) the applicable Installment Payment Date to (but excluding) the date of actual payment of such Installment Payment.

(c) The obligation of Valley Water to make the Installment Payments is absolute and unconditional, and until such time as the Purchase Price shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article IX), Valley Water shall not discontinue or suspend any Installment Payments required to be made by it under this section when due, whether or not the WIFIA Portion of the Project or any Component thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Installment Payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

ARTICLE V

WATER UTILITY SYSTEM REVENUES

Section 5.1. Pledge. All Water Utility System Revenues, the Water Utility System Revenue Fund (including all amounts on deposit therein), the Rate Stabilization Reserve Fund (including all amounts on deposit therein), the Special Purpose Funds (including all amounts on deposit therein), the Project Acquisition Fund (including all amounts on deposit therein) and the WIFIA Debt Service Account (including all amounts on deposit therein) are hereby irrevocably pledged to the payment of the Installment Payments as provided herein, and the Water Utility System Revenues and such other amounts shall not be used for any other purpose while any of the Installment Payments remain unpaid; provided that out of the Water Utility System Revenues there may be apportioned such sums for such purposes as are expressly permitted herein and in the Water Utility Parity System Master Resolution. This pledge shall constitute a lien on the Water Utility System Revenues and, subject to application of amounts on deposit therein as permitted herein and in the Water Utility Parity System Master Resolution, the Water Utility System Revenue Fund, the Rate Stabilization Reserve Fund and the Special Purpose Funds for the payment of the Installment Payments in accordance with the terms hereof, which lien shall be (a) subordinate only to the liens created with respect to any Contracts and Bonds in accordance with the terms of the Water Utility Parity System Master Resolution and the WIFIA Master Agreement and (b) *pari passu* with the liens created with respect to any Subordinate Bonds and Subordinate Contracts in accordance with the terms of the Water Utility Parity System Master Resolution and the WIFIA Master Agreement; provided that, following the occurrence of a Bankruptcy Related Event, such lien shall be *pari passu* with the liens created with respect to any other Contracts and Bonds, in all cases without the need for any notice to or from any Person, physical delivery, recordation, filing or further act. During any period when a Bankruptcy Related Event has not occurred, except for the payment of the Maintenance and Operation Costs, Debt Service and any amount required to be deposited into any applicable Bond or Contract reserve fund (as set forth in

Section 2.2(a) and (d) and (e) of the Water Utility Parity System Master Resolution), the Water Utility System Revenues shall not be used for any purpose other than the payment of the Installment Payments (and, on a pro rata basis, debt service with respect to other Subordinate Bonds or Subordinate Contracts) while any of the Installment Payments remain unpaid. Following the occurrence of a Bankruptcy Related Event, Water Utility System Revenues shall not be used for any purpose other than the payment of Maintenance and Operation Costs and the Installment Payments (and, on a pro rata basis, Debt Service with respect to other Bonds or Contracts) while any of the Installment Payments remain unpaid. Prior to the occurrence of a Bankruptcy Related Event, this Installment Purchase Agreement (and the obligation of Valley Water to make the Installment Payments hereunder) constitutes a Subordinate Contract. Upon the occurrence of a Bankruptcy Related Event, this Installment Purchase Agreement (and the obligation of Valley Water to make the Installment Payments hereunder) shall constitute a “Contract” under the Water Utility Parity System Master Resolution.

Section 5.2. Allocation. In order to carry out and effectuate the pledge contained in the Water Utility Parity System Master Resolution, on or prior to each Installment Payment Date, Valley Water shall pay, in accordance with Section 2.2 of the Water Utility Parity System Master Resolution, from Net Water Utility System Revenues remaining after making payments required by Section 2.2(d) and (e) of the Water Utility Parity System Master Resolution, to the WIFIA Lender, as assignee of the Corporation, and deposit into the WIFIA Debt Service Account, the Installment Payments due and payable on such Installment Payment Date. Notwithstanding the foregoing, after the occurrence of a Bankruptcy Related Event, Valley Water shall deposit into the WIFIA Debt Service Account the Installment Payments due and payable on such Installment Payment Date on a pro rata basis with Bonds and Contracts in accordance with Section 2.2(d) of the Water Utility Parity System Master Resolution.

Section 5.3. Investments. All moneys held by Valley Water in the SCW Revenue Fund, the Project Acquisition Fund and the WIFIA Debt Service Account shall be invested in Permitted Investments and the investment earnings thereon shall remain on deposit in such funds, except as otherwise provided herein.

Section 5.4. WIFIA Debt Service Account. Valley Water, as agent of the Corporation, shall establish, maintain and hold in trust a separate general ledger account within Valley Water’s debt service group, which account shall be designated as the “WIFIA Debt Service Account” and as of the Effective Date is identified as “Water Utility WIFIA Loan 2022-95993033” and within such account there shall be maintained a “Water Utility WIFIA Loan 2022 Principal Account” designated as “95993033-80110” and a “Water Utility WIFIA Loan 2022 Interest Account” designated as “95993033 – 80210”. Such account number(s) may change as Valley Water designates from time to time provided that Valley Water must promptly notify the WIFIA Lender in writing of any such change. Moneys in the WIFIA Debt Service Account shall be held by Valley Water in trust and applied to the payment of Installment Payments hereunder in accordance with Section 8(a) of the 2022 WIFIA Loan Agreement and Section 17(i) of the WIFIA Master Agreement. Any investment earnings thereon shall be transferred by Valley Water to the Water Utility System Revenue Fund no later than the last day of Valley Water’s Fiscal Year.

ARTICLE VI

COVENANTS OF VALLEY WATER

Section 6.1. Compliance with Installment Purchase Agreement, Water Utility Parity System Master Resolution and the 2022 WIFIA Loan Agreement. Valley Water will punctually pay the Installment Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate this Installment Purchase Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California or any political subdivision of either or any failure of the Corporation to observe or perform any agreement, condition, covenant or term contained herein required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected herewith or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Corporation or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lock outs, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

It is expressly understood and agreed by and among the parties to this Installment Purchase Agreement that, subject to Section 9.7 hereof, each of the agreements, conditions, covenants and terms contained in this Installment Purchase Agreement is an essential and material term of the purchase of and payment for the Project by Valley Water pursuant to, and in accordance with, and as authorized under the Law and other applicable laws.

Valley Water will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Water Utility Parity System Master Resolution, this Installment Purchase Agreement, the WIFIA Master Agreement and the 2022 WIFIA Loan Agreement required to be observed and performed by it, provided that nothing herein shall obligate Valley Water to pay the principal of or interest with respect to the WIFIA Loan or the WIFIA Note, which obligation is solely the responsibility of the Corporation as borrower under the 2022 WIFIA Loan Agreement.

Section 6.2. Against Encumbrances.

(a) Valley Water will not make any pledge of or place any lien on the Water Utility System Revenues or the moneys in the Water Utility System Revenue Fund, the Rate Stabilization Reserve Fund or the Special Purpose Funds except as permitted hereby, by the Water Utility Parity Master Resolution, and subject to the restrictions agreed to by Valley Water in the WIFIA Master Agreement. Valley Water may at any time, or from time to time, (i) issue or incur Bonds, Contracts, Subordinate Bonds and Subordinate Contracts as permitted under the Water Utility Parity Master Resolution and the 2022 WIFIA Loan Agreement, or (ii) issue or incur evidences of indebtedness or incur other obligations secured by or payable from the Water Utility System Revenues subordinate to the payment of Installment Payments, provided that any such pledge and lien shall be subordinate in all respects to the pledge of and lien thereon provided herein.

(b) Valley Water will not make any pledge of or place any lien on the Project Acquisition Fund (including the moneys on deposit therein) or the WIFIA Debt Service Account (including the moneys on deposit therein), except as set forth in the WIFIA Master Agreement.

Section 6.3. Compliance with Contracts. Valley Water will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Project and all other contracts affecting or involving the Project to the extent that Valley Water is a party thereto.

Section 6.4. Protection of Security and Rights of the Corporation. Valley Water will preserve and protect the security hereof and the rights of the Corporation and the WIFIA Lender to the Installment Payments hereunder and will warrant and defend such rights against all claims and demands of all persons.

Section 6.5. Additional Protection for Officers of the Corporation. Valley Water will, to the maximum extent permitted by law, indemnify and hold the Corporation and each of its directors and officers harmless from, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorneys' fees) as a result of entering into this Installment Purchase Agreement.

Section 6.6. Further Assurances. Valley Water will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Corporation and the WIFIA Lender of the rights and benefits provided to the Corporation and the WIFIA Lender herein.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

Section 7.1. Prepayment.

(a) Valley Water shall prepay from the Net Proceeds remaining after the application thereof in accordance with Section 4.11 of the Water Utility Parity Master Resolution, to the extent required pursuant to this Installment Purchase Agreement or the 2022 WIFIA Loan Agreement, all or any part of the principal amount of the unpaid Installment Payments at a prepayment price equal to the sum of the principal amount prepaid plus accrued interest thereon to the date of prepayment; provided that if Net Proceeds are applied to the prepayment of any Subordinate Bonds or Subordinate Contracts, such Net Proceeds will be applied by Valley Water to prepay the WIFIA Loan on a pro-rata basis based on the then outstanding principal amount of the WIFIA Loan and such other Subordinate Bonds and Subordinate Contracts, as the case may be, required to be prepaid. Any such prepayment shall occur substantially concurrently with the prepayment of the WIFIA Loan by the Corporation pursuant to the terms of Section 9(a) of the WIFIA Master Agreement.

(b) Valley Water shall prepay the Installment Payments on the same dates as the Corporation makes optional prepayments of the WIFIA Loan in accordance with the 2022 WIFIA Loan Agreement and shall not optionally prepay the Installment Payments at any other time.

Notwithstanding any such prepayment made pursuant to clauses (a) or (b) of this Section 7.1, Valley Water shall not be relieved of its obligations hereunder, including its obligations under Article IV, until the Purchase Price shall have been fully paid.

Section 7.2. Method of Prepayment. Before making any prepayment pursuant to Section 7.1(a), Valley Water shall, within five (5) days following the event permitting the exercise of such right to

prepay or creating such obligation to prepay, give written notice to the Corporation and the WIFIA Lender describing such event and specifying the date on which such prepayment will be paid, which date shall be not less than ten (10) days nor more than thirty (30) days from the date such notice is given.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF THE CORPORATION

Section 8.1. Events of Default. If one or more of the following Events of Default shall happen, that is to say --

(1) if default shall be made by Valley Water in the due and punctual payment of any Installment Payment, any Bond or Contract or any Subordinate Bond or Subordinate Contract when and as the same shall become due and payable; or

(2) if default shall be made by Valley Water in the performance of any of the agreements or covenants required herein or with respect to any Bond, Contract, Subordinate Bond or Subordinate Contract to be performed by it, and such default shall have continued for a period of thirty (30) days after Valley Water shall have been given notice in writing of such default or, if such default is not reasonably susceptible to cure within thirty (30) days after notice thereof, such default shall have continued for a period of sixty (60) days; or

(3) if Valley Water shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of Valley Water seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of Valley Water or of the whole or any substantial part of its property; or

(4) declaration of an "event of default" under any Bond, Contract, Subordinate Bond or Subordinate Contract as provided by the terms thereof; or

(5) if an "Event of Default" (as defined in the WIFIA Master Agreement) under the 2022 WIFIA Loan Agreement or the WIFIA Master Agreement shall have occurred;

then the Corporation shall immediately notify the WIFIA Lender of such Event of Default and shall follow any written directions of the WIFIA Lender, which may include a direction to declare the entire principal amount of the unpaid Purchase Price and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein to the contrary notwithstanding; provided that the unpaid Purchase Price shall automatically become due and payable without the action of the Corporation or any other person if the unpaid principal amount of the WIFIA Loan shall have become immediately due and payable. Notwithstanding anything to the contrary set forth herein, the Corporation shall not have the right to (i) declare the unpaid Purchase Price immediately due and payable or (ii) exercise any other rights or remedies hereunder following the occurrence of an Event of Default, in each case without the prior written direction of the WIFIA Lender.

Section 8.2. Application of Water Utility System Revenues and Other Funds After Default. If an Event of Default shall occur and be continuing, all Water Utility System Revenues thereafter received by Valley Water and amounts on deposit in the funds and accounts held under the Water Utility Parity System Master Resolution shall be applied in the following order:

- (1) to the payment, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, of the fees, costs and expenses of the Corporation, the WIFIA Lender, owners of Bonds and Contracts, and any agents and assignees of each of the foregoing, if any, including reasonable compensation to their accountants and counsel;
- (2) to the payment of Maintenance and Operation Costs;
- (3) (i) during any period when a Bankruptcy Related Event has not occurred, to the payment of the entire principal amount of the unpaid principal amount of all Bonds and Contracts and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to such Bonds and Contracts if paid in accordance with their respective terms, and (ii) following the occurrence of a Bankruptcy Related Event, to the payment without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, of the entire principal amount of the unpaid Installment Payments and the unpaid principal amount of all Bonds and Contracts and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the Installment Payments and such Bonds and Contracts if paid in accordance with their respective terms; and
- (4) to the payment without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, of the entire unpaid principal amount of all Subordinate Bonds and the unpaid principal amount with respect to all Subordinate Contracts and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to such Subordinate Bonds and Subordinate Contracts if paid in accordance with their respective terms.

Section 8.3. Other Remedies of the Corporation.

Upon the occurrence of an Event of Default, the Corporation shall have the right (but only following the prior written direction of the WIFIA Lender):

- (a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against Valley Water or any member of Valley Water's Board of Directors, officer or employee thereof, and to compel Valley Water or any such member of Valley Water's Board of Directors, officer or employee to perform and carry out its or his duties under the Law and the agreements and covenants required to be performed by it or him contained herein;
- (b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Corporation;
- (c) by suit in equity upon the happening of an Event of Default to require Valley Water and any member of Valley Water's Board of Directors, officers and employees to account as the trustee of an express trust;

- (d) to apply the Default Rate to the unpaid balance of the Purchase Price; or
- (e) suspend or terminate all of its obligations hereunder with respect to the allocation of any undisbursed amounts of the WIFIA Loan.

Notwithstanding anything contained herein, other than as expressly provided herein, the Corporation shall have no security interest in or mortgage on the Project or other assets of Valley Water and no default hereunder shall result in the loss of the Project or other assets of Valley Water.

Section 8.4. Remedies of the WIFIA Lender. Upon the occurrence of an Event of Default, the WIFIA Lender, as assignee of the Corporation pursuant to the WIFIA Master Agreement, shall be entitled and empowered to institute any actions or proceedings at law or in equity against Valley Water for the collection of any sums due to the Corporation from Valley Water and unpaid hereunder, and may prosecute any such judgment or final decree against Valley Water and collect in the manner provided by law the moneys adjudged or decreed to be payable, may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Valley Water to the Corporation under this Installment Purchase Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of Valley Water under this Installment Purchase Agreement.

Section 8.5. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of Valley Water, which is absolute and unconditional, to pay the Installment Payments to the Corporation at the respective due dates or upon prepayment from the Water Utility System Revenues and the other amounts herein pledged for such payment, or shall affect or impair the right of the Corporation or the WIFIA Lender, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

A waiver of any default or breach of duty or contract by the Corporation or the WIFIA Lender shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Corporation or the WIFIA Lender to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Corporation or the WIFIA Lender by the Law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Corporation or the WIFIA Lender, as applicable.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Corporation or the WIFIA Lender, Valley Water, the Corporation and the WIFIA Lender shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 8.6. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Corporation or the WIFIA Lender is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Liability of Valley Water Limited to Water Utility System Revenues. Notwithstanding anything contained herein, Valley Water shall not be required to advance any moneys derived from any source of income other than as provided in the Water Utility Parity System Master Resolution for the payment of the Installment Payments or for the performance of any agreements or covenants required to be performed by it contained herein. Valley Water may, however, but in no event shall be obligated to, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by Valley Water for such purpose.

The obligation of Valley Water to make the Installment Payments is payable as provided in the Water Utility Parity System Master Resolution, and does not constitute a debt of Valley Water or of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 9.2. Benefits of Installment Purchase Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than Valley Water, the Corporation and the WIFIA Lender any right, remedy or claim under or pursuant hereto. Each of the Corporation and Valley Water agrees that the WIFIA Lender shall be a third party beneficiary of this Installment Purchase Agreement, and any agreement or covenant required herein to be performed by or on behalf of Valley Water, the Corporation or the WIFIA Lender shall be for the sole and exclusive benefit of the other parties.

Section 9.3. Amendment of Water Utility Parity System Master Resolution. Subject to the WIFIA Master Agreement, the Water Utility Parity System Master Resolution may be amended or modified by Valley Water by a supplemental resolution thereto with the consent of a majority of the owners of outstanding Bonds and Contracts; provided, however, that Valley Water may modify or amend the Water Utility Parity System Master Resolution at any time without the consent of owners of outstanding Bonds and Contracts by a supplemental resolution thereto to: (i) add to the agreements and covenants of Valley Water other agreements and covenants to be observed, or to surrender any right or power therein reserved to Valley Water, or (ii) cure, correct or supplement any ambiguous or defective provision contained therein, or (iii) resolve questions arising thereunder as Valley Water may deem necessary or desirable, and which do not materially adversely affect the interests of the owners of outstanding Bonds, Contracts, Subordinate Bonds and Subordinate Contracts. Such amendment or modification shall be filed by Valley Water with the applicable trustee, if any, for such outstanding Bonds, Contracts, Subordinate Bonds or Subordinate Contracts. Valley Water shall give notice of any such amendment or supplement to each Rating Agency then rating the WIFIA Loan.

Section 9.4. Successor Is Deemed Included in all References to Predecessor. Whenever either Valley Water, the Corporation or the WIFIA Lender is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in Valley Water, the Corporation or the WIFIA Lender, and all agreements and covenants required hereby to be performed by or on behalf of Valley Water or the Corporation shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 9.5. Waiver of Personal Liability. No official, officer or employee of Valley Water shall be individually or personally liable for the payment of the Installment Payments, but nothing

contained herein shall relieve any official, officer or employee of Valley Water from the performance of any official duty provided by any applicable provisions of law or hereby.

Section 9.6. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to this Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 9.7. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of Valley Water or the Corporation shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof.

Section 9.8. Assignment. This Installment Purchase Agreement and any rights hereunder may be assigned by the Corporation, as a whole or in part, to the WIFIA Lender without the necessity of obtaining the prior consent of Valley Water. On each Installment Payment Date, Valley Water, as agent of the Corporation, shall transfer to the WIFIA Lender on the Corporation's behalf the Installment Payments hereunder from the WIFIA Debt Service Account in accordance with the terms of the 2022 WIFIA Loan Agreement.

Section 9.9. Net Contract. This Installment Purchase Agreement shall be deemed and construed to be a net contract, and Valley Water shall pay absolutely net during the term hereof the Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or setoff whatsoever.

Section 9.10. California Law. This Installment Purchase Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 9.11. Notices. All written notices to be given hereunder shall be given (a) in the case of the WIFIA Lender, by email to its email address set forth below and (b) in the case of the Corporation and Valley Water, by first class mail, postage prepaid, courier or hand delivery to the party entitled thereto at its address set forth below, or in each case at such other address as such party may provide to the other party in writing from time to time, namely:

If to	
Valley Water:	Santa Clara Valley Water District 5750 Almaden Expressway San Jose, California 95118 Attention: Treasury, Debt and Grants Officer Email: Wifia-loan-admin@valleywater.org

If to the
Corporation: Santa Clara Valley Water District
Public Facilities Financing Corporation
c/o Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118
Attention: Treasurer
Email: Wifia-loan-admin@valleywater.org

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

Section 9.12. Effective Date. This Installment Purchase Agreement shall become effective upon its execution and delivery, and shall terminate when (a) the Purchase Price shall have been fully paid and (b) the 2022 WIFIA Loan Agreement shall have terminated in accordance with its terms.

Section 9.13. Execution in Counterparts. This Installment Purchase Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 9.14. Indemnification of Corporation. Valley Water hereby agrees to indemnify and hold harmless the Corporation and the WIFIA Lender if and to the extent permitted by law, from and against all claims, advances, damages and losses, including legal fees and expenses, arising out of or in connection with the acceptance or the performance of their duties hereunder or, to the extent provided in the 2022 WIFIA Loan Agreement, under the 2022 WIFIA Loan Agreement.

Section 9.15. Amendments Permitted. This Installment Purchase Agreement and the rights and obligations of Valley Water and the Corporation, may be modified or amended at any time by an amendment hereto which shall become binding only (a) following the execution and delivery of such amendment by Valley Water and the Corporation and (b) with the prior written consent of the WIFIA Lender.

IN WITNESS WHEREOF, the parties hereto have executed and attested this Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Authorized Officer

(SEAL)

Attest:

Clerk of the Board of Directors

**SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING
CORPORATION**

By: _____
Authorized Officer

(SEAL)

Attest:

Secretary

EXHIBIT A

DESCRIPTION OF THE PROJECT

The Project includes the following Valley Water facilities and projects:

Component A:

[PORTION OF WIFIA PROJECT COSTS OTHER THAN REIMBURSEMENT TO COME FROM
VALLEY WATER]

Component B:

[PORTION OF WIFIA PROJECT COSTS BEING REIMBURSED TO COME FROM VALLEY WATER]

EXHIBIT B

PURCHASE PRICE

1. The principal amount of payments to be made by Valley Water hereunder is \$_____.

2. The Installment Payments are payable in the amounts and on the Installment Payment Dates as follows:

Installment Payment Date (Five Days Prior To)	Installment Payments		
	Total Principal	Total Interest	Total

TOTAL

B17

4861-6984-3760v8/022817-0043

Attachment 4
25 of 27

EXHIBIT C

[FORM OF REQUISITION]

\$ _____
SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING
CORPORATION
2022 WIFIA LOAN AGREEMENT

REQUISITION NO. _ FOR DISBURSEMENT FROM PROJECT ACQUISITION FUND

The undersigned hereby states and certifies:

- (i) that the undersigned is the duly appointed, qualified and acting Chief Financial Officer of the Santa Clara Valley Water District, a special district created by the State Legislature that is organized and existing under the Constitution and laws of the State of California ("Valley Water"), and as such, is familiar with the facts herein certified and is authorized to certify the same;
- (ii) that, pursuant to Section 3.5 of that certain Installment Purchase Agreement, dated as of December __, 2022 (the "Installment Purchase Agreement"), by and between the Santa Clara Valley Water District and the Santa Clara Valley Water District Public Facilities Financing Corporation, the undersigned hereby requests the Treasury, Debt and Grants Officer to disburse on this date from the Project Acquisition Fund established under the Installment Purchase Agreement relating to the above-captioned obligations, in the amounts and to the payees designated on the attached Schedule A;
- (iii) that each obligation mentioned herein has been incurred by Valley Water for the planning, designing, construction or acquisition of the WIFIA Portion of the Project and is a proper charge against the Project Acquisition Fund;
- (iv) all approvals required under the California Environmental Quality Act, as amended (Division 13 of the California Public Resources Code), to the extent required prior to the expenditure of such amount for the purpose set forth on the attached Schedule A has been received and is final; and
- (v) that there has not been filed with or served upon Valley Water notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to any of the payees named on the attached Schedule A, which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen's or mechanics' liens accruing by mere operation of law.

Dated: _____, 20____

SANTA CLARA VALLEY WATER DISTRICT

By:

Chief Financial Officer

SCHEDULE A
PROJECT ACQUISITION FUND DISBURSEMENTS

<i>Item Number</i>	<i>Payee Name and Address</i>	<i>Purpose of Obligation</i>	<i>Amount</i>
------------------------	-------------------------------	------------------------------	---------------

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA MASTER AGREEMENT

With

**SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING
CORPORATION and**

SANTA CLARA VALLEY WATER DISTRICT

For the

SCVWD MASTER PROGRAM FOR WATER RELIABILITY PROGRAM

Dated as of [●], 2022

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND INTERPRETATION	2
Section 1. Definitions.....	2
Section 2. Interpretation.....	22
ARTICLE II THE WIFIA LOAN.....	24
Section 3. WIFIA Loans Under the Master Program	24
Section 4. Disbursement Conditions.....	24
Section 5. Term.....	26
Section 6. Interest Rate	26
Section 7. Security and Priority; Flow of Funds.....	26
Section 8. Payment of Principal and Interest	28
Section 9. Prepayment	32
Section 10. Fees and Expenses	33
ARTICLE III CONDITIONS PRECEDENT	35
Section 11. Conditions Precedent	35
ARTICLE IV REPRESENTATIONS AND WARRANTIES	43
Section 12. Representations and Warranties of the Borrower	43
Section 13. Representations and Warranties of the District	47
Section 14. Representations and Warranties of WIFIA Lender	53
ARTICLE V COVENANTS	53
Section 15. Affirmative Covenants of the Borrower	53
Section 16. Negative Covenants of the Borrower.....	56
Section 17. Affirmative Covenants of the District.....	56
Section 18. Negative Covenants of the District	63
Section 19. Reporting Requirements of the Borrower	66
Section 20. Reporting Requirements of the District	68
ARTICLE VI EVENTS OF DEFAULT	73
Section 21. Events of Default and Remedies	73
ARTICLE VII MISCELLANEOUS	78
Section 22. Disclaimer of Warranty.....	78
Section 23. No Personal Recourse	78
Section 24. No Third Party Rights.....	78
Section 25. Borrower's Authorized Representative.....	79
Section 26. District's Authorized Representative	79
Section 27. WIFIA Lender's Authorized Representative	79
Section 28. Servicer	79
Section 29. Amendments and Waivers	80

Section 30.	Governing Law	80
Section 31.	Severability	80
Section 32.	Successors and Assigns.....	80
Section 33.	Remedies Not Exclusive	80
Section 34.	Delay or Omission Not Waiver.....	80
Section 35.	Counterparts.....	80
Section 36.	Notices	81
Section 37.	Indemnification.....	81
Section 38.	Sale of WIFIA Loan.....	82
Section 39.	Effectiveness	83
Section 40.	Survival	83
Section 41.	Integration	83

SCHEDULE I – Master Program

SCHEDULE II – Master Program Budget

SCHEDULE 7(d) – Flow of Funds

SCHEDULE 12(f) – Litigation

SCHEDULE 12(u) – Existing Water Utility System Indebtedness

EXHIBIT A – Form of WIFIA Note

EXHIBIT B – Requisition Procedures

EXHIBIT C – Form of Certification of Eligible Project Costs Documentation

EXHIBIT D – Form of WIFIA Loan Request

EXHIBIT E-1 – Form of Opinion of Borrower’s General Counsel

EXHIBIT E-2 – Form of Opinion of Borrower’s Bond Counsel

EXHIBIT E-3 – Form of Opinion of District’s General Counsel

EXHIBIT E-4 – Form of Opinion of District’s Bond Counsel

EXHIBIT F-1 – Form of Closing Certificate of Borrower

EXHIBIT F-2 – Form of Closing Certificate of District

EXHIBIT F-3 – Form of Project Closing Certificate of Borrower

EXHIBIT F-4 – Form of Project Closing Certificate of District

EXHIBIT G – Form of Certificate of Substantial Completion

EXHIBIT H – Form of Construction Monitoring Report

EXHIBIT I – Form of Public Benefits Report

EXHIBIT J – Form of WIFIA Project Term Sheet

EXHIBIT K – Form of WIFIA Loan Agreement

EXHIBIT L – Form of WIFIA IPA

WIFIA MASTER AGREEMENT

THIS WIFIA MASTER AGREEMENT (this “**Agreement**”), dated as of [●], 2022, is by and among **SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION**, a nonprofit public benefit corporation duly organized and existing under the Nonprofit Public Benefit Corporation Law of the State of California (the “**State**”), with an address at 5750 Almaden Expressway, San Jose, CA 95118 (the “**Borrower**”), **SANTA CLARA VALLEY WATER DISTRICT**, a special district created by the State Legislature duly organized and existing under the laws of the State, with an address at 5750 Almaden Expressway, San Jose, CA 95118 (the “**District**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act (“**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. §§ 3901-3915;

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 was formed for the purpose of providing for the financing of public capital improvements for the District;

WHEREAS, pursuant to the Application (as defined herein), the Borrower and the District have proposed the development and construction of multiple Projects (as defined herein) with respect to the Water Utility 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 District will request, from time to time, that the WIFIA Lender make a WIFIA Loan (as defined herein) to the Borrower 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 Eligible Project Costs of Projects through the purchase of a WIFIA Note (as defined herein) to be issued by the Borrower for each Project;

WHEREAS, the Borrower will enter into a WIFIA IPA (as defined herein) with the District for each WIFIA Loan, pursuant to which (i) the Borrower will agree to purchase the relevant

Project from the District in exchange for the provision of funds, in the amount of such WIFIA Loan, and (ii) the District will agree to purchase the relevant Project from the Borrower in exchange for the payment of WIFIA Installment Payments (as defined herein) by the District to the Borrower, such payments being secured by the Pledged Collateral (as defined herein);

WHEREAS, the Borrower has agreed to pledge and assign to the WIFIA Lender and grant to the WIFIA Lender Liens for its benefit on (i) all of its right, title and interest to receive the Corporation Revenues (as defined herein), (ii) all of its rights to receive amounts from the District from the WIFIA Debt Service Account (as defined herein) and (iii) all of its rights and remedies to enforce each WIFIA IPA upon an event of default under such WIFIA IPA, in each case for the purpose of securing (y) the payment of all sums due and owing by the Borrower to the WIFIA Lender under the relevant WIFIA Loan Agreement and (z) the observance, performance and discharge of each agreement, condition, covenant and term of the Borrower and the District under this Agreement and the relevant WIFIA Loan Agreement and of the District under such WIFIA IPA; and

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the District set forth in the Application and the supporting information provided by the Borrower and the District.

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 among the Borrower, the District and the WIFIA Lender as follows:

ARTICLE I **DEFINITIONS AND INTERPRETATION**

Section 1. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

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

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

“**Additional Obligations**” means Senior Obligations issued or incurred on or after the date hereof in accordance with Section 18(a) (*Negative Covenants of the District – Additional Obligations*) and Additional Parity Obligations.

“**Additional Parity Obligations**” means any Parity Obligations permitted under Section 18(a) (*Negative Covenants of the District – Additional Obligations*), which Parity Obligations are issued or incurred on or after the Effective Date.

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

“Aggregate Master Program Amount” means \$[2,028,816,252].

“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 June 17, 2022, as supplemented on [●], 2022.

“Authorized Officer” has the meaning provided in the Master Resolution.

“Average Annual Debt Service” means the average of (a) the interest payable on all Obligations for all District Fiscal Years, assuming all Obligations are retired as scheduled (including by reason of sinking fund payment redemption), and (b) the principal amount of the Obligations scheduled to be paid for all District Fiscal Years (including any sinking fund payment redemptions due), including the District Fiscal Year in which the calculation is made.

“Bankruptcy Related Event” means, with respect to either the Borrower or the District, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of either the Borrower or the District 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 either the Borrower or the District 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) either the Borrower or the District (other than with respect to clause (iii) below, which applies to the Borrower only) shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 8 (*Payment of Principal and Interest*) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral or Corporation Revenues 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 Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral or Corporation Revenues may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Collateral or Corporation Revenues 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 Obligations, funds on deposit in any of the Water Utility System (including the Master Program) funds or accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any Obligation Document for application to the prepayment or repayment of any principal amount of the Obligations other than in accordance with the provisions of this Agreement.

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

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

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

“Borrower Event of Default” has the meaning provided in Section 21(a) (*Events of Default*).

“Borrower Financial Statements” means the audited income statement and balance sheet of the Borrower as of the end of the Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year; provided that, so long as the Borrower is a component unit of the District, all references to “Borrower Financial Statements” shall be deemed to refer to “District Financial Statements”.

“Borrower Fiscal Year” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Lender in accordance with Section 16(c) (*Negative Covenants of the Borrower – Borrower Fiscal Year*).

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

“Borrower Payment Default” has the meaning provided in Section 21(a)(i) (*Events of Default and Remedies – Borrower Payment Default*).

“Borrower Project Closing Certificate” has the meaning provided in Section 11(b)(vii) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*).

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

“Budgeted Transfers” means, for any District Fiscal Year, lawfully available amounts, including in the Rate Stabilization Reserve Fund, as of the last day of such District Fiscal Year, in each case, (a) which may be lawfully used to pay the WIFIA Installment Payments and (b) that have been transferred to the Water Utility System Revenue Fund, pursuant to a budget process where such amounts have been budgeted and approved by the Board of Directors of the District (and which removal from the Water Utility System Revenue Fund would require a separate budget and approval process by the Board of Directors of the District prior to any such removal), for application solely to the Water Utility System.

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or San Jose, California.

“Capitalized Interest Period” means, with respect to each WIFIA Loan Agreement, the period from (and including) the applicable WIFIA Loan Agreement Effective Date to (but excluding) the date that is six (6) months prior to the applicable Debt Service Payment Commencement Date, subject to earlier termination as set forth in Section 8(b) (*Payment of Principal and Interest – Capitalized Interest*).

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

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

“Construction Contract” means, with respect to any Project, any prime contract entered into by the District 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 Contractor” means any Person (other than the Borrower or the District) party to a Construction Contract.

“Construction Monitoring Report” means, with respect to each Project, a report on the status of such Project, substantially in the form of **Exhibit H** (*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 WIFIA Loan Agreement, the period from the applicable WIFIA Loan Agreement Effective Date through the applicable Substantial Completion Date.

“Construction Period Servicing Fee” has the meaning provided in Section 10(a)(ii) (*Fees and Expenses – Fees*) and, for each WIFIA Loan, shall be in the amount specified in Section 10(b) (*Fees and Expenses*) of the applicable WIFIA Loan Agreement and paid in accordance with Section 10(a)(ii) and Section 10(b) (*Fees and Expenses*) hereof.

“Construction Schedule” has, for each Project, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

“Corporation Revenues” means (a) the WIFIA Installment Payments received by the Borrower pursuant to or with respect to each WIFIA IPA and (b) all interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder or thereunder.

“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>.

“Current Water Utility System Revenues” has the meaning provided in the Master Resolution.

“Date of Operation” means, with respect to any uncompleted Parity Project, the estimated date by which such uncompleted Parity Project will have been completed and, in the opinion of the District, will be ready for operation by or on behalf of the District.

“Debt Service” means, for any District Fiscal Year,

(a) the sum of:

(i) the interest payable during such District Fiscal Year on all outstanding Obligations, assuming that all outstanding serial Obligations are retired as scheduled and that all outstanding term Obligations are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 23 Stat. 115 (2009), enacted February 17, 2009)), or any future similar program);

(ii) those portions of the principal amount of all outstanding serial Obligations maturing in such District Fiscal Year (but excluding Excluded Principal);

(iii) those portions of the principal amount of all outstanding term Obligations required to be prepaid or paid in such District Fiscal Year (but excluding Excluded Principal); and

(iv) any other portions of the Obligations required to be paid during such District Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B

of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 23 Stat. 115 (2009), enacted February 17, 2009)), or any future similar program); *minus*

(b) the earnings to be derived from the investment of moneys on deposit in debt service reserve funds established for all outstanding Obligations;

provided that, as to any such Obligations bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of:

(x) the then current Variable Interest Rate borne by such Obligations; and

(y) if such Obligations have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, or if such Obligations have not been outstanding for the twelve (12) prior months, the average rate borne by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for such Obligations to be issued;

provided further that if any series or issue of such Obligations have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Debt Service shall be determined for the District Fiscal Year of determination as if the principal of and interest on such series or issue of such Obligations were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of forty (40) years from the date of calculation;

provided further that if any Obligations constitute Paired Obligations, the interest rate on such Obligations shall be the resulting linked rate or the effective fixed interest rate to be paid by the District with respect to such Paired Obligations; and

provided further that the amount on deposit in a debt service reserve fund on any date of calculation of Debt Service shall be deducted from the amount of principal due at the final maturity of the Obligations for which such debt service reserve fund was established and to the extent the amount in such debt service reserve fund is in excess of such amount of principal, such excess shall be applied to the full amount of principal due, in each preceding year, in descending order, until such amount is exhausted.

“Debt Service Payment Commencement Date” has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

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

“Default Rate” means, with respect to each WIFIA Loan, an interest rate equal to the lesser of (a) the sum of (i) the applicable WIFIA Interest Rate plus (ii) two hundred (200) basis points and (b) the maximum interest rate permitted by law.

“Development Default” means, with respect to any Project, (a) the District abandons work related to such Project or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to such Project or (b) the District fails to achieve Substantial Completion of such Project within twenty four (24) months following the Projected Substantial Completion Date set forth in the relevant WIFIA Loan Agreement as of the applicable WIFIA Loan Agreement Effective Date.

“District” has the meaning provided in the preamble hereto.

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

“District Event of Default” has the meaning provided in Section 21(b) (*Events of Default and Remedies*).

“District Financial Statements” means the audited income statement and balance sheet of the District as of the end of the District Fiscal Year and the related audited statements of operations and of cash flow of the District for such District Fiscal Year.

“District Fiscal Year” means (a) as of the Effective Date, a fiscal year of the District commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the District may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Lender in accordance with Section 18(e) (*Negative Covenants of the District – District Fiscal Year*).

“District Material Adverse Effect” means a material adverse effect on (a) the Water Utility System (including the Master Program), the Projects or the Pledged Collateral, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the District with respect to the Water Utility System, (c) the legality, validity or enforceability of any material provision of any WIFIA Loan Document to which the District is a party, (d) the ability of the District to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document to which it is a party, (e) the validity, enforceability or priority of the Liens provided under the WIFIA Loan Documents on the Pledged Collateral or (f) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document to which the District is a party.

“District Payment Default” has the meaning provided in Section 21(b)(i) (*Events of Default and Remedies – District Payment Default*).

“District Project Closing Certificate” has the meaning provided in Section 11(b)(viii) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*).

“District’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 26 (*District’s Authorized Representative*).

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

“Effective Date” means the date of this Agreement.

“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 District, as agent of the Borrower pursuant to the applicable WIFIA IPA, in connection with such Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance, or the repayment of amounts borrowed to make such expenditures 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 Section 3905(8) of Title 33 of the United States Code), construction contingencies, and acquisition of equipment; or
- (d) capitalized interest (with respect to Obligations other than the WIFIA Loans) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

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

“Eligible Project Costs Documentation” means, with respect to each Project, all supporting documentation with respect to the Eligible Project Costs for such Project, including copies of invoices and records evidencing incurred or previously paid Eligible Project Costs for such Project, which documentation should contain sufficient detail satisfactory to the WIFIA Lender (e.g. if the District, as agent of the Borrower pursuant to the applicable WIFIA IPA, intends to utilize WIFIA Loan proceeds to make construction progress payments for Eligible Project Costs for such Project, 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.

“Environmental Laws” has the meaning provided in Section 13(j)(iii) (*Representations and Warranties of the District – Compliance with Laws*).

“EPA” means the United States Environmental Protection Agency.

“Event of Default” means any District Event of Default or any Borrower Event of Default.

“Excluded Principal” means each payment of principal of Obligations with a maturity of less than forty-two (42) months and which the District specifies in a certificate signed by an Authorized Officer and filed with the WIFIA Lender that the District intends to pay from the proceeds of Obligations, other bonds, notes or other obligations of the District or moneys other than Water Utility System Revenues, Current Water Utility System Revenues or Net Water Utility System Revenues. No such determination shall affect the security for such Obligations or the obligation of the District to pay such Obligations from Water Utility System Revenues.

“Existing Construction Contract” means, with respect to any Project, each Construction Contract of the District existing as of the applicable WIFIA Loan Agreement Effective Date, as set forth in Schedule 13(m) (*Existing Construction Contracts*) to the applicable WIFIA Loan Agreement.

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

“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 on 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 21 (*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 provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

“Flow of Funds” means the requirements specified in Section 2.2 (*Allocation of Water Utility System Revenues*) of the Master Resolution and Section [5.2] (*Allocation*) of each WIFIA IPA, a copy of applicable requirements in such sections, as of the Effective Date, is attached hereto as **Schedule 7(d)** (*Flow of Funds*) (all capitalized terms used in **Schedule 7(d)** shall have the meanings provided in the Master Resolution or such WIFIA IPA, as applicable).

“Flow of Funds Following Acceleration” means the requirements specified in Section [8.2] (*Application of Funds Upon Acceleration*) of each WIFIA IPA.

“Forecast Period” means, as of any date, the time period from and including the then-current District Fiscal Year until the later ending date of either (a) the four (4) immediately succeeding District Fiscal Years or (b) the end of the District Fiscal Year in which the District’s then-currently effective capital improvement plan for the Water Utility System concludes.

“GAAP” means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or of any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

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

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

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

“Indemnitee” has the meaning provided in Section 37 (*Indemnification*).

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

“Installment Payment Date” means the fifth (5th) day prior to each Interest Payment Date, or if said date is not a Business Day, then the preceding Business Day.

“Interest Only Period” has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

“Interest Payment Date” has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of 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 occurring on or before the Projected Substantial Completion Date under the applicable WIFIA Loan Agreement in effect on the date on which such short-term temporary financing is issued or incurred.

“Investment Grade Rating” means a public rating no lower than ‘BBB-’, ‘Baa3’, ‘bbb-’, ‘BBB (low)’, or higher, from a Nationally Recognized Rating Agency.

“Investment Policy” means that certain Santa Clara Valley Water District Board Investment Policy, dated July 1, 2022, as may be amended by the District from time to time.

“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.

“Maintenance and Operation Costs” means, for any District Fiscal Year or other period, (a) costs for maintenance and operation of the Water Utility System (including the Master Program) calculated in accordance with GAAP, including (among other things) the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water Utility System in good repair and working order, and including administrative costs of the District that are charged directly or apportioned to the Water Utility System, including¹ salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of engineers, auditors, accountants, attorneys, consultants, trustees, fiscal agents, letter of credit providers, dealers and remarketing agents and other charges and fees payable to credit or liquidity providers (other than payments of principal and interest constituting Debt Service) and insurance premiums, and including all other reasonable and necessary costs of the District or charges (other than Debt Service) required to be paid by it to comply with the terms of the Master Resolution, this Agreement or any other Obligation Document or of any other resolution or indenture authorizing the issuance of any Obligations or of such Obligations, (b) all costs of water purchased or otherwise acquired for delivery by the Water Utility System (including any interim or renewed arrangement therefor), including both fixed and variable components thereof except to the extent payable from amount identified in clause (x) of the definition of Current Water Utility System Revenues under the Master Resolution, and (c) all amounts payable with respect to Maintenance and Operation Obligations, including both fixed and variable components thereof, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, other bookkeeping entries of a similar nature and other maintenance and operation costs of a non-cash basis.

“Maintenance and Operation Obligation” has the meaning provided in the Master Resolution.

“Master Availability Period” means the period from the Effective Date until the date that is eight (8) years following the Effective Date.

“Master Program” means the District’s anticipated improvements to the Water Utility System through the development and construction of each Project component as set forth on **Schedule I (Master Program)**.

“Master Program Budget” means the total estimated aggregate budget for the Project components attached to this Agreement as **Schedule II (Master Program Budget)**, as updated from time to time to reflect updated Project Budgets as provided in Section 11(b)(vi) (*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.

“Master Resolution” means Resolution No. 16-10, adopted by the District on February 23, 2016, as amended by Resolution No. 16-82, adopted by the District on December 13, 2016.

“Material Adverse Effect” means a material adverse effect on (a) the Water Utility System (including the Master Program), the Projects, the Pledged Collateral or the Corporation Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects

¹ **Note to Borrower:** “Including” is deemed to be followed by “without limitation” as provided in Section 2(d).

of either (i) the Borrower or (ii) the District with respect to the Water Utility System, (c) the legality, validity or enforceability of any material provision of any WIFIA Loan Document, (d) the ability of either the Borrower or the District to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document to which it is a party, (e) the validity, enforceability or priority of the Liens provided under the WIFIA Loan Documents on the Pledged Collateral or the Corporation Revenues or (f) the WIFIA Lender's rights or remedies available under any WIFIA Loan Document.

"Nationally Recognized Rating Agency" means any nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

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

"NEPA Determination" means, with respect to each Project, the final NEPA decision issued for such Project by EPA in accordance with NEPA.

"Net Proceeds" means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such proceeds.

"Net Water Utility System Revenues" means, for any District Fiscal Year or other period, the Water Utility System Revenues during such District Fiscal Year or period less the Maintenance and Operation Costs during such District Fiscal Year or period.

"Obligation Document" means any indenture, installment purchase agreement, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee or any other agreement, contract, instrument or document pursuant to which any Obligation is incurred by the District.

"Obligations" means, collectively, the Senior Obligations and the Parity Obligations.

"Operating Period Servicing Fee" has the meaning provided in Section 10(a)(iii) (*Fees and Expenses – Fees*) and, for each WIFIA Loan, shall be in the amount specified in Section 10(c) (*Fees and Expenses*) of the applicable WIFIA Loan Agreement and paid in accordance with Section 10(a)(iii) and Section 10(b) (*Fees and Expenses*) hereof.

"Organizational Documents" means (a) with respect to the District, the Santa Clara Valley Water District Act, set forth at Chapter 1405 of the Statutes of California of 1951, as amended and supplemented from time to time, and (b) with respect to the Borrower, (i) the Articles of Incorporation of the Borrower, dated December 16, 1987 and filed in the office of the Secretary of State of the State on December 21, 1987, as amended by the Certificate of Amendment of Articles of Incorporation, dated September 30, 2008 and filed in the office of the Secretary of State of the State on October 2, 2008, and (ii) the Bylaws of the Borrower, dated as of January 26, 1988, as amended by the Certificate of First Amendment to the Bylaws of the Borrower, dated as of September 9, 2008.

“Outstanding” means, with respect to Obligations, Obligations that have not been cancelled or legally defeased or discharged.

“Outstanding WIFIA Loan Balance” means, with respect to each WIFIA Loan, (a) the aggregate principal amount of such WIFIA Loan drawn by the Borrower plus (b) capitalized interest added to the principal balance of such WIFIA Loan minus (c) the aggregate principal amount of such WIFIA Loan repaid by the Borrower, as determined in accordance with Section 8(f) (*Payment of Principal and Interest – Adjustments to WIFIA Loan Amortization Schedule*).

“Paired Obligations” means any Obligations (or portion thereof) designated as Paired Obligations in the resolution, indenture, trust agreement or other security document authorizing the issuance or execution and delivery thereof (a) the principal of which is of equal amount maturing and to be redeemed or prepaid (or cancelled after acquisition thereof) on the same dates and in the same amounts, and (b) the interest rates which, taken together, are intended to result in a fixed interest rate obligation of the District for all or a portion of the term of such Obligations, all as certified by an Experienced Banker or Advisor (as defined in the Master Resolution).

“Parity Debt Service” means, for any District Fiscal Year,

(a) the sum of:

(i) the interest payable during such District Fiscal Year on all outstanding Parity Obligations, assuming that all outstanding serial Parity Obligations are retired as scheduled and that all outstanding term Parity Obligations are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 23 Stat. 115 (2009), enacted February 17, 2009)), or any future similar program);

(ii) those portions of the principal amount of all outstanding serial Parity Obligations maturing in such District Fiscal Year (but excluding Excluded Principal);

(iii) those portions of the principal amount of all outstanding term Parity Obligations required to be prepaid or paid in such District Fiscal Year (but excluding Excluded Principal); and

(iv) any other portions of the Parity Obligations required to be paid during such District Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 23 Stat. 115 (2009), enacted February 17, 2009)), or any future similar program); *minus*

(b) the earnings to be derived from the investment of moneys on deposit in debt service reserve funds established for all outstanding Parity Obligations;

provided that, as to any such Parity Obligations bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Parity Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of:

(x) the then current Variable Interest Rate borne by such Parity Obligations; and

(y) if such Parity Obligations have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, or if such Parity Obligations have not been outstanding for the twelve (12) prior months, the average rate borne by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for such Parity Obligations to be issued;

provided further that if any series or issue of such Parity Obligations have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Parity Debt Service shall be determined for the District Fiscal Year of determination as if the principal of and interest on such series or issue of such Parity Obligations were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of forty (40) years from the date of calculation;

provided further that if any Parity Obligations constitute Paired Obligations, the interest rate on such Parity Obligations shall be the resulting linked rate or the effective fixed interest rate to be paid by the District with respect to such Paired Obligations; and

provided further that the amount on deposit in a debt service reserve fund on any date of calculation of Parity Debt Service shall be deducted from the amount of principal due at the final maturity of the Parity Obligations for which such debt service reserve fund was established and to the extent the amount in such debt service reserve fund is in excess of such amount of principal, such excess shall be applied to the full amount of principal due, in each preceding year, in descending order, until such amount is exhausted.

“Parity Obligations” means the WIFIA Installment Payments and all other obligations of the District which (a) are secured by a pledge of and lien on the Pledged Collateral and rank *pari passu* in right of payment and right of security with the WIFIA Installment Payments, including any Additional Parity Obligations, and (b) constitute “Subordinate Bonds” or “Subordinate Contracts” under each WIFIA IPA.

“Parity Project” means any additions, betterments, extensions or improvements to the Water Utility System (including the Master Program) designated by the Board of Directors of the District as a Parity Project, the acquisition and construction of which is to be paid for with the proceeds of any Parity Obligations.

“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” means any Borrower Payment Default or any District Payment Default.

“Permitted Investment” means any investment permitted by both State law and the Investment Policy.

“Permitted Liens” means:

(a) Liens imposed pursuant to the WIFIA Loan Documents and the other Obligation Documents;

(b) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 15(g) (*Affirmative Covenants of the Borrower – Material Obligations; Payment of Claims*) and Section 17(k) (*Affirmative Covenants of the District – Material Obligations; Payment of Claims*);

(c) 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 15(g) (*Affirmative Covenants of the Borrower – Material Obligations; Payment of Claims*) and Section 17(k) (*Affirmative Covenants of the District – Material Obligations; Payment of Claims*);

(d) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;

(e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(f) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 21(a)(iv) (*Events of Default and Remedies – Borrower Material Adverse Judgment*) or Section 21(b)(vi) (*Events of Default and Remedies – District Material Adverse Judgment*); and

(g) 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 either the Borrower or the District.

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“Pledged Collateral” has the meaning provided in Section 7(a) (*Security and Priority; Flow of Funds*).

“Principal Payment Date” has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement..

“Project” has, for each WIFIA Loan Agreement, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

“Project Acquisition Fund” means the project acquisition fund established and maintained by the District, as agent of the Borrower pursuant to each WIFIA IPA.

“Project Budget” has, for each Project, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

“Project Term Sheet” means a term sheet substantially in the form attached hereto as **Exhibit J (Form of WIFIA Project Term Sheet)** entered into by the Borrower and the WIFIA Lender in respect of each WIFIA Loan.

“Projected Substantial Completion Date” has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

“Public Benefits Report” has the meaning provided in Section 20(d) (*Reporting Requirements of the District – Public Benefits Report*).

“Rate Stabilization Reserve Fund” has the meaning provided in the Master Resolution.

“Related Documents” means the WIFIA Loan Documents and each other Obligation Document.

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

“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 Debt Service” means, for any District Fiscal Year,

(a) the sum of:

(i) the interest payable during such District Fiscal Year on all outstanding Senior Obligations, assuming that all outstanding serial Senior Obligations are retired as scheduled and that all outstanding term Senior Obligations are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 23 Stat. 115 (2009), enacted February 17, 2009)), or any future similar program);

(ii) those portions of the principal amount of all outstanding serial Senior Obligations maturing in such District Fiscal Year (but excluding Excluded Principal);

(iii) those portions of the principal amount of all outstanding term Senior Obligations required to be prepaid or paid in such District Fiscal Year (but excluding Excluded Principal); and

(iv) any other portions of the Senior Obligations required to be paid during such District Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 23 Stat. 115 (2009), enacted February 17, 2009)), or any future similar program); *minus*

(b) the earnings to be derived from the investment of moneys on deposit in debt service reserve funds established for all outstanding Senior Obligations;

provided that, as to any such Senior Obligations bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Senior Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of:

(x) the then current Variable Interest Rate borne by such Senior Obligations; and

(y) if such Senior Obligations have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, or if such Senior Obligations have not been outstanding for the twelve (12) prior months, the average rate borne by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for such Senior Obligations to be issued;

provided further that if any series or issue of such Senior Obligations have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Senior Debt Service shall be determined for the District Fiscal Year of determination as if the principal of and interest on such series or issue of such Senior Obligations were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of forty (40) years from the date of calculation;

provided further that if any Senior Obligations constitute Paired Obligations, the interest rate on such Senior Obligations shall be the resulting linked rate or the effective fixed interest rate to be paid by the District with respect to such Paired Obligations; and

provided further that the amount on deposit in a debt service reserve fund on any date of calculation of Senior Debt Service shall be deducted from the amount of principal due at the final maturity of the Senior Obligations for which such debt service reserve fund was established and to the extent the amount in such debt service reserve fund is in excess of such amount of principal, such excess shall be applied to the full amount of principal due, in each preceding year, in descending order, until such amount is exhausted.

“Senior Obligations” means all obligations of the District which (a) are secured by a pledge of and lien on the Pledged Collateral and rank senior in right of payment and right of

security to the WIFIA Installment Payments and (b) constitute “Bonds” or “Contracts” under the Master Resolution; provided that Senior Obligations shall include the Obligations in respect of the WIFIA Loan (including in respect of WIFIA Installment Payments) upon the occurrence of a Bankruptcy Related Event as further described in Section 7 (*Security and Priority; Flow of Funds*).

“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 any Servicing Set-Up Fee, Construction Period Servicing Fee or Operating Period Servicing Fee.

“Servicing Set-Up Fee” has the meaning provided in Section 10(a)(i) (*Fees and Expenses – Fees*) and, for each WIFIA Loan, shall be in the amount provided in Section 10(a) (*Fees and Expenses*) of the applicable WIFIA Loan Agreement and paid in accordance with Section 10(a)(i) (*Fees and Expenses – Fees*) hereof.

“Special Purpose Funds” has the meaning provided in the Master Resolution.

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

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

“Substantial Completion Date” means, with respect to each Project, the date on which the District certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender, that Substantial Completion for such Project has occurred.

“Total Project Costs” means, with respect to each Project, (a) the costs paid or incurred or to be paid or incurred by the District, as agent of the Borrower pursuant to the relevant WIFIA IPA, 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 WIFIA Loan Documents to be paid into any fund or account upon the incurrence of the applicable WIFIA Loan or any other Obligation, 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) during the Construction Period of such Project in respect of any obligations of the District in connection with such Project (other than the WIFIA Loan in respect of such Project); and (d) costs of equipment and supplies and initial working capital and reserves required by the District for the commencement of operation of such Project, including general administrative expenses and overhead of the District.

“Uncontrollable Force” means any cause beyond the control of the Borrower and the District, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, global pandemic or act of God (provided that neither the Borrower nor the District shall 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 or the District and neither the Borrower nor the District controls 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 or the District.

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

“Unique Entity Identifier” means, with respect to any Person, the unique entity identifier issued by the Government through SAM.gov for such Person.

“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 Section 20(a) (*Reporting Requirements of the District – Updated Financial Model/Plan*).

“Variable Interest Rate” means a variable interest rate to be borne by any Obligations. The method of computing such variable interest rate shall be specified in the Obligation Document pursuant to which such Obligations are incurred. Such Obligation Document shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect or (b) the time or times upon which any change in such variable interest rate shall become effective.

“Variable Interest Rate Obligations” means Obligations which bear a Variable Interest Rate but does not include any Obligations for which the interest rate has been fixed during the remainder of the term thereof to maturity.

“Water Service” has the meaning provided in the Master Resolution.

“Water Utility System” has the meaning provided in the Master Resolution.

“Water Utility System Revenue Fund” has the meaning provided in the Master Resolution.

“Water Utility System Revenues” has the meaning provided in the Master Resolution.

“Weighted Average Life” means, with respect to any WIFIA Loan, as of any date of determination, the number of years (rounded to the nearest one-twelfth (1/12th)) obtained by dividing (a) the sum of the Weighted Payments with respect to such WIFIA Loan by (b) the Outstanding WIFIA Loan Balance with respect to such WIFIA Loan.

“Weighted Payment” means, with respect to any WIFIA Loan, as of any date of determination, each product obtained by multiplying (a) the amount of principal with respect to such WIFIA Loan payable as of any Principal Payment Date under the applicable WIFIA Loan Agreement by (b) the number of years (rounded to the nearest one-twelfth (1/12th)) that will elapse between such date of determination and such Principal Payment Date.

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

“**WIFIA Borrower Resolution**” means Resolution No. [●], adopted by the Borrower on [●], 2022, authorizing the execution and delivery of this Agreement, each WIFIA Loan Agreement, each WIFIA IPA and each WIFIA Note and certain related actions by the Borrower in connection therewith.

“**WIFIA CUSIP Number**” has the meaning provided in Section 11(b)(vii)(B) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each 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 Outstanding WIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on Exhibit A (*WIFIA Loan Amortization Schedule*) of the applicable WIFIA Loan Agreement and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*).

“**WIFIA Debt Service Account**” means the debt service account established and maintained by the District, as agent of the Borrower pursuant to each WIFIA IPA, pursuant to Section 17(i) (*Affirmative Covenants of the District – WIFIA Debt Service Account*).

“**WIFIA District Resolution**” means Resolution No. [●], adopted by the District on [●], 2022, authorizing the execution and delivery of this Agreement, each WIFIA Loan Agreement and each WIFIA IPA and certain related actions by the District in connection therewith.

“**WIFIA Installment Payments**” means, for each WIFIA IPA, the installment payments of interest and principal scheduled to be paid by the District under and pursuant to such WIFIA IPA.

“**WIFIA Interest Rate**” means, for each WIFIA Loan, the rate specified in Section 6 (*Interest Rate*) of the applicable WIFIA Loan Agreement, which shall be computed in accordance with Section 6 (*Interest Rate*) hereof.

“**WIFIA IPA**” means, for each WIFIA Loan, an Installment Purchase Agreement substantially in the form attached hereto as **Exhibit L** (*Form of WIFIA IPA*) entered into by and between the District and the Borrower with respect to the Project corresponding to such WIFIA Loan.

“**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 27 (*WIFIA Lender’s Authorized Representative*).

“**WIFIA Loan**” has, for each WIFIA Loan Agreement, the meaning provided in Section 1 (*Definitions*) thereof.

“**WIFIA Loan Agreement**” means, for each WIFIA Loan, a loan agreement substantially in the form attached hereto as **Exhibit K** (*Form of WIFIA Loan Agreement*) entered into by the Borrower, the District 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 Section 1 (*Definitions*) thereof.

“**WIFIA Loan Amortization Schedule**” has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

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

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

“**WIFIA Loan Documents**” means this Agreement, the WIFIA Notes, the WIFIA IPAs, the WIFIA Loan Agreements, the Master Resolution and the WIFIA Resolutions.

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

“**WIFIA Notes**” means, collectively, each “WIFIA Note” as defined in Section 1 (*Definitions*) of each WIFIA Loan Agreement..

“**WIFIA Resolutions**” means, collectively, the WIFIA District Resolution and the WIFIA Borrower Resolution.

Section 2. Interpretation.

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

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

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

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

(e) The word “shall” is mandatory and the word “may” is permissive. The words “shall not” and “may not” are prohibitory.

(f) Whenever the Borrower’s knowledge or the District’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or the phrase “to the District’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or the District’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge or the best of the District’s knowledge, as applicable, after reasonable and diligent inquiry. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns.

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

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

(i) 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.

(j) 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.

(k) 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 36 (*Notices*) and signed by a duly authorized representative of such party.

(l) 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 Notes”.

(m) 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 Note. Whenever there is a mandatory or optional prepayment of any WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the corresponding WIFIA Note.

(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 LOAN

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 principal amount set forth in **Schedule II (Master Program Budget)** for such Project component (such principal amount, the "**WIFIA Loan Commitment Amount**"); provided that (x) the aggregate WIFIA Loan Commitment Amount 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 for such WIFIA Loan 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 component included in **Schedule I (Master Program)** and **Schedule II (Master Program Budget)** may be replaced with one or more other Project components and (ii) any WIFIA Loan Commitment Amount included in **Schedule II (Master Program Budget)** may be adjusted as necessary, so long as, following such adjustment, (x) the maximum principal amount of the relevant WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, would not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs for such Project and (y) the aggregate WIFIA Loan Commitment Amount does not exceed the Aggregate Master Program Amount. In connection with any such modification, the Borrower shall amend **Schedule I (Master Program)** and **Schedule II (Master Program Budget)** 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. Each 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 District, as agent of the Borrower pursuant to the applicable WIFIA IPA, may, with respect to each relevant Project, 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 D (Form of WIFIA Loan Request)** (a "**WIFIA Loan Request**"), which shall specify the Project components to which such

WIFIA Loan Request relates, together with (i) a description of such Project components, (ii) the most recent Updated Financial Model/Plan delivered to the WIFIA Lender in accordance with Section 20(a) (*Reporting Requirements of the District – Updated Financial Model/Plan*), and (iii) such additional information relating to such Project as may be requested by the WIFIA Lender; provided that a WIFIA Loan Request shall not be required in connection with the initial WIFIA Loan Agreement; provided further that no more than ten (10) WIFIA Loan Requests shall be delivered during the Master Availability Period. For each WIFIA Loan, the WIFIA Lender and the District, as agent of the Borrower pursuant to the applicable WIFIA IPA, 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) Pursuant to each WIFIA IPA, the Borrower shall appoint the District as its agent to request funds from time to time under this Agreement and the WIFIA Loan Agreements, and the District shall accept such appointment and assume all rights, liabilities, duties and responsibilities of the Borrower under this Agreement and the WIFIA Loan Agreements regarding the requisition of funds from time to time hereunder and thereunder. 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 purpose of paying or redeeming, in whole or in part, amounts owed by the District under an Interim Financing the proceeds of which were applied to pay Eligible Project Costs. If the Borrower intends to utilize the WIFIA Loan proceeds to make progress payments for construction work performed under the Construction Contracts with respect to such Project, the District, as agent of the Borrower pursuant to the applicable WIFIA IPA, shall demonstrate to the satisfaction of the WIFIA Lender that such progress payments are commensurate with the cost of the work that has been completed. Each disbursement of the applicable WIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One (Form of Requisition)** to **Exhibit B (Requisition Procedures)**, along with all documentation and other information required thereby, submitted by the District, as agent of the Borrower pursuant to the applicable WIFIA IPA, to, and approved by, the WIFIA Lender, all in accordance with the procedures of **Exhibit B (Requisition Procedures)** and subject to the requirements of this Section 4 and the conditions set forth in Section 11(c) (*Conditions Precedent – Conditions Precedent to Disbursements*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the applicable WIFIA Loan Agreement; provided that no disbursements of WIFIA Loan proceeds shall be made after the Final Disbursement Date with respect to such WIFIA Loan.

(c) Each Requisition shall include a certification by the District, as agent of the Borrower pursuant to the applicable WIFIA IPA, certifying as to the following: (i) whether reimbursement or payment is being requested with respect to (A) Eligible Project Costs that have been submitted by it pursuant to Section 20(c)(iii) (*Reporting Requirements of the District – Construction Reporting – Quarterly Certification of Eligible Project Costs*) and approved by the WIFIA Lender pursuant to Section 20(c)(iii) or (B) other Eligible Project Costs incurred by the District, as agent of the Borrower pursuant to such WIFIA IPA; (ii) the amount for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of WIFIA Loan proceeds; and (iii) to the extent any Eligible Project Costs described

in clause (i)(B) above are included in the Requisition, that such Eligible Project Costs have not and will not be submitted by the District for approval pursuant to Section 20(c)(iii).

(d) Subject to this Section 4, with respect to any WIFIA Loan, any scheduled disbursement (as reflected in the applicable WIFIA Loan Disbursement Schedule) of such WIFIA Loan that remains undrawn as of its scheduled date shall automatically be available for the next scheduled disbursement date, up to the Final Disbursement Date, with the effect of automatically updating such WIFIA Loan Disbursement Schedule (and the WIFIA Loan Amortization Schedule for such WIFIA Loan) without need for the WIFIA Lender's approval. The District 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 the WIFIA Loan Amortization Schedule for such WIFIA Loan to reflect the updated WIFIA Loan Disbursement Schedule. Notwithstanding the foregoing, the date of the first disbursement of any WIFIA Loan shall not be earlier than the initial date of disbursement for such WIFIA Loan 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, interest will accrue and be computed on each Outstanding WIFIA Loan Balance (as well as on any past due interest) from time to time at the relevant WIFIA Interest Rate on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate, (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and (b) in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured or waived (if applicable) in accordance with the terms of this Agreement and the relevant WIFIA Loan Agreement and (ii) the Outstanding WIFIA Loan Balance has been irrevocably paid in full by the Borrower in immediately available funds. For the avoidance of doubt, interest on each WIFIA Loan and each WIFIA Note shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as have been approved by the WIFIA Lender) have been disbursed to the Borrower for use on the relevant Project in accordance with Section 4 (*Disbursement Conditions*).

Section 7. Security and Priority; Flow of Funds.

(a) Pursuant to each WIFIA IPA, as security for the WIFIA Installment Payments under such WIFIA IPA, and concurrently with the issuance and delivery of the applicable WIFIA Loan Agreement, the District shall pledge, assign and grant to the Borrower for

its benefit, Liens on (v) all Water Utility System Revenues, the Water Utility System Revenue Fund and all amounts on deposit in the Water Utility System Revenue Fund, (w) the Rate Stabilization Reserve Fund and all amounts on deposit in the Rate Stabilization Reserve Fund, (x) each Special Purpose Fund and all amounts on deposit in such Special Purpose Fund, (y) the Project Acquisition Fund and all amounts on deposit in the Project Acquisition Fund and (z) the WIFIA Debt Service Account and all amounts on deposit in the WIFIA Debt Service Account (collectively, the “**Pledged Collateral**”). The obligation of the District to make the WIFIA Installment Payments under each WIFIA IPA shall (i) be secured by the Liens on the Pledged Collateral, (ii) not be subordinate in right of payment or in right of security to any Lien on the Pledged Collateral other than, during any period when a Bankruptcy Related Event has not occurred, the Liens on the Pledged Collateral for the benefit of the Senior Obligations and with respect to Maintenance and Operation Costs, and (iii) (A) during any period when a Bankruptcy Related Event has not occurred, be *pari passu* in right of payment and right of security only to the Lien on the Pledged Collateral for the benefit of the Parity Obligations and (B) during any period when a Bankruptcy Related Event has occurred, be *pari passu* in right of payment and right of security only to the Lien on the Pledged Collateral for the benefit of the Senior Obligations, in the case of each of clauses (A) and (B) above, without the need for any notice to or from any Person, physical delivery, recordation, filing or further act. Prior to the occurrence of a Bankruptcy Related Event, (1) the obligation of the District to make the WIFIA Installment Payments under each WIFIA IPA constitutes Parity Obligations under this Agreement and “Subordinate Contracts” under each WIFIA IPA, and (2) each WIFIA IPA constitutes a “Subordinate Contract” under each WIFIA IPA. Upon the occurrence of a Bankruptcy Related Event, (I) the obligation of the District to make the WIFIA Installment Payments under each WIFIA IPA shall constitute Senior Obligations under this Agreement and “Contracts” under the Master Resolution and shall not be subordinate in right of payment or in right of security to any Lien on the Pledged Collateral, and (II) each WIFIA IPA shall constitute a “Contract” under the Master Resolution.

(b) Except (i) for Permitted Liens, or (ii) to the extent otherwise provided in Section 7(a), the Pledged Collateral shall be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, that is of equal rank with or senior to the pledge of the Borrower created under the WIFIA Loan Documents for the benefit of the WIFIA Lender, and all organizational, regulatory or other necessary action on the part of the District with respect to the foregoing has been duly and validly taken.

(c) The Borrower hereby unconditionally pledges and assigns to the WIFIA Lender and grants to the WIFIA Lender Liens for its benefit on (i) all of its right, title and interest to receive the Corporation Revenues, (ii) all of its rights to receive amounts from the District from the WIFIA Debt Service Account and (iii) all of its rights and remedies to enforce each WIFIA IPA upon an event of default under such WIFIA IPA, in each case for the purpose of securing (x) the payment of all sums due and owing to the WIFIA Lender under this Agreement and the relevant WIFIA Loan Agreement and (y) the observance, performance and discharge of each agreement, condition, covenant and term of the Borrower and the District under this Agreement and the relevant WIFIA Loan Agreement and of the District under such WIFIA IPA. The District hereby consents to such pledge, assignment and grant. Notwithstanding anything in this Agreement or any other WIFIA Loan Document to the contrary, the Borrower does not and shall not assign, and the WIFIA Lender does not and shall not assume, any obligation, duty or liability of the Borrower under each WIFIA IPA. Each WIFIA Loan is and shall be secured by the Liens on the Corporation

Revenues. The Corporation Revenues shall be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than the Liens with respect to each WIFIA Loan. The WIFIA Debt Service Account shall be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than the Liens with respect to the WIFIA Installment Payments under each WIFIA IPA.

(d) The District shall not use any Pledged Collateral to make any payments or satisfy any obligations other than in accordance with the Flow of Funds, the provisions of this Section 7 and the Related Documents and shall not apply any portion of the Pledged Collateral in contravention of this Agreement or the other Related Documents. The District shall not use any amounts on deposit in the WIFIA Debt Service Account to make any payments or satisfy any obligations other than the payment of WIFIA Debt Service on the Borrower's behalf; provided that, on the last Business Day of each District Fiscal Year, the District may transfer to the Water Utility System Revenue Fund any amounts on deposit in the WIFIA Debt Service Account that are not needed for such purpose.

(e) The Borrower shall not use any Corporation Revenues to make any payments or satisfy any obligations other than the payment of WIFIA Debt Service and other amounts payable to the WIFIA Lender under this Agreement, the relevant WIFIA Loan Agreement and the relevant WIFIA Note.

(f) All Water Utility System Revenues shall, immediately upon receipt thereof, be deposited by the District into the Water Utility System Revenue Fund. Amounts deposited in the Water Utility System Revenue Fund shall be applied in the order of priority described in, and in accordance with, the Flow of Funds, which includes payment of WIFIA Debt Service in accordance with Section [5.2] of the relevant WIFIA IPA.

(g) Following the acceleration of amounts payable by the Borrower under this Agreement and the relevant WIFIA Loan Agreement or payable by the District under the relevant WIFIA IPA pursuant to Section 21(c) (*Events of Default and Remedies*) or Section 21(d)(vii) (*Events of Default and Remedies*) hereof or Section 21(c) (*Events of Default and Remedies*) of such WIFIA Loan Agreement, amounts deposited in the Water Utility System Revenue Fund shall be applied in the order of priority described in, and in accordance with, the Flow of Funds Following Acceleration.

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service.

(i) Pursuant to the applicable WIFIA IPA, not later than each Installment Payment Date occurring on or after the applicable Debt Service Payment Commencement Date, the District shall, from moneys in the Water Utility System Revenue Fund, transfer to the WIFIA Debt Service Account the WIFIA Installment Payment under such WIFIA IPA due and payable on the relevant Payment Date. All WIFIA Installment Payments under the applicable WIFIA IPA shall be paid directly by the District to the WIFIA Debt Service Account for the benefit of the WIFIA Lender. All WIFIA Installment Payments under the applicable WIFIA IPA and any other amounts deposited into the

WIFIA Debt Service Account shall be held by the District, as agent of the Borrower pursuant to such WIFIA IPA, in trust for the benefit of the WIFIA Lender until the immediately succeeding Payment Date, whereupon such money shall be applied to the payment of WIFIA Debt Service.

(ii) No WIFIA Debt Service under the applicable WIFIA Loan Agreement shall be due or payable prior to the applicable Debt Service Payment Commencement Date. The Borrower shall pay, or the District, as agent of the Borrower pursuant to the applicable WIFIA IPA, shall transfer from the WIFIA Debt Service Account on the Borrower's behalf, (A) WIFIA Debt Service in the amounts and manner and on the Payment Dates as set forth in the applicable WIFIA Loan Amortization Schedule, as the same may be revised pursuant to Section 8(f) (*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 (including the applicable Final Maturity Date and any date on which payment is due hereunder or thereunder or under the applicable WIFIA Note by reason of the mandatory redemption or prepayment or the acceleration of the maturity of the applicable WIFIA Loan or otherwise); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. WIFIA Loan proceeds borrowed and repaid may not be reborrowed.

(iii) Notwithstanding anything herein to the contrary, each Outstanding WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date of the related WIFIA Loan (or on any earlier date on which the related WIFIA Loan and WIFIA Note are subject to mandatory redemption or prepayment prior to the maturity thereof).

(iv) Any defeasance of the applicable WIFIA Loan in accordance with applicable law shall not be deemed a repayment or prepayment of such WIFIA Loan in full, and each of the Borrower and the District shall comply with all of its respective obligations hereunder and under the other WIFIA Loan Documents (other than with respect to payments of WIFIA Debt Service, which payments shall continue to be made in accordance with the applicable 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 by the Borrower of the Outstanding WIFIA Loan Balance with respect to such WIFIA Loan, together with all accrued interest, fees and expenses with respect thereto.

(b) Capitalized Interest. No payment of the principal of or interest on any WIFIA Loan is required to be made during the applicable Capitalized Interest Period. On each applicable Payment Date occurring during the applicable Capitalized Interest Period, and on the day immediately following the end of such Capitalized Interest Period, interest accrued on the applicable WIFIA Loan in the six (6) month period ending immediately prior to such date (or such shorter period if such Capitalized Interest Period ends on a date other than the date immediately prior to an Interest Payment Date) shall be capitalized and added to the relevant Outstanding WIFIA Loan Balance. The accrual of interest on amounts capitalized during the applicable Capitalized Interest Period pursuant to this Section 8(b) shall commence on the date such amounts

are added to the relevant Outstanding WIFIA Loan Balance. Within thirty (30) days after the end of the applicable Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower and the District stating the Outstanding WIFIA Loan Balance of the related WIFIA Loan 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 that no failure to give or delay in giving such notice shall affect any payment obligation or other obligation of the Borrower hereunder or under any other WIFIA Loan Document to which the Borrower is a party, or any payment obligation of the District under the applicable WIFIA IPA or any other obligation of the District under this Agreement or under any other WIFIA Loan Document to which the District is a party. Notwithstanding the foregoing, the applicable Capitalized Interest Period shall end immediately upon written notification to the Borrower or the District by the WIFIA Lender that an Event of Default under the relevant WIFIA Loan Agreement has occurred, in which case the provisions of this Section 8(b) shall no longer apply and payments of principal and interest shall be currently due and payable in accordance with the terms hereof and of such WIFIA Loan Agreement and interest shall no longer be capitalized. For purposes of this Section 8(b), an Event of Default under Section 21(b)(v) (*Events of Default and Remedies – Cross Default with Obligation Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of principal of, interest on or redemption price of any Parity Obligations (other than the WIFIA Loan) or Senior Obligations (as applicable) when due, regardless of whether any holder of the applicable Parity Obligations or Senior Obligations (as applicable), or any legal order, has waived or permitted deferral of any such payment (it being understood that payment obligations under any contract where the District makes service or availability payments based on performance of the counterparty shall not be considered due for periods where the terms of such contract do not require the District to make such payments). To the extent that any prepayment of any WIFIA Loan is made during the applicable Capitalized Interest Period, such prepayment shall be applied to the relevant Outstanding WIFIA Loan Balance as provided in Section 9(d) (*Prepayment – General Prepayment Instructions*) and reflected in a revised Exhibit A (*WIFIA Loan Amortization Schedule*) to the relevant WIFIA Loan Agreement.

(c) Interest Payments and Interest Only Period.

(i) Interest shall accrue on each WIFIA Loan commencing on the date of the first disbursement of such WIFIA Loan and shall be payable commencing on the applicable Debt Service Payment Commencement Date.

(ii) During the applicable Interest Only Period, the WIFIA Debt Service payable by the Borrower shall consist of one hundred percent (100%) of the amount of interest then due and payable on the relevant Outstanding WIFIA Loan Balance, and no payment of principal will be due and payable.

(d) WIFIA Notes. As evidence of the Borrower's obligation to repay each WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the applicable WIFIA Loan Agreement Effective Date, a WIFIA Note substantially in the form of **Exhibit A** (*Form of WIFIA Note*), having the maximum principal amount (excluding interest to be capitalized in accordance with the terms hereof and thereof) specified in the WIFIA Loan Agreement for such WIFIA Loan, bearing interest at the applicable WIFIA Interest Rate and having principal and interest payable on the same dates as those set forth in such WIFIA Loan

Agreement. Any payment in respect of any WIFIA Note shall be treated as a payment in respect of the corresponding WIFIA Loan and any prepayment of principal in respect of any WIFIA Loan shall be treated as a redemption in respect of the corresponding WIFIA Note.

(e) Manner of Payment. The Borrower hereby assigns all its right and interest in and to the WIFIA Installment Payments under each WIFIA IPA to the WIFIA Lender and directs the District to transfer, on the Borrower's behalf, all amounts on deposit in the WIFIA Debt Service Account to the WIFIA Lender by wire transfer on or before each applicable Payment Date 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 neither the assignment of such rights by the Borrower nor such direction by the Borrower to the District with respect to payments hereunder or under the applicable WIFIA Loan Agreement shall affect in any manner any payment obligation or other obligation of the Borrower hereunder or under any other WIFIA Loan Document to which the Borrower is a party, or any payment obligation of the District under such WIFIA IPA or other obligation of the District hereunder or under any WIFIA Loan Document to which the District is a party.

(f) Adjustments to WIFIA Loan Amortization Schedule.

(i) Each Outstanding WIFIA Loan Balance will be (A) increased on each occasion on which the WIFIA Lender disburses proceeds of the applicable WIFIA Loan under the applicable WIFIA Loan Agreement by the amount of such disbursement of loan proceeds; (B) increased on each occasion on which interest on the WIFIA Loan is capitalized pursuant to the provisions of Section 8(b) (*Payment of Principal and Interest – Capitalized Interest*), by the amount of interest so capitalized; and (C) decreased upon each payment or prepayment of the Outstanding WIFIA Loan Balance for the applicable WIFIA Loan by the amount of principal so paid. The WIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower or the District, advise the Borrower or the District by written notice of the amount of such Outstanding WIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(ii) The WIFIA Lender is hereby authorized to modify any WIFIA Loan Amortization Schedule from time to time, in accordance with the principles set forth below in this Section 8(f), to reflect (A) any change to the Outstanding WIFIA Loan Balance for the applicable WIFIA Loan, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement or the corresponding WIFIA Loan Agreement, (C) any mathematical corrections as the WIFIA Lender may determine are necessary and (D) with the consent of the Borrower (not to be unreasonably withheld), such other information as the WIFIA Lender may determine is necessary for administering 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 changes in such Outstanding WIFIA Loan Balance shall be applied to reduce future payments due with respect to such WIFIA Loan in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(d) (*Prepayment –*

General Prepayment Instructions). Absent manifest error, the WIFIA Lender's determination of such matters as set forth on Exhibit A (*WIFIA Loan Amortization Schedule*) attached to each WIFIA Loan Agreement 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 any payment obligation or other obligation of the Borrower hereunder or under any other WIFIA Loan Document to which the Borrower is a party, or any payment obligation of the District under each WIFIA IPA or other obligation of the District hereunder or under any WIFIA Loan Document to which the District is a party. The WIFIA Lender shall provide the Borrower and the District with a copy of such Exhibit A (*WIFIA Loan Amortization Schedule*) as revised pursuant to this Section 8(f)(ii), but no failure to provide or delay in providing the Borrower or the District with such copy shall affect any of the obligations of the Borrower or the District under this Agreement or the other WIFIA Loan Documents.

(g) WIFIA Loan Not District Indebtedness. Each WIFIA Loan and each WIFIA Note are limited obligations of the Borrower, payable solely from the Corporation Revenues, and do not constitute a debt of the State or any of its political subdivisions (including the District), except the Borrower. Notwithstanding anything to the contrary set forth in this Agreement, the District is not a borrower with respect to each WIFIA Loan, each WIFIA Note, or this Agreement and the District has no obligation to make any payment or provision for payment of such WIFIA Loan or such WIFIA Note. This Agreement does not constitute a contract between the District and the WIFIA Lender by which the District has incurred an indebtedness.

Section 9. Prepayment.

(a) Mandatory Prepayment from Insurance Proceeds or Eminent Domain Proceeds. The Borrower, or the District as agent of the Borrower, shall prepay each WIFIA Loan from and in the amount of any prepayments of the WIFIA Installment Payments received from the District pursuant to the WIFIA IPA for such WIFIA Loan and Section 17(f)(vi) (*Affirmative Covenants of the District – Insurance; Eminent Domain; Net Proceeds*). The amount of any such prepayment shall be equal to the portion of the Outstanding WIFIA Loan Balance for such WIFIA Loan required to be prepaid hereunder plus accrued interest thereon to the date of prepayment. All such prepayments shall be paid to the WIFIA Lender by the District as agent of the Borrower substantially concurrently with the receipt of such amount by the Borrower and applied against such Outstanding WIFIA Loan Balance in accordance with Section 9(d) (*Prepayment – General Prepayment Instructions*).

(b) Optional Prepayments. After the Final Disbursement Date for a WIFIA Loan, the Borrower (or the District as agent of the Borrower) may prepay such WIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Lender such principal amount of such WIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, which shall be a Payment Date under the applicable WIFIA Loan Agreement unless otherwise agreed by the WIFIA Lender. Each prepayment of a WIFIA Loan pursuant to this Section 9(b) shall be made on such Payment Date and in such principal amount as

shall be specified by the Borrower in a written notice delivered to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 9(b) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement or the applicable WIFIA Loan Agreement.

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

(d) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of the entire Outstanding 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 mandatory or optional prepayment, the WIFIA Lender shall surrender the corresponding WIFIA Note to the Borrower or its representative by mail in accordance with Section 36 (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 Exhibit A (*WIFIA Loan Amortization Schedule*) attached to the applicable WIFIA Loan Agreement, indicating the amount of principal of and interest on such WIFIA Loan then being prepaid. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on such Exhibit A (*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 any payment obligation or other obligation of the Borrower hereunder or under any other WIFIA Loan Document to which the Borrower is a party, or any payment obligation of the District under the WIFIA IPA with respect to such WIFIA Loan or any other obligation of the District hereunder or under any WIFIA Loan Document to which the District is a party. All partial prepayments of principal shall be applied to reduce future payments due on the applicable WIFIA Loan on pro rata basis. 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 in the applicable WIFIA Loan Agreement.

Section 10. Fees and Expenses.

(a) Fees. The District shall pay, on behalf of the Borrower, to the WIFIA Lender for each WIFIA Loan:

(i) a servicing set-up fee equal to the amount specified in clause (a) of Section 10 (*Fees and Expenses*) of the applicable WIFIA Loan Agreement (the "Servicing Set-Up Fee"), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the related WIFIA Loan);

(ii) an annual construction period servicing fee equal to the amount specified in clause (b) of Section 10 (*Fees and Expenses*) of the applicable WIFIA Loan Agreement (the “**Construction Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period under the applicable WIFIA Loan Agreement (including 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 of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan), in an amount pro-rated from the applicable WIFIA Loan Agreement Effective Date through the last day of the then-applicable Federal Fiscal Year; and

(iii) an annual operating period servicing fee equal to the amount specified in clause (c) of Section 10 (*Fees and Expenses*) of the applicable WIFIA Loan Agreement (the “**Operating Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the 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 District 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 District agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Loan Documents and the transactions hereby and thereby contemplated, including attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the 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 protection or preservation of any right or claim under, the Liens on the Pledged Collateral or any

provision of this Agreement or any other WIFIA Loan Document or the rights of the WIFIA Lender thereunder;

(iii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower or the District under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default; provided that nothing in this Section 10(c) shall obligate the District to pay principal or interest on any WIFIA Loan or WIFIA Note.

(d) The obligations of the District under this Section 10 shall survive the payment or prepayment in full in accordance with Section 8 or Section 9, respectively, of any WIFIA Note, 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 and the District shall each have duly executed and delivered to the WIFIA Lender this Agreement in form and substance satisfactory to the WIFIA Lender.

(ii) The District shall have delivered to the WIFIA Lender a certified, complete copy of the adopted Master Resolution, together with any amendments, supplements, waivers or modifications thereto, that has been adopted on or prior to the Effective Date, along with a certification in the District Closing Certificate that the Master Resolution is complete and in full force and effect, and that all conditions contained in the Master Resolution and the WIFIA Resolutions that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled.

(iii) The Borrower and the District shall each have delivered to the WIFIA Lender a copy of its Organizational Documents, as in effect on the Effective Date, along with a certification in the Borrower Closing Certificate or District Closing Certificate, as applicable, that such Organizational Documents are in full force and effect.

(iv) The District shall have delivered to the WIFIA Lender a copy of the WIFIA District Resolution, along with a certification that the WIFIA District Resolution is in full force and effect, and no further instruments or documents (including any

resolutions, ordinances, and supplements) are necessary for the District to execute and deliver, and to perform its obligations under, this Agreement and each other WIFIA Loan Document to which the District is a party and to consummate and implement the transactions contemplated by this Agreement and each other WIFIA Loan Document to which the District is a party.

(v) The Borrower shall have delivered to the WIFIA Lender a copy of the WIFIA Borrower Resolution, along with a certification that the WIFIA Borrower Resolution is in full force and effect, and no further instruments or documents (including any resolutions, ordinances, and supplements) are necessary for the Borrower to execute and deliver, and to perform its obligations under, this Agreement and each other WIFIA Loan Document to which the Borrower is a party and to consummate and implement the transactions contemplated by this Agreement and each other WIFIA Loan Document to which the Borrower is a party.

(vi) (A) 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 E-1** (*Opinions Required from Counsel to Borrower*)), (B) 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 E-2** (*Opinions Required from Borrower Bond Counsel*)), (C) counsel to the District 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 E-3** (*Opinions Required from Counsel to District*)), and (D) bond counsel to the District 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 E-4** (*Opinions Required from District Bond Counsel*)).

(vii) 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 F-1** (*Form of Closing Certificate of Borrower*) (the "**Borrower Closing Certificate**"), designating the Borrower's Authorized Representative, confirming such person's position and incumbency, and certifying as to the satisfaction of the following conditions precedent (and, if requested by the WIFIA Lender, shall have provided evidence satisfactory to the WIFIA Lender of such satisfaction):

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

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

(viii) The District shall have delivered to the WIFIA Lender a certificate, signed by the District's Authorized Representative, substantially in the form attached hereto as **Exhibit F-2 (Form of Closing Certificate of District)** (the "**District Closing Certificate**"), designating the District's Authorized Representative, confirming such person's position and incumbency, and certifying as to the satisfaction of the following conditions precedent (and, if requested by the WIFIA Lender, shall have provided evidence satisfactory to the WIFIA Lender of such satisfaction):

(A) the District has (x) obtained a Federal Employer Identification Number, (y) obtained a Unique Entity Identifier, and (z) registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov);

(B) the representations and warranties of the District set forth in this Agreement and in each other WIFIA Loan Document to which the District 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

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

(ix) The District shall have paid in full all invoices delivered by the WIFIA Lender to the District 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.

(x) The District shall have provided evidence to the WIFIA Lender's satisfaction of the (A) establishment by the District of the WIFIA Debt Service Account and (B) the pledge of such account by the District for the sole benefit of the Borrower.

(xi) The District shall have delivered to the WIFIA Lender a copy of the Investment Policy.

(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 District shall have duly executed and delivered to the WIFIA Lender, except with respect to the initial WIFIA Loan Agreement, a WIFIA Loan Request that complies with the provisions of Section 4(a) (*Disbursement Conditions*).

(ii) The Borrower and the District shall each have duly executed and delivered to the WIFIA Lender, (A) a Project Term Sheet with respect to the applicable Project, (B) the WIFIA Loan Agreement with respect to such Project and (C) the WIFIA

IPA with respect to such Project, in each case in form and substance satisfactory to the WIFIA Lender.

(iii) The Borrower shall have duly executed and delivered to the WIFIA Lender the WIFIA Note with respect to the applicable WIFIA Loan Agreement in form and substance satisfactory to the WIFIA Lender.

(iv) The Borrower and the District shall each have delivered to the WIFIA Lender complete and fully executed copies of each Related Document (to the extent not previously delivered to the WIFIA Lender) and Existing Construction Contract to which it is a party with respect to the applicable Project, together with any amendments, supplements, waivers or modifications thereto, that has been entered into on or prior to the applicable WIFIA Loan Agreement Effective Date, along with a certification in the applicable Borrower Project Closing Certificate and District Project Closing Certificate, respectively, that each such document is complete, fully executed and in full force and effect.

(v) (A) 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 E-1** (*Opinions Required from Counsel to Borrower*)), (B) 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 E-2** (*Opinions Required from Borrower Bond Counsel*)), (C) counsel to the District 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 E-3** (*Opinions Required from Counsel to District*)), and (D) bond counsel to the District 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 E-4** (*Opinions Required from District Bond Counsel*)), in each case for the relevant Project.

(vi) The Borrower and the District shall each have delivered to the WIFIA Lender (A) each Project Budget for the relevant Project and (B) except with respect to the initial WIFIA Loan Agreement, a revised Master Program Budget reflecting such Project Budget.

(vii) The Borrower shall have delivered to the WIFIA Lender a certificate with respect to the relevant Project, signed by the Borrower's Authorized Representative, substantially in the form attached hereto as **Exhibit F-3** (*Form of Project Closing Certificate of Borrower*) (the "**Borrower Project Closing Certificate**"), confirming the Borrower's Authorized Representative previously designated and such person's position and incumbency as previously provided to the WIFIA Lender remain unchanged and in full force and effect (or if changed, designating such new Borrower's Authorized Representative and confirming such person's position and incumbency, in form and substance satisfactory to the WIFIA Lender) and certifying as to the satisfaction of the following conditions precedent (and, if requested by the WIFIA Lender, shall have provided evidence satisfactory to the WIFIA Lender of such satisfaction):

(A) as of the applicable WIFIA Loan Agreement Effective Date, (x) the maximum principal amount of the relevant WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof and of the relevant WIFIA Loan Agreement), 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 applicable Project and (y) the total federal assistance provided to the applicable Project, including the maximum principal amount of the relevant WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof and of the relevant WIFIA Loan Agreement), does not exceed eighty percent (80%) of Total Project Costs for such Project;

(B) (1) with respect to the initial WIFIA Loan Agreement, the Borrower has obtained a CUSIP number for the initial WIFIA Loan (the “**WIFIA CUSIP Number**”) for purposes of monitoring through EMMA, and (2) with respect to each other WIFIA Loan Agreement, the Borrower (x) has 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 has extended the expiration date of the WIFIA CUSIP Number to be no earlier than the Final Maturity Date of the relevant WIFIA Loan;

(C) 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; and

(D) no Borrower Material Adverse Effect, or any event or condition that could reasonably be expected to have a Borrower Material Adverse Effect, has occurred or arisen since the Effective Date.

(viii) The District shall have delivered to the WIFIA Lender a certificate with respect to the relevant Project, signed by the District’s Authorized Representative, substantially in the form attached hereto as **Exhibit F-4 (Form of Project Closing Certificate of District)** (the “**District Project Closing Certificate**”), confirming the District’s Authorized Representative previously designated and such person’s position and incumbency as previously provided to the WIFIA Lender remain unchanged and in full force and effect (or if changed, designating such new District’s Authorized Representative and confirming such person’s position and incumbency, in form and substance satisfactory to the WIFIA Lender) and certifying as to the satisfaction of the following conditions precedent (and, if requested by the WIFIA Lender, shall have provided evidence satisfactory to the WIFIA Lender of such satisfaction):

(A) as of the applicable WIFIA Loan Agreement Effective Date, (x) the maximum principal amount of the relevant WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof and of the relevant

WIFIA Loan Agreement), 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 applicable Project and (y) the total federal assistance provided to the applicable Project, including the maximum principal amount of the relevant WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof and of the relevant WIFIA Loan Agreement), does not exceed eighty percent (80%) of Total Project Costs for such Project;

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

(C) the District has maintained (x) the Federal Employer Identification Number provided to the WIFIA Lender as a condition precedent to the Effective Date, (y) the Unique Entity Identifier provided to the WIFIA Lender as a condition precedent to the Effective Date, and (z) an active registration status with the federal System for Award Management (www.SAM.gov);

(D) the representations and warranties of the District set forth in the relevant WIFIA Loan Agreement and in each other WIFIA Loan Document to which the District 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; and

(E) no District Material Adverse Effect, or any event or condition that could reasonably be expected to have a District Material Adverse Effect, has occurred or arisen since the Effective Date.

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

(x) The District shall have delivered to the WIFIA Lender the most recent Updated Financial Model/Plan in compliance with the requirements of Section 20(a) (*Reporting Requirements of the District – Updated Financial Model/Plan*).

(xi) The District shall have delivered to the WIFIA Lender a Public Benefits Report for the relevant Project.

(xii) To the extent not previously paid, the District 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 District as of the relevant WIFIA Loan Agreement 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 of the WIFIA Loan Documents.

(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 proceeds with respect to any WIFIA Loan to the Borrower until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The District, as agent of the Borrower pursuant to the relevant WIFIA IPA, shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*) (including satisfactory Eligible Project Costs Documentation relating to such Requisition), and the WIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 20(c)(iii) (*Reporting Requirements of the District – Construction Reporting – Quarterly Certification of Eligible Project Costs*)) such Requisition. The District'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 to which the District is a party shall have occurred and be 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 to which the District is a party shall have occurred and be continuing;

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

(C) the aggregate amount of all disbursements of such WIFIA Loan (including the requested disbursement but excluding any interest that is capitalized in accordance with the terms hereof and of the relevant WIFIA Loan Agreement) will not exceed (1) the maximum principal amount of such WIFIA Loan, (2) the aggregate amount of the Eligible Project Costs with respect to the applicable Project paid or incurred by the District, as agent of the Borrower pursuant to the relevant WIFIA IPA;

(D) the Eligible Project Costs with respect to the applicable Project for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of such WIFIA Loan or any other source of funding for such Project as identified in the Project Budget for such Project;

(E) (1) the District and each of the contractors and subcontractors at all tiers with respect to the relevant Project have 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 District set forth in this Agreement (including Section 13 (*Representations and Warranties of the District*)) and in each other WIFIA Loan Document to which the District is a party shall be 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 shall be true and correct as of such earlier date);

(G) the District has delivered all required deliverables under and in compliance with the requirements of Section 20 (*Reporting Requirements of the District*), except as has been otherwise agreed by the WIFIA Lender; and

(H) Eligible Project Costs Documentation evidencing Eligible Project Costs in an amount equal to the amount requested for such disbursement, either (1) has been previously submitted to and approved by the WIFIA Lender in accordance with **Exhibit B** (*Requisition Procedures*) and Section 20 (*Reporting Requirements of the District*) of this Agreement or (2) has been submitted to the WIFIA Lender, together with a summary of such Eligible Project Costs in the Requisition (or attached separately to the Requisition), for approval by the WIFIA Lender.

(ii) To the extent necessary to make the corresponding representations and warranties true, correct and complete as of the date of the applicable disbursement, the District shall have delivered a schedule, in form and substance satisfactory to the WIFIA Lender, listing any exceptions with respect to the representations and warranties set forth in Section 12(f) (*Representations and Warranties of the Borrower – Litigation*), Section 13(f) (*Representations and Warranties of the District – Litigation*) and Section 13(j)(iii) (*Representations and Warranties of the District – Compliance with Laws*).

(iii) The Borrower's Authorized Representative shall have delivered to the WIFIA Lender a certificate in the form of **Appendix Two** (*Form of Borrower Disbursement Certificate*) to **Exhibit B** (*Requisition Procedures*) certifying that:

(A) at the time of, and immediately after giving effect to, any disbursement of any proceeds with respect to the applicable WIFIA Loan then currently requested, (1) no Default or Event of Default hereunder and no event of default under any other Related Document to which the Borrower is a party shall have occurred and be 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 to which the Borrower is a party shall have occurred and be continuing;

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

(C) the representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of the Borrower*)) and in each other WIFIA Loan Document to which the Borrower is a party shall be true and correct as of each date on which any disbursement of such WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date); and

(D) the Borrower has delivered all required deliverables under and in compliance with the requirements of Section 19 (*Reporting Requirements of the Borrower*), except as has been otherwise agreed by the WIFIA Lender.

(iv) The District shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (*Fees and Expenses*) and (B) all invoices received from the WIFIA Lender as of the date of disbursement of the relevant WIFIA Loan and delivered by the WIFIA Lender to the District, 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 of the WIFIA Loan Documents.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of the Borrower. The Borrower hereby represents and warrants that, as of the Effective Date (other than with respect to the representations and warranties contained in Section 12(k) (*Representations and Warranties of the Borrower – Credit Ratings*)) and as of each WIFIA Loan Agreement Effective Date (other than with respect to the representations and warranties contained in Section 12(u) (*Representations and Warranties of the Borrower – Existing Water Utility System Indebtedness*)) and, as to each of the representations and warranties other than those (x) contained in Section 12(b) (*Representations and Warranties of the Borrower – Officers' Authorization*), Section 12(k) (*Representations and Warranties of the Borrower – Credit Ratings*), the first sentence of Section 12(f) (*Representations and Warranties of the Borrower – Litigation*) and Section 12(u) (*Representations and Warranties of the Borrower – Existing Water Utility System Indebtedness*), or (y) which expressly relate only to the District, 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 nonprofit public benefit corporation duly organized and validly existing under its Organizational Documents and the Nonprofit Public Benefit Corporation Law of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence to which it is a party, to execute and deliver this Agreement and the other Related Documents to which it is a party, and to carry out and consummate all transactions contemplated hereby and thereby, and has duly authorized the execution, delivery and performance of this Agreement and the other Related Documents to which it is a party.

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

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable against it in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity, the exercise of judicial discretion and the limitation on legal remedies against governmental entities imposed by the laws of the State (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 to which the Borrower is a party, and the fulfillment of or compliance with the terms and conditions of the Related Documents to which the Borrower is a party, 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. No consent or approval of any trustee, holder of any indebtedness of the Borrower, or of any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents to which it is a party, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by any of the Related Documents to which the Borrower is a party, or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of any of the Related Documents to which the Borrower is a party, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. Except as set forth in **Schedule 12(f) (Litigation)**, there is no action suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Water Utility System or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents to which the Borrower is a party. Except as set forth in **Schedule 12(f) (Litigation)**, there is no action, suit, proceeding

or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Water Utility System, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Borrower Material Adverse Effect.

(g) Security Interests. (i) This Agreement and Section 5451 of the California Government Code establish, and (ii) the Borrower has taken all necessary action to pledge, assign, and grant, in each case in favor of the WIFIA Lender, legal, valid, binding and enforceable Liens on the Corporation Revenues and the Borrower's rights with respect to the WIFIA Debt Service Account purported to be created, pledged, assigned, and granted pursuant to and in accordance with this Agreement, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are the only Liens in respect of the Corporation Revenues or the Borrower's rights with respect to the WIFIA Debt Service Account. The Borrower has taken all necessary action to assign to the WIFIA Lender all of its rights (A) to receive the Corporation Revenues, (B) with respect to the WIFIA Debt Service Account and (C) to enforce each WIFIA IPA upon an event of default under such WIFIA IPA without the need for any further act. The Borrower is not in breach of any covenant set forth in Section 15(a) (*Affirmative Covenants of the Borrower – Securing Liens*) or in any other WIFIA Loan Document to which the Borrower is a party with respect to the matters described in Section 15(a) (*Affirmative Covenants of the Borrower – Securing Liens*). 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 Lien on the Corporation Revenues for the benefit of the WIFIA Lender, and all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any WIFIA Loan Document or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, validity, enforceability or priority of the security interest in the Corporation Revenues or the Borrower's rights with respect to the WIFIA Debt Service Account is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) (i) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters, (ii) is presently indicted for or otherwise criminally or civilly charged by a Governmental Authority with commission of any of the offenses listed in 2 C.F.R. § 180 or 2 C.F.R. § 1532; or (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) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents to which the Borrower is a party are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Laws. The Borrower has complied with all applicable laws, rules, regulations and requirements.

(k) Credit Rating. As of any WIFIA Loan Agreement Effective Date, the corresponding WIFIA Loan has received a public Investment Grade Rating from at least one (1) Nationally Recognized Rating Agency, written evidence of such rating has been provided to the WIFIA Lender, and no such rating has been reduced, withdrawn or suspended.

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

(m) Information. Neither the WIFIA Loan Documents to which the Borrower is a party, nor any documents, certificates or statements provided to the WIFIA Lender by representatives of the Borrower in connection with the transactions contemplated thereby, which for purposes of this Section 12(m) shall consist of all documents or statements related to the Application or the Master Program, cash flow schematics, responses to due diligence interrogatories or requests from the WIFIA Lender or its advisors, and documents uploaded to the online WIFIA SharePoint data room made accessible to the Borrower by the WIFIA Lender, to the extent such documents, certificates, statements or other materials relate to the Borrower (including its finances or operations) or the Master Program, contains any untrue statement of any material fact or omits to state any material fact necessary so as to make such WIFIA Loan Documents, documents, certificates, statements or other materials so provided to the WIFIA Lender, in light of the circumstances under which they were made, not misleading.

(n) Insurance. The Borrower is in compliance with all insurance obligations applicable to the Borrower required under each Related Document to which the Borrower is a party 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.

(o) 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 Corporation Revenues or its rights with respect to the WIFIA Debt Service Account. The Corporation Revenues and the Borrower's rights with respect to the WIFIA Debt Service Account are free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than the pledge and Lien thereon for the benefit of the WIFIA Lender.

(p) Borrower Financial Statements. Each Borrower Financial Statement delivered to the WIFIA Lender by the Borrower pursuant to Section 19(a) (*Reporting Requirements of the Borrower – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Borrower Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the periods to which such Borrower Financial Statements relate that are required to be disclosed in accordance with GAAP.

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

(r) Sovereign Immunity. The Borrower either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower under any of the Related Documents to which the Borrower 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 15(h) (*Affirmative Covenants of the Borrower – Immunity*).

(s) Taxes; No 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) No Lobbying. Pursuant to 31 U.S.C. § 1352, to the best of the Borrower's knowledge and belief, (i) 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 any WIFIA Loan Document, or any other federal action under 31 U.S.C. § 1352(a)(2); and (ii) 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.

(u) Existing Water Utility System Indebtedness. As of the Effective Date, except as set forth in **Schedule 12(u)** (*Existing Water Utility System Indebtedness*), no indebtedness of the Borrower with respect to the Water Utility System is outstanding.

Section 13. Representations and Warranties of the District. The District hereby represents and warrants that, as of the Effective Date (other than with respect to the representations and warranties contained in the first sentence of Section 13(m) (*Representations and Warranties of the District – Construction Contracts*) and Section 13(o) (*Representations and Warranties of the District – Credit Rating*)) and as of each WIFIA Loan Agreement Effective Date (other than with respect to the representations and warranties contained in Section 13(w) (*Representations and Warranties of the District – Existing Obligations*)) and, as to each of the representations and warranties other than those (x) contained in Section 13(b) (*Representations and Warranties of the District – Officers' Authorization*), the first sentence of Section 13(f) (*Representations and Warranties of the District – Litigation*), the first sentence of Section 13(m) (*Representations and Warranties of the District – Construction Contracts*), Section 13(o) (*Representations and*

Warranties of the District – Credit Rating) and Section 13(w) (Representations and Warranties of the District – Existing Obligations) or (y) which expressly relate only to the Borrower, as of each date on which any disbursement of a WIFIA Loan is requested or made:

(a) Organization; Power and Authority. The District is a special district duly organized and validly existing under the statutes of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence to which it is a party, to execute and deliver this Agreement and the other Related Documents to which it is a party, and to carry out and consummate all transactions contemplated hereby and thereby, and has duly authorized the execution, delivery and performance of this Agreement and the other Related Documents to which it is a party.

(b) Officers' Authorization. As of the Effective Date and as of each WIFIA Loan Agreement Effective Date, the officers of the District executing (or that previously executed) the Related Documents (and any certifications or instruments related thereto) to which the District 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 District is a party has been duly authorized, executed and delivered by the District and constitutes the legal, valid and binding agreement of the District enforceable against it in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity, the exercise of judicial discretion and the limitation on legal remedies against governmental entities imposed by the laws of the State (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 District is a party, the consummation of the transactions contemplated by the Related Documents to which the District is a party, and the fulfillment of or compliance with the terms and conditions of the Related Documents to which the District is a party, will not (i) conflict with the District'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 District 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 District 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 District, other than Permitted Liens.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the District or of any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the District of the Related Documents to which it is a party, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by any of the Related Documents to which the

District is a party, or (B) the fulfillment of or compliance by the District with the terms and conditions of any of the Related Documents to which the District is a party, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. Except as set forth in **Schedule 12(f) (Litigation)**, there is no action suit, proceeding or, to the knowledge of the District, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the District, threatened against or affecting the Water Utility System (including the Master Program) or the ability of the District to execute, deliver and perform its obligations under the Related Documents to which the District is a party. Except as set forth in **Schedule 12(f) (Litigation)**, there is no action, suit, proceeding or, to the knowledge of the District, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the District, threatened against or affecting the Water Utility System (including the Master Program), the District or the assets, properties or operations of the District, that in any case could reasonably be expected to result in a District Material Adverse Effect.

(g) Security Interests. (i) Each WIFIA IPA and Section 5451 of the California Government Code establish, and (ii) the District has taken all necessary action to pledge, assign, and grant, in each case in favor of the Borrower, legal, valid, binding and enforceable Liens on the Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to and in accordance with such WIFIA IPA, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The Liens on the Pledged Collateral in favor of the Borrower are in full force and effect and are (A) not subordinate or junior to any other Liens in respect of the Pledged Collateral other than, during any period when a Bankruptcy Related Event has not occurred, the Liens on the Pledged Collateral for the benefit of the Senior Obligations and with respect to Maintenance and Operation Costs and (B) not *pari passu* with any Liens in respect of the Pledged Collateral other than (1) during any period when a Bankruptcy Related Event has not occurred, the Liens on the Pledged Collateral for the benefit of the Parity Obligations and (2) during any period when a Bankruptcy Related Event has occurred, the Liens on the Pledged Collateral for the benefit of the Senior Obligations. The Lien on the WIFIA Debt Service Account in favor of the Borrower is the only Lien with respect to the WIFIA Debt Service Account. The District is not in breach of any covenant set forth in Section 17(b) (*Affirmative Covenants of the District – Securing Liens*) or in any WIFIA Loan Document to which the District is a party with respect to the matters described in Section 17(b) (*Affirmative Covenants of the District – Securing Liens*). 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 Lien on the Pledged Collateral for the benefit of the Borrower, and all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any WIFIA Loan Document or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, validity, enforceability or priority of the security interest in the Pledged Collateral granted pursuant to any WIFIA IPA is governed by Article 9 of the UCC.

(h) No Debarment. The District 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 District nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) is (i) 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; or (iii) has, within the three (3) year period preceding the Effective Date, (x) been convicted for or had a civil judgment rendered against the District for any of the offenses within such period or (y) had any public transactions (federal, state or local) terminated for cause or default.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the District set forth in this Agreement and the other Related Documents to which the District is a party are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Laws.

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

(ii) To ensure such compliance, the District has included in all contracts with respect to the Master Program (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors shall (1) comply with all applicable laws, rules, regulations, and requirements set forth in this Section 13(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 13(j) (including with respect to the Davis-Bacon Act requirements).

(iii) The District is in compliance with all laws applicable to the Water Utility System (including the Master Program) relating to environmental, health or safety matters (collectively, the “**Environmental Laws**”).

(k) No Defaults. No Default or Event of Default, and no default or event of default by the District under any other Related Document to which the District is a party, has occurred and is continuing.

(l) Governmental Approvals. All Governmental Approvals required as of the Effective Date and required as of any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the District, as agent of the Borrower pursuant to each WIFIA IPA, of the Master Program, and for the operation and management

thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of or a default under any such Governmental Approval.

(m) Construction Contracts. As of any WIFIA Loan Agreement Effective Date, attached as Schedule 13(m) (*Existing Construction Contracts*) to the applicable WIFIA Loan Agreement is a list of the Existing Construction Contracts. With respect to each Construction Contract executed as of any date on which this representation and warranty is made, such Construction Contract is in full force and effect.

(n) Information. Neither the WIFIA Loan Documents to which the District is a party, nor any documents, certificates or statements provided to the WIFIA Lender by representatives of the District in connection with the transactions contemplated thereby, which for purposes of this Section 13(n) shall consist of all financial models, project budgets, documents or statements related to the Application or the Master Program, cash flow schematics, responses to due diligence interrogatories or requests from the WIFIA Lender or its advisors, and documents uploaded to any data room made accessible to the District by the WIFIA Lender (or its advisors) or provided to the WIFIA Lender in an electronic written communication, to the extent such documents, certificates, statements or other materials relate to the District (including its finances or operations) or the Master Program, contains any untrue statement of any material fact or omits to state any material fact necessary so as to make such WIFIA Loan Documents, documents, certificates, statements or other materials so provided to the WIFIA Lender, in light of the circumstances under which they were made, not misleading.

(o) Credit Rating. As of any WIFIA Loan Agreement Effective Date, the corresponding WIFIA Loan has received a public Investment Grade Rating from at least one (1) Nationally Recognized Rating Agency, written evidence of such rating has been provided to the WIFIA Lender, and no such rating has been reduced, withdrawn or suspended.

(p) Insurance. The District is in compliance with all insurance obligations required under each Related Document to which the District is a party as of the date on which this representation and warranty is made. To the extent the District self-insures, the District's self-insurance program is actuarially sound.

(q) No Prohibited Liens. Except for Permitted Liens, the District 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 Water Utility System, the Master Program or the properties or assets in relation to the Master Program.

(r) District Financial Statements. Each District Financial Statement delivered to the WIFIA Lender by the District pursuant to Section 20(b) (*Reporting Requirements of the District – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the District as of the respective dates of the balance sheets included therein and the results of operations of the District for the respective periods covered by the statements of income included therein. Except as reflected in such District Financial Statements, there are no liabilities or obligations of the District of any nature whatsoever

for the periods to which such District Financial Statements relate that are required to be disclosed in accordance with GAAP.

(s) Sufficient Funds. The amount of the WIFIA Loans, when combined with all other funds committed for the development and construction of the Projects as set forth under the various sources of funds in the Project Budgets and identified in the Base Case Financial Model, will be sufficient to carry out the Master Program, pay all Total Project Costs anticipated for the development and construction of the Projects and achieve Substantial Completion with respect to each 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 WIFIA Loan for such Project (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 Section 20(a) (*Reporting Requirements of the District – Updated Financial Model/Plan*) demonstrates that the projected Water Utility System Revenues and Corporation Revenues are sufficient to meet the WIFIA Loan Amortization Schedule for each Project. The District has developed, and identified adequate revenues to implement, a plan for operating, maintaining, and repairing each Project over the useful life of such Project.

(t) Sovereign Immunity. The District 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 District under any of the Related Documents to which the District is a party or the transactions contemplated hereby or thereby, including the obligations of the District hereunder and thereunder, or, to the extent that the District has such immunity, the District has waived such immunity pursuant to Section 17(n) (*Affirmative Covenants of the District – Immunity*).

(u) Taxes; No Federal Debt. The District 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 District 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).

(v) No Lobbying. Pursuant to 31 U.S.C. § 1352, to the best of the District's knowledge and belief, (i) no Federal appropriated funds have been paid or will be paid, by or on behalf of the District, 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 any WIFIA Loan Document, or any other federal action under 31 U.S.C. § 1352(a)(2); and (ii) 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 District has completed and submitted to the WIFIA Lender Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(w) Existing Obligations. As of the Effective Date, except as set forth in **Schedule 12(u)** (*Existing Water Utility System Indebtedness*), no Obligations of the District are Outstanding.

Section 14. 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 each WIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

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

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

ARTICLE V COVENANTS

Section 15. Affirmative Covenants of the Borrower. The Borrower covenants and agrees as follows until the date each WIFIA Note and all of the obligations of the Borrower under this Agreement and each WIFIA Loan Agreement (other than contingent indemnity obligations to the extent applicable) are irrevocably paid in full by the Borrower 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) Securing Liens. The Borrower shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Corporation Revenues (whether now existing or hereafter arising) and the Borrower's rights with respect to the WIFIA Debt Service Account granted to the WIFIA Lender for its benefit pursuant to the WIFIA Loan Documents to which the Borrower is a party, or intended so to be granted pursuant to the WIFIA Loan Documents to which the Borrower is a party, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Corporation Revenues and its rights with respect to the WIFIA Debt Service Account free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than the Liens with respect to the WIFIA Loans, 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 Corporation Revenues granted pursuant to the WIFIA Loan Documents and for the benefit of the WIFIA Lender under the WIFIA Loan Documents against all claims and demands of all Persons whomsoever.

(b) Use of Proceeds. The Borrower shall use, and shall cause the District pursuant to the relevant WIFIA IPA to use, the proceeds of each WIFIA Loan solely for purposes permitted by this Agreement and the relevant WIFIA Loan Agreement.

(c) Verification Requirements. 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 each Project similar terms or requirements for compliance.

(d) Operation of the Borrower. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(e) Maintain Legal Structure. The Borrower shall maintain its existence as a nonprofit public benefit corporation organized and existing under its Organizational Documents and the Nonprofit Public Benefit Corporation Law of the State.

(f) Compliance with Laws. The Borrower shall comply with all applicable laws, rules, regulations and requirements.

(g) Material Obligations; Payment of Claims.

(i) The Borrower shall pay its material obligations with respect to the Water Utility System promptly and in accordance with their terms.

(ii) The Borrower shall pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Corporation Revenues, before the same shall become delinquent or in default; provided 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.

(iii) The Borrower will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a Lien on the Corporation Revenues.

(h) 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 to which the Borrower is a party.

(i) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for Corporation Revenues, debt issued and outstanding and debt payments. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, 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 (or the District on behalf of 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 the initial WIFIA Loan Agreement and annually thereafter to the extent required by applicable law, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower (or the District on behalf of 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 WIFIA Loans, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(j) 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 examine books of account and records of the Borrower relating to the relevant Project, to make copies and extracts therefrom at the District's expense, and to discuss the Borrower's affairs, finances and accounts relating to such WIFIA Loan 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 15(j) 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.

(ii) The Borrower shall maintain and retain all pertinent files relating to the WIFIA Loans, as may be necessary for the WIFIA Lender to facilitate an effective and accurate audit and performance evaluation of the Master Program, 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 the corresponding WIFIA Notes (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Master Program, the WIFIA Loans, this Agreement or the WIFIA Loan Agreements 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.

(k) Compliance with Contracts. The Borrower will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be

performed by it contained in all contracts affecting or involving the Water Utility System (including the Master Program), to the extent that the Borrower is a party thereto.

(l) Further Assurances. The Borrower will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and of the WIFIA Loan Agreements and for the better assuring and confirming unto the WIFIA Lender the rights and benefits provided to it herein and in the WIFIA Loan Agreements.

Section 16. Negative Covenants of the Borrower. The Borrower covenants and agrees as follows until the date each WIFIA Note and all of the obligations of the Borrower under this Agreement and each WIFIA Loan Agreement (other than contingent indemnity obligations to the extent applicable) are irrevocably paid in full by the Borrower 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) 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 or impair the Liens on the Corporation Revenues or the Borrower's rights with respect to the WIFIA Debt Service Account granted pursuant to this Agreement, (ii) amend, modify, terminate, assign, replace or supplement, or permit a waiver of any provision of, any WIFIA IPA, (iii) amend, modify, replace or supplement any Related Document to which the Borrower is a party (other than any WIFIA IPA) 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 Borrower Material Adverse Effect, or (iv) terminate or assign any Related Document to which the Borrower is a party (other than any WIFIA IPA) in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to have a Borrower Material Adverse Effect. The Borrower shall not take or omit to take any action under any contract if the effect of such act or failure to act would in any manner impair or adversely affect the ability of the District to secure adequate Water Utility System Revenues to meet the requirements of the WIFIA Loan Documents.

(b) No Prohibited Liens. Except for the Liens with respect to the WIFIA Loans for the benefit of the WIFIA Lender, the Borrower shall not create, incur, assume or permit to exist any Lien on the Corporation Revenues or its rights with respect to the WIFIA Debt Service Account.

(c) Borrower Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the WIFIA Lender.

(d) Hedging. The Borrower shall not enter into any swap or hedging transaction that is speculative or creates extraordinary leverage or risk, without the prior written consent of the WIFIA Lender.

Section 17. Affirmative Covenants of the District. The District covenants and agrees as follows until the date each WIFIA Note and all of the obligations of the Borrower and the District under this Agreement and each WIFIA Loan Agreement (other than contingent indemnity

obligations to the extent applicable) are irrevocably paid in full by the Borrower and the District in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower or the District, unless the WIFIA Lender waives compliance in writing:

(a) Rate Covenant.

(i) To the fullest extent permitted by law, the District shall fix and prescribe rates, fees and charges for Water Service at the commencement of each District Fiscal Year, which, together with other Current Water Utility System Revenues or Net Water Utility System Revenues, as the case may be, are reasonably expected to be at least sufficient to yield during each District Fiscal Year (A) Current Water Utility System Revenues in an amount sufficient to meet the Maintenance and Operation Costs, the Debt Service for the then current District Fiscal Year and the interest and principal payable for the then current District Fiscal Year in respect of any obligations that are secured by a Lien on the Pledged Collateral or payable from the Pledged Collateral, in each case on a basis subordinate to the Parity Obligations, (B) Net Water Utility System Revenues equal to one hundred twenty-five percent (125%) of the Senior Debt Service for such District Fiscal Year and (C) Net Water Utility System Revenues for such District Fiscal Year equal to one hundred ten percent (110%) of the Debt Service for such District Fiscal Year. For purposes of clause (C) above, Net Water Utility System Revenues may be increased by Budgeted Transfers (measured as of the last day of the immediately preceding District Fiscal Year) in an amount no greater than ten percent (10%) of Debt Service referred to in clause (C) above. The District may make adjustments from time to time in such rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Current Water Utility System Revenues or Net Water Utility System Revenues, as the case may be, from such reduced rates, fees and charges are reasonably expected to be sufficient to meet the requirements of this Section 17(a)(i).

(ii) For avoidance of doubt, so long as the District has complied with its obligations set forth in Section 17(a)(i) (*Affirmative Covenants of the District – Rate Covenant*), the failure of Current Water Utility System Revenues to meet the threshold set forth in Section 17(a)(i)(A) or the failure of Net Water Utility System Revenues to meet the thresholds set forth in Section 17(a)(i)(B) or Section 17(a)(i)(C) at the end of an District Fiscal Year shall not constitute a Default or an Event of Default so long as the District has complied with Section 17(a)(i) at the commencement of the succeeding District Fiscal Year.

(iii) The District shall charge and collect or cause to be collected the rates, fees and charges applicable to the Water Service and will not permit any part of the Water Utility System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the Government, the State and any city, county, district, political subdivision, public corporation or agency of any thereof) if such use would prevent the District from complying with the requirements of Section 17(a)(i) (*Affirmative Covenants of the District – Rate Covenant*).

(b) Securing Liens. The District shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Pledged Collateral (whether now existing or hereafter arising) granted to the Borrower for its benefit pursuant to each WIFIA IPA, or intended so to be granted pursuant to each WIFIA IPA, or which the District may become bound to grant, and the District shall at all times maintain the Pledged Collateral free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by such WIFIA IPA, other than as permitted by this Agreement, the relevant WIFIA Loan Agreement and such WIFIA IPA, and all organizational, regulatory or other necessary action on the part of the District to that end shall be duly and validly taken at all times. The District shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Pledged Collateral granted for the benefit of the Borrower pursuant to each WIFIA IPA against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(c) Use of Proceeds. The District shall use the proceeds of each WIFIA Loan solely for purposes permitted by applicable law, the relevant WIFIA IPA and the other Related Documents to which the District is a party.

(d) Prosecution of Work; Verification Requirements.

(i) The District, as agent of the Borrower pursuant to each WIFIA IPA, shall diligently prosecute the work relating to, and complete, each Project in accordance with the Construction Schedule for such Project, the Governmental Approvals in connection with such Project, and the highest standards of the District's industry.

(ii) The District 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 each Project similar terms or requirements for compliance.

(e) Maintenance and Operation of the Water Utility System. The District will maintain and preserve the Projects and the Water Utility System in good repair and working order at all times and will operate the Project and the Water Utility System in an efficient and economical manner and substantially in accordance with its maintenance and operation plan (that incorporates the Master Program) and will pay all Maintenance and Operation Costs as they become due and payable. The District shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance; Eminent Domain; Net Proceeds.

(i) The District will procure and maintain or cause to be procured and maintained insurance on the Water Utility System with responsible insurers in such amounts and against such risks (including damage to or destruction of the Water Utility System) as are usually covered in connection with facilities, properties, structures and

works similar to the Water Utility System so long as such insurance is available from reputable insurance companies.

(ii) Any insurance required to be maintained by Section 17(f)(i) may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner usually maintained in connection with facilities, properties, structures and works similar to the Water Utility System and is, in the opinion of an accredited actuary, actuarially sound.

(iii) Except for any self-insurance, the District shall cause all liability insurance policies that it maintains (excluding property damage, automobile or workers' compensation insurance), to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.

(iv) Promptly upon request by the WIFIA Lender, the District shall deliver to the WIFIA Lender certificates of insurance and copies of any underlying insurance policies obtained by or on behalf of the Borrower or the District in respect of Master Program or, as applicable, a letter of self-insurance. All such insurance policies shall be available at all reasonable times for inspection by the WIFIA Lender, its agents and representatives.

(v) If all or any part of the Water Utility System shall be taken by eminent domain proceedings, or if the District receives any insurance proceeds resulting from a casualty loss to the Water Utility System, the Net Proceeds thereof shall be used to substitute other components for the condemned or destroyed components of the Water Utility System or applied to the prepayment or cancellation of the Senior Obligations.

(vi) The Net Proceeds remaining after the application thereof under Section 17(f)(v) above shall be applied to the prepayment or cancellation of the WIFIA Loan as provided in Section 9(a) (*Prepayment – Mandatory Prepayment from Insurance Proceeds or Eminent Domain Proceeds*) and the other Parity Obligations in the same proportion which the Outstanding WIFIA Loan Balance with respect to each WIFIA Loan then bears to the aggregate unpaid principal amount of the other Parity Obligations.

(g) Maintain Legal Structure. The District shall maintain its existence as a special district created by the State Legislature.

(h) Water Utility System Revenue Fund; Permitted Investments.

(i) The District shall maintain the Water Utility System Revenue Fund in accordance with the terms hereof, the Master Resolution and the other WIFIA Loan Documents. All Water Utility System Revenues received shall be deposited in the Water Utility System Revenue Fund when and as received in trust for the benefit of the holders of the Obligations, subject to the application of Water Utility System Revenues in accordance with Section 2.2 of the Master Resolution and Section [5.2] of each WIFIA IPA. The District shall maintain and hold separate and apart from other funds the Water Utility System Revenue Fund so long as any Parity Obligations remain unpaid. Moneys in

the Water Utility System Revenue Fund shall be used and applied by the District as provided in the Flow of Funds.

(ii) All moneys held by the District in the Water Utility System Revenue Fund shall be invested in Permitted Investments and the investment earnings thereon shall remain on deposit in such fund, except as otherwise provided herein.

(i) WIFIA Debt Service Account. The District, as agent of the Borrower pursuant to each WIFIA IPA, shall (i) establish the “WIFIA Debt Service Account” on or prior to the Effective Date and (ii) maintain the WIFIA Debt Service Account in accordance with such WIFIA IPA for the benefit of the Borrower. The WIFIA Debt Service Account shall be subject to a Lien and has been pledged by the District under such WIFIA IPA to the Borrower as security solely for the benefit of the Borrower and shall not be subject to any security interest in favor of any Person other than the Borrower. Amounts on deposit in the WIFIA Debt Service Account shall be applied by the District, as agent of the Borrower pursuant to such WIFIA IPA, solely to pay WIFIA Debt Service and other amounts due with respect to the applicable WIFIA Loan or WIFIA Note.

(j) Compliance with Laws.

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

(ii) To ensure such compliance, the District shall include in all contracts with respect to the Master Program (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 17(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 17(j) (including with respect to the Davis-Bacon Act requirements).

(k) Material Obligations; Payment of Claims.

(i) The District shall pay its material obligations with respect to the Water Utility System promptly and in accordance with their terms.

(ii) The District shall 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 Water Utility System (including the Master Program), before the same shall become delinquent or in default; provided 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 District in good faith by appropriate proceedings and so long as the District shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(iii) The District shall pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a Lien on the Water Utility System (or any part thereof), the WIFIA Debt Service Account, the Master Program, the Pledged Collateral or any fund or account of the District pledged to pay Parity Obligations or Senior Obligations.

(l) SAM Registration. The District shall obtain prior to the Effective Date (and provide such registration information to the WIFIA Lender) and maintain through each Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry).

(m) Unique Entity Identifier. The District shall obtain prior to the Effective Date (and provide to the WIFIA Lender) and maintain through each Final Maturity Date a Unique Entity Identifier.

(n) Immunity. To the fullest extent permitted by applicable law, the District 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 District under this Agreement or any other WIFIA Loan Document to which the District is a party.

(o) Accounting and Audit Procedures.

(i) The District shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all of the following: (A) Water Utility System Revenues, and Maintenance and Operation Costs, and, with respect to the Water Utility System, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments; and (B) Project-related costs, WIFIA Loan requisitions submitted, WIFIA Loan proceeds received, payments made by the District, as an agent of the Borrower pursuant to each WIFIA IPA, with regard 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 and the WIFIA Loan Agreements). The District shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Installment Payments, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The District 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 District Fiscal Year in which a disbursement is made under the initial WIFIA Loan Agreement and annually thereafter to the extent required by applicable law, except to the extent biennial audits are permitted for the District pursuant to 2 C.F.R. § 200.504 and 31

U.S.C. § 7502(b). Upon reasonable notice, the District 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 Master Program or the WIFIA Loans, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(p) 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 by the Borrower, the WIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any portion of the relevant Project, to examine books of account and records of the District relating to such Project, to make copies and extracts therefrom at the District's expense, and to discuss the District'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 District irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the District, whether or not any representative of the District is present, it being understood that nothing contained in this Section 17(p) 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 District 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 17(p) at any time when an Event of Default shall have occurred and be continuing.

(ii) The District 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 the Master Program, until five (5) years after the later of the date on which (A) all rights and duties of the District or the Borrower under this Agreement and under the WIFIA Loan Agreements and corresponding WIFIA Notes (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Master Program, the WIFIA Loans, this Agreement or the WIFIA Loan Agreements 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 District. The District 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.

(q) Compliance with Contracts. The District will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts affecting or involving the Water Utility System (including the Master Program), to the extent that the District is a party thereto.

(r) Protection of Security and Rights of the Borrower. The District will preserve and protect the security and the rights of the Borrower to the WIFIA Installment Payments

and the WIFIA Debt Service Account under each WIFIA IPA and will warrant and defend such rights against all claims and demands of all persons.

(s) Further Assurances. The District will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and of the WIFIA Loan Agreements and for the better assuring and confirming unto the WIFIA Lender the rights and benefits provided to it herein and in the WIFIA Loan Agreements.

Section 18. Negative Covenants of the District. The District covenants and agrees as follows until the date each WIFIA Note and all of the obligations of the Borrower and the District under this Agreement and each WIFIA Loan Agreement (other than contingent indemnity obligations to the extent applicable) are irrevocably paid in full by the Borrower and the District in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower or the District, unless the WIFIA Lender waives compliance in writing:

(a) Additional Obligations.

(i) The District shall not create, incur or suffer to exist (A) any obligations which are senior or prior in right of payment or right of security with respect to the Pledged Collateral to the Parity Obligations, other than the Senior Obligations (prior to the occurrence of a Bankruptcy Related Event); (B) any obligations, all or a portion of the proceeds of which are or will be applied at any time to fund all or any portion of Total Project Costs of any Project, that are secured by a Lien on any assets or property of the District other than the Pledged Collateral; or (C) any obligations, all or a portion of the proceeds of which are or will be applied at any time to fund any purchase, construction, condemnation, acquisition or expansion of the Water Utility System, that are secured by a Lien on the Pledged Collateral or payable from the Pledged Collateral except in either case, Senior Obligations, Parity Obligations, or obligations so secured on a basis subordinate to the Parity Obligations. While an Event of Default relating to a Payment Default or a Bankruptcy Related Event has occurred and is continuing, the District shall not incur any indebtedness of any kind payable from, secured or supported by the Pledged Collateral without the prior written consent of the WIFIA Lender.

(ii) The District may incur Senior Obligations in accordance with Section 3.1 (*Additional Bonds and Contracts*) of the Master Resolution.

(iii) The District may incur Additional Parity Obligations in accordance with the terms hereof; provided that:

(A) the Net Water Utility System Revenues for the most recent audited District Fiscal Year preceding the date of adoption by the Board of Directors of the District of the resolution authorizing the incurrence of such Additional Parity Obligations (or if no such resolution exists, the date of incurrence of such Additional Parity Obligations), adjusted to reflect any change in rates and charges for the Water Service approved and in effect as of the date of calculation,

remaining after payment of amounts under Sections 2.2(d) (*Allocation of Water Utility System Revenues*) and 2.2(e) (*Allocation of Water Utility System Revenues*) of the Master Resolution due and payable in such District Fiscal Year as evidenced by a calculation prepared by the District, shall be equal to at least one hundred ten percent (110%) of the sum of (1) the Parity Debt Service for such District Fiscal Year, (2) the Parity Debt Service which would have been payable on any Parity Obligations incurred since the end of such District Fiscal Year assuming such Parity Obligations had been incurred at the beginning of such District Fiscal Year and (3) the Parity Debt Service which would have been payable had such Additional Parity Obligations been incurred at the beginning of such District Fiscal Year; and

(B) the estimated Net Water Utility System Revenues for the then current District Fiscal Year and for each District Fiscal Year thereafter to and including the first complete District Fiscal Year after the latest Date of Operation of any uncompleted Parity Project, as evidenced by a certificate of an Authorized Officer of the District on file with the District, including (after giving effect to the completion of all such uncompleted Parity Projects) an allowance for estimated Net Water Utility System Revenues for each such District Fiscal Year arising from any increase in the income, rents, fees, rates and charges estimated to be fixed, prescribed or received for the Water Service and which are economically feasible and reasonably considered necessary based on projected operations for such period, as evidenced by a certificate of an Authorized Officer on file with the District, shall be equal to at least one hundred ten percent (110%) of the estimated Debt Service for each of such District Fiscal Years, after giving effect to the incurrence of all Obligations estimated to be required to be incurred to pay the costs of completing all uncompleted Parity Projects within such District Fiscal Years, assuming that all such Obligations have maturities, interest rates and proportionate principal repayment provisions similar to the Obligation last incurred or then being incurred for the purpose of acquiring and constructing any of such uncompleted Parity Projects. For the purposes of this clause (B), Net Water Utility System Revenues may be increased by Budgeted Transfers (measured as of the last day of the immediately preceding District Fiscal Year) in an amount no greater than ten percent (10%) of the estimated Debt Service referred to in the preceding sentence.

(iv) Notwithstanding Section 18(a)(ii) and Section 18(a)(iii), Obligations may be incurred to refund outstanding Obligations if the Average Annual Debt Service on Obligations after the refunding is not greater than the Average Annual Debt Service on Obligations outstanding prior to the refunding.

(v) Upon the incurrence of any Additional Obligations, the District shall provide to the WIFIA Lender a certificate signed by the District's Authorized Representative (x) specifying the closing date with respect to such Additional Obligations and (y) confirming that such Additional Obligations are authorized pursuant to, and satisfy the applicable requirements under, this Section 18(a).

(b) No Lien Extinguishment or Adverse Amendments. The District shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i)

extinguish or impair the Liens on the Pledged Collateral granted pursuant to any WIFIA IPA, (ii) amend, modify, terminate, assign, replace or supplement, or permit a waiver of any provision of, any WIFIA IPA, (iii) amend, modify, replace or supplement any Related Document to which the District is a party (other than any WIFIA IPA) 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 or assign any Related Document to which the District is a party (other than any WIFIA IPA) in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to have a Material Adverse Effect. The District shall not take or omit to take any action under any contract if the effect of such act or failure to act would in any manner impair or adversely affect the ability of the District to secure adequate Water Utility System Revenues to meet the requirements of the WIFIA IPAs.

(c) No Prohibited Liens. Except for Permitted Liens, the District shall not create, incur, assume or permit to exist any Lien on the Water Utility System, the Projects, the Pledged Collateral, or the District's respective rights therein.

(d) Restricted Payments and Transfers. The District shall not permit Water Utility System Revenues or any funds in any other fund or account held by or on behalf of the District with respect to the Water Utility System, to be paid or transferred or otherwise applied for purposes that would violate the terms of the Master Resolution.

(e) District Fiscal Year. The District shall not at any time adopt any fiscal year other than the District Fiscal Year, except with thirty (30) days' prior written notice to the WIFIA Lender.

(f) Hedging. The District shall not enter into any swap or hedging transaction that is speculative or creates extraordinary leverage or risk, without the prior written consent of the WIFIA Lender.

(g) Against Sale or Other Disposition of Property. The District shall not sell, lease or otherwise dispose of the Water Utility System or any part thereof essential to the proper operation of the Water Utility System or to the maintenance of the Net Water Utility System Revenues, and shall not enter into any agreement or lease which impairs the operation of the Water Utility System or any part thereof necessary to secure adequate Net Water Utility System Revenues to meet the requirements of the WIFIA IPA, or which would otherwise impair the rights of the Borrower under the WIFIA IPA with respect to the Net Water Utility System Revenues or the operation of the Water Utility System. Any real or personal property which has become nonoperative or which is not needed for the efficient and proper operation of the Water Utility System, or any material or equipment which has become worn out, may be sold if such sale will not reduce the Net Water Utility System Revenues below the requirements to be maintained under Section 17(a) (*Rate Covenant*).

Nothing herein shall restrict the ability of the District to sell or lease any facilities which are part of the Water Utility System if such facilities are immediately repurchased or re-leased, as the case may be, by the District and if such arrangement cannot by its terms result in the purchaser of such facilities exercising any remedy which would deprive the District of or otherwise interfere with its right to own and operate such facilities.

Section 19. Reporting Requirements of the Borrower.

(a) Annual Financial Statements. The Borrower shall deliver to the WIFIA Lender, as soon as available, and within one hundred eighty (180) days after the end of each Borrower Fiscal Year (provided that the failure of the Borrower to furnish the documents required by this Section 19(a) within such one hundred eighty (180)-day period shall not constitute a Default or an Event of Default hereunder or under the WIFIA Loan Agreements so long as the Borrower furnishes to the WIFIA Lender such documents within ninety (90) days after the end of such period, and provided further that the parties agree that delivering the documents required by this Section 19(a) within such additional ninety (90) day period shall not, in and of itself, constitute a default under this Agreement or the WIFIA Loan Agreements, an event of acceleration under this Agreement, the WIFIA Loan Agreements, the WIFIA Loans, or the WIFIA Notes, a termination event under this Agreement, the WIFIA Loan Agreements, the WIFIA Loans, or the WIFIA Notes, a modification of terms with respect to this Agreement, the WIFIA Loan Agreements, the WIFIA Loans, or the WIFIA Notes, or other similar event under this Agreement, the WIFIA Loan Agreements, the WIFIA Loans, or the WIFIA Notes reflecting financial difficulties), a copy of the audited Borrower Financial Statements as of the end of such Borrower Fiscal Year, (i) setting forth in each case in comparative form the figures for the previous fiscal year, (ii) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and (iii) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(b) Notices.

(i) The Borrower shall, within fifteen (15) days after it 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 (provided that the Borrower shall not be obligated to provide such notice to the WIFIA Lender if notice of such event has already been provided to the WIFIA Lender by the District):

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

(B) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Borrower Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower that could reasonably be expected to have a Borrower Material Adverse Effect, either individually or in the aggregate;

(C) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of fully executed amendments, modifications,

replacements or supplements to any Related Document to which the Borrower is a party within ten (10) days following execution thereof; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(D) 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 to which the Borrower is a party; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(E) 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 the Borrower's principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(F) Issuance of Indebtedness: 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 indebtedness; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(G) Postings on EMMA: the posting of any document of the Borrower on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document relating to annual financial information and operating data and the reporting of significant events; provided that such notice can be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number; and

(H) Other Adverse Events: the occurrence of any other event or condition that could reasonably be expected to result in a Material Adverse Effect.

(ii) Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (C) (*Amendments*), (F) (*Issuance of Indebtedness*) or (G) (*Postings on EMMA*)), the Borrower's Authorized Representative shall provide a statement to the WIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto; provided that the Borrower shall not be required to provide such information if and to the extent such information has been provided by the District. The Borrower shall also provide the WIFIA Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters described in clause (i) above.

(c) Requested Information. 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 the Corporation

Revenues as the WIFIA Lender may from time to time reasonably request. The Borrower agrees that the delivery of any documents or information under and pursuant to this Agreement shall not be construed as compliance with, or affect in any manner, any obligations of the Borrower under any other contracts, agreements, decrees, Governmental Approvals, or other documents with EPA (other than the WIFIA Loan Documents) or the Government.

Section 20. Reporting Requirements of the District.

(a) Updated Financial Model/Plan.

(i) The District shall provide to the WIFIA Lender not later than one hundred eighty (180) days after the end of each District Fiscal Year, an Updated Financial Model/Plan. The Updated Financial Model/Plan shall reflect the District's reasonable expectations, using assumptions that the District believes to be reasonable, and include: (A) the District's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected Water Utility System Revenues, projected Corporation Revenues, and projected Maintenance and Operation Costs for a reasonable projection period consistent with the District's operating and financial planning and demonstrating that the District has developed and identified adequate revenues to implement a plan for operating, maintaining, and repairing the Water Utility System (including the Master Program); (B) evidence of compliance with the requirements specified in Section 17(a) (*Affirmative Covenants of the District – Rate Covenant*) for the most recent District Fiscal Year for which the District Financial Statements are available and the projected debt service coverage ratios (including projected coverages with respect to the requirements specified in Section 17(a)) through the Forecast Period; and (C) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model/Plan.

(ii) With respect to each District Fiscal Year, if requested by the WIFIA Lender, the District shall provide to the WIFIA Lender, as soon as available, a budget adopted by the District pursuant to Section 4.3 (*Maintenance and Operation of the Water Utility System; Budgets*) of the Master Resolution and any amendments or modifications to such budget.

(b) Annual Financial Statements. The District shall deliver to the WIFIA Lender, as soon as available, and within one hundred eighty (180) days after the end of each District Fiscal Year (provided that the failure of the District to furnish the documents required by this Section 20(b) within such one hundred eighty (180)-day period shall not constitute a Default or an Event of Default hereunder or under the WIFIA Loan Agreements so long as the District furnishes to the WIFIA Lender such documents within ninety (90) days after the end of such period, and provided further that the parties agree that delivering the documents required by this Section 20(b) within such additional ninety (90) day period shall not, in and of itself, constitute a default under this Agreement or the WIFIA Loan Agreements, an event of acceleration under this Agreement, the WIFIA Loan Agreements, the WIFIA Loans, or the WIFIA Notes, a termination event under this Agreement, the WIFIA Loan Agreements, the WIFIA Loans, or the WIFIA Notes, a modification of terms with respect to this Agreement, the WIFIA Loan Agreements, the WIFIA Loans, or the WIFIA Notes, or other similar event under this Agreement, the WIFIA Loan

Agreements, the WIFIA Loans, or the WIFIA Notes reflecting financial difficulties), a copy of the audited District Financial Statements as of the end of such District Fiscal Year, (i) setting forth in each case in comparative form the figures for the previous fiscal year, (ii) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the District and (iii) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(c) Construction Reporting.

(i) Construction Monitoring. The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Master Program, including environmental compliance, design, and construction of the Projects. The District shall be responsible for administering construction oversight of each Project in accordance with applicable federal, state and local governmental requirements. The District agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with any Construction Contracts (together with any related contracts, side letters or other understandings) and 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.

(ii) Construction Monitoring Report. During the period beginning from the first quarter following bid advertisement of the first Construction Contract entered into for each Project, through and until Substantial Completion of such Project, the District shall furnish to the WIFIA Lender, on a quarterly basis, a Construction Monitoring Report for such Project in substantially the form attached hereto as **Exhibit H** (*Form of Construction Monitoring Report*). Each Construction Monitoring 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 later than the Projected Substantial Completion Date of such Project, the District shall provide in such Construction Monitoring Report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay or difference. The Projected Substantial Completion Date for such Project shall automatically be adjusted to the new date specified by the District in such Construction Monitoring Report unless the WIFIA Lender objects to the adjustment in writing to the District 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.

(iii) Quarterly Certification of Eligible Project Costs. With respect to any Project, if requested by the WIFIA Lender, on a basis not more frequently than quarterly, the District shall submit to the WIFIA Lender, concurrently with the delivery of the relevant Construction Monitoring Report, a certificate, in the form of **Exhibit C** (*Form of Certification of Eligible Project Costs Documentation*), signed by the District's Authorized Representative, and attaching Eligible Project Costs Documentation as

applicable. If there are no applicable Eligible Project Costs for such quarter for such Project, the District may notify the WIFIA Lender by written confirmation of the same by email in accordance with Section 36 (*Notices*). Within sixty (60) days following the receipt of such certificate and accompanying Eligible Project Costs Documentation (if applicable), the WIFIA Lender shall notify the District confirming (A) which Eligible Project Costs set forth in the certification have been approved or denied (and, if denied, the reasons therefor) and (B) 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 District submits a Requisition in respect of such approved amounts in accordance with Section 4 (*Disbursement Conditions*).

(iv) Final Specifications. The District shall deliver to the WIFIA Lender, prior to bid advertisement for each 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. For the avoidance of doubt, no prior consent or approval by the WIFIA Lender shall be required for the District to proceed with such bid advertisement and the relevant procurement for the development and construction of such Project.

(d) Public Benefits Report. With respect to each Project, the District shall deliver to the WIFIA Lender a report, in the form of **Exhibit I** (*Form of Public Benefits Report*) (the “**Public Benefits Report**”), (i) prior to the applicable WIFIA Loan Agreement Effective Date, (ii) within ninety (90) days following the applicable Substantial Completion Date and (iii) within ninety (90) days following the fifth (5th) anniversary of such Substantial Completion Date. The District agrees that information described under this Section 20(d) may be made publicly available by the WIFIA Lender at its discretion.

(e) Operations and Maintenance. The WIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) each Project’s operations and, as the WIFIA Lender may request from time to time, to receive reporting on the operation and management of each Project, and copies of any contracts relating to the operation and maintenance of each Project. The District agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation, or other information requested by the WIFIA Lender. The WIFIA Lender has the right, in its sole discretion, to retain such consultants or advisors, to carry out the provisions of this Section 20(e).

(f) Notices.

(i) The District shall, within fifteen (15) days after it 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 (provided that the District shall not be obligated to provide such notice to the WIFIA Lender if notice of such event has already been provided to the WIFIA Lender by the Borrower):

(A) 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*);

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

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the District before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the District in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the District that, in each case, could reasonably be expected to have an District Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the District that could reasonably be expected to have an District Material Adverse Effect, either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including 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 District's plans to remedy or mitigate the effects of such failure or delay;

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

(F) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of fully executed amendments, modifications, replacements or supplements to any Related Document to which the District is a party within ten (10) days following execution thereof; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(G) Related Document Defaults: any material breach or default or event of default on the part of the District or any other party under any Related Document to which the District is a party; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

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

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

(J) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the District to disclose information previously required to have been disclosed or due to the District or any of the District's principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(K) SAM; Unique Entity Identifier: any change in the District's SAM registration status (including any exclusions, expiration or inactive registration) or Unique Entity Identifier (including any expiration or change in effectiveness); provided that such notice can be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number;

(L) Issuance of Obligations: copies of any final issuing instrument (together with any continuing disclosure documents, ordinances, official statement, certifications or cash flow projections in connection therewith), prepared in connection with the incurrence of any Additional Obligations (including any Variable Interest Rate Obligations); provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(M) Amendments to Policies: any material amendment or modification to the Investment Policy, along with a copy of such amendment or modification; and

(N) Other Adverse Events: the occurrence of any other event or condition, including 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 or have a material and adverse effect on the Master Program.

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

(g) Requested Information. The District shall, at any time while the WIFIA Loan remains outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the District or regarding the Water Utility System (including the Master Program) or the Pledged Collateral as the WIFIA Lender may from time to time reasonably request. The District agrees that the delivery of any documents or information under and pursuant to this Agreement shall not be construed as compliance with, or affect in any manner, any obligations of the District under any other contracts, agreements, decrees, Governmental Approvals, or other documents with EPA (other than the WIFIA Loan Documents) or the Government.

ARTICLE VI EVENTS OF DEFAULT

Section 21. Events of Default and Remedies.

(a) A “**Borrower Event of Default**” shall exist under this Agreement and each WIFIA Loan Agreement if any of the following occurs; provided that any event described in Section 21(a)(vii) (*Events of Default and Remedies – Additional Borrower Events of Default*) shall be a Borrower Event of Default solely under the WIFIA Loan Agreement for the relevant Project to which such event relates and not under this Agreement or any other WIFIA Loan Agreement:

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

(ii) Borrower Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, any WIFIA Loan Agreement, any WIFIA Note or any other WIFIA Loan Document to which the Borrower is a party (other than in the case of any Borrower Payment 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 no Borrower Event of Default shall be deemed to have occurred or be continuing under this Section 21(a)(ii), and 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.

(iii) Borrower Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to any WIFIA

Loan Document to which the Borrower is a party (or in any certificates delivered by the Borrower in connection with any WIFIA Loan Document to which the Borrower is a party) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty or certification that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Borrower Event of Default shall be deemed to have occurred under this Section 21(a)(iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(h) (*Representations and Warranties of the Borrower – No Debarment*), or Section 12(j) (*Representations and Warranties of the Borrower – 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 Borrower 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.

(iv) Borrower Material Adverse Judgment. Any final, non-appealable judgment related to the Corporation Revenues shall be entered against the Borrower which has a Material Adverse Effect.

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

(vi) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document to which the Borrower is a party 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) this Agreement ceases to grant a valid and binding security interest on any material portion of the Corporation Revenues, other than as a result of actions or a failure to act by, and within the control of, the WIFIA Lender; or (C) any event occurs that results in the material impairment in the priority of (1) the Borrower's security interest in the Pledged Collateral or in the value of the Pledged Collateral, (2) the WIFIA Lender's security interest in the Corporation Revenues or in the value of the Corporation Revenues or (3) the Borrower's security interest in the WIFIA Debt Service Account or the assignment to the WIFIA Lender of the Borrower's rights thereto.

(vii) Additional Borrower Events of Default. Any additional Borrower Event of Default specified in a WIFIA Loan Agreement occurs.

(b) A “**District Event of Default**” shall exist under this Agreement and each WIFIA Loan Agreement if any of the following occurs; provided that any event described in Section 21(b)(ix) (*Events of Default and Remedies – Development Default*) or Section 21(b)(x) (*Events of Default and Remedies – Additional District Events of Default*) shall be a District Event

of Default solely under the WIFIA Loan Agreement for the relevant Project to which such event relates and not under this Agreement or any other WIFIA Loan Agreement:

(i) District Payment Default. (A) The District shall fail to pay when due any part of any WIFIA Installment Payment required to have been paid pursuant to the provisions of any WIFIA IPA or (B) the District, as agent of the Borrower pursuant to any WIFIA IPA, shall fail to make any mandatory prepayment required pursuant to the provisions of Section 9 (*Prepayment*) (each such failure, an “**District Payment Default**”).

(ii) District Covenant Default. The District shall fail to observe or perform any covenant, agreement or obligation of the District under this Agreement, any WIFIA Loan Agreement, any WIFIA IPA or any other WIFIA Loan Document to which the District is a party (other than in the case of any District 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 District from the WIFIA Lender of written notice thereof or (B) the District’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 no Event of Default shall be deemed to have occurred or be continuing under this Section 21(b)(ii), and 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 District shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) District Misrepresentation Default. Any of the representations, warranties or certifications of the District made in or delivered pursuant to any WIFIA Loan Document to which the District is a party (or in any certificates delivered by the District in connection with any WIFIA Loan Document to which the District is a party) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty or certification that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no District Event of Default shall be deemed to have occurred under this Section 21(b)(iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (*Representations and Warranties of the District – No Debarment*), or Section 13(j) (*Representations and Warranties of the District – 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, an District 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 District within thirty (30) days after the date on which the District first became aware (or reasonably should have become aware) of such misrepresentation.

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

(v) Cross Default with Obligation Documents. Any default shall occur in respect of the performance of any covenant, agreement or obligation of the District under any Obligation Document relating to any Parity Obligation or any Senior Obligation (other than the WIFIA Loan Documents), and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in such Obligation Document relating to any Parity Obligation or any Senior Obligation (as the case may be) with respect to such default, and the District shall have failed to cure such default or to obtain an effective written waiver thereof in accordance with the terms thereof.

(vi) District Material Adverse Judgment. Any final, non-appealable judgment related to the Pledged Collateral, the Water Utility System (including the Master Program) or any Project shall be entered against the District which has a Material Adverse Effect.

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

(viii) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document to which the District is a party 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 District 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; or (B) any WIFIA IPA 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, and with the priority purported to be created thereby, or on the WIFIA Debt Service Account.

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

(x) Additional District Events of Default. Any additional District Event of Default specified in a WIFIA Loan Agreement occurs.

(c) Upon (i) the occurrence of any Bankruptcy Related Event (other than a Bankruptcy Related Event under clause (b)(iii) of the definition thereof) or (ii) the acceleration of any amounts under any WIFIA IPA, 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, and the Outstanding WIFIA Loan Balance of such WIFIA Loan, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable to the WIFIA Lender under this Agreement, the WIFIA Loan Agreements, the WIFIA Notes and the other WIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived. Following the occurrence of a Bankruptcy Related Event, the lien provisions of Section 7(a) (*Security and Priority; Flow of Funds*) relating to a first priority security interest shall automatically be effective and the WIFIA Lender shall have the right to inspect any and all records related to transfers of funds to and from the Water Utility System Revenue Fund and other funds and accounts

constituting Pledged Collateral. The District, as agent of the Borrower pursuant to each WIFIA IPA, shall deliver to the WIFIA Lender (or give the WIFIA Lender access to) any such records as the WIFIA Lender may request so as to permit the WIFIA Lender to ensure that the District is treating the WIFIA Installment Payments under each WIFIA IPA as Senior Obligations in all respects, including in respect of priority of payments.

(d) Upon the occurrence of any Event of Default hereunder or under any WIFIA Loan Agreement, the WIFIA Lender, by written notice to the Borrower and the District, may exercise any or all of the following remedies:

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

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

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

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

(v) the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity against the Borrower for the collection of any sums due from the Borrower and unpaid under this Agreement, the relevant WIFIA Loan Agreement and corresponding WIFIA Note 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 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 Note 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 Note or the other applicable WIFIA Loan Documents, including directing the Borrower to exercise any rights or remedies under the relevant WIFIA IPA pursuant to Article [VIII] (*Events of Default and Remedies of the Corporation*) thereto;

(vi) the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity against the District for the collection of any sums due from the District and unpaid under this Agreement, the relevant WIFIA Loan Agreement or the relevant WIFIA IPA, and may prosecute any such judgment or final decree against the District and collect in the manner provided by law out of the property of the District the moneys adjudged or decreed to be payable, and the WIFIA Lender shall

have all of the rights and remedies of a creditor and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the District under this Agreement, the relevant WIFIA Loan Agreement or the relevant WIFIA IPA then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the District under this Agreement, the relevant WIFIA Loan Agreement or the relevant WIFIA IPA; and

(vii) the WIFIA Lender may declare the unpaid principal amount of the relevant WIFIA Note 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 to the WIFIA Lender under this Agreement, the relevant WIFIA Loan Agreement and corresponding WIFIA Note and the other WIFIA Loan Documents, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) Notwithstanding anything to the contrary set forth in any WIFIA Loan Document, the Borrower shall not have the right to (i) accelerate any WIFIA Installment Payments or (ii) exercise any other rights or remedies under any WIFIA IPA following the occurrence of an "Event of Default" under and as defined in such WIFIA IPA without the prior written direction of the WIFIA Lender.

(f) No action taken pursuant to this Section 21 shall relieve either the Borrower or the District from its obligations pursuant to this Agreement, the WIFIA Loan Agreements and corresponding WIFIA Notes or the other WIFIA Loan Documents, all of which shall survive any such action.

ARTICLE VII MISCELLANEOUS

Section 22. 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 Water Utility System (including the Master Program) or any Project or the existence, furnishing, functioning or use of any Project or any item or products or services provided for in this Agreement or any WIFIA Loan Agreement.

Section 23. No Personal Recourse. No official, employee or agent of the WIFIA Lender or either the Borrower or the District or any Person executing this Agreement or any of the other WIFIA Loan Documents shall be personally liable under this Agreement or such other WIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the District, the Government, or the WIFIA Lender, solely by virtue of the WIFIA Loans, and the Borrower and the District each agree to indemnify on a joint and several basis and hold the WIFIA Lender, the Servicer (if any), the Administrator,

and the Government harmless, to the extent permitted by law and in accordance with Section 37 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of any WIFIA Loan, and that no third party creditor of either the Borrower or the District shall have any right against the WIFIA Lender with respect to any WIFIA Loan made pursuant to this Agreement or any WIFIA Loan Agreement.

Section 25. 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 26. District's Authorized Representative. The District shall at all times have appointed a District's Authorized Representative by designating such Person or Persons from time to time to act on the District'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 District.

Section 27. 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 36 (*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 and the District within a reasonable time period following the succession.

Section 28. 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 Notes. The WIFIA Lender shall give the Borrower and the District written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Lender shall have delegated to such Servicer. The WIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the WIFIA Loan Agreements and corresponding WIFIA Notes. The Borrower and the District 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 and under the WIFIA Loan Agreements; provided that (a) neither the Borrower nor the District shall be required to provide any public disclosure, representation, warranty, estoppel, certification or indemnity to the Servicer in connection with the proposed appointment thereof and (b) no fees or costs of the Borrower or the District payable to the WIFIA Lender hereunder shall significantly increase solely as a result of any appointment of a Servicer and such increase in fees or costs shall not in any event be more than the amount of the Construction Period Servicing Fee or the Operating Period Servicing Fee applicable at the time the Servicer is appointed as set forth in the applicable WIFIA Loan Agreement.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement, the WIFIA Loan Agreements or the corresponding WIFIA Notes shall in any event be effective without the prior written consent of each of the parties hereto and thereto.

Section 30. 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 31. 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 32. 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 rights nor obligations of the Borrower under this Agreement, the WIFIA Loan Agreements or the corresponding WIFIA Notes nor any interest herein or therein may be assigned or delegated by the Borrower without the prior written consent of the WIFIA Lender. Neither the rights nor obligations of the District under this Agreement or the WIFIA Loan Agreements nor any interest herein or therein may be assigned or delegated by the District without the prior written consent of the WIFIA Lender.

Section 33. Remedies Not Exclusive. No remedy conferred or reserved to the WIFIA Lender under this Agreement, the WIFIA Loan Agreements or the corresponding WIFIA Notes 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 34. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided under this Agreement, the WIFIA Loan Agreements or the corresponding WIFIA Notes upon a default of either the Borrower or the District (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, the WIFIA Loan Agreements or the corresponding WIFIA Notes 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 35. 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 36

(*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 36. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Lender: United States Environmental Protection Agency

WJC-E 7334A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

If to Borrower: Santa Clara Valley Water District Public Facilities

Financing Corporation
5750 Almaden Expressway
San Jose, California 95118
Attention: Treasurer
Email: Wifia-loan-admin@valleywater.org

If to District:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118
Attention: Treasury, Debt and Grants Officer
Email: Wifia-loan-admin@valleywater.org

Unless otherwise instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email to the email address noted above for the WIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by the Borrower's Authorized Representative, with respect to notices to the Borrower, or by the District's Authorized Representative, with respect to notices to the District, or by the WIFIA Lender's Authorized Representative, with respect to notices to the WIFIA Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (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 37. Indemnification. The Borrower and the District shall, to the extent permitted by law, indemnify on a joint and several basis the WIFIA Lender 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 or any of the other Related Documents, (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 nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower and the District shall each 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 expense of the Borrower or the District, as applicable, and such participation by the Borrower and/or the District in the defense thereof shall not release the Borrower or the District of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 37 is made shall be entitled, after consultation with the Borrower and the District 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 and the District for purposes of this Section 37. 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, none of the Borrower, the District, or the WIFIA Lender shall assert, and the Borrower, the District, and the WIFIA Lender each hereby waives, any claim against any Indemnitee, the Borrower, or the District, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the WIFIA Loans or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's or the District'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 37 shall be payable promptly upon demand therefor. The obligations of the Borrower and the District under this Section 37 shall survive the payment or prepayment in full of any WIFIA Note pursuant to Section 8 (*Payment of Principal and Interest*) or Section 9 (*Prepayment*), 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 37) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower or the District hereunder or thereunder.

Section 38. Sale of WIFIA Loan. The WIFIA Lender shall not sell any WIFIA Loan at any time prior to the Substantial Completion Date of the Project relating to such WIFIA Loan. 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 38. 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 and the District in accordance with Section 29 (*Amendments and Waivers*). The WIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of such WIFIA Loan, written notice to the Borrower and the District of the WIFIA Lender's intention to consummate such a sale or reoffering; provided that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 38 shall neither (x) obligate the WIFIA Lender to sell nor (y) provide either of the Borrower or the District with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell such WIFIA Loan. Neither the Borrower nor the District shall have any obligation to provide any disclosure, representation, warranty, estoppel, certificate, consent, agreement, approval, or other assistance to the WIFIA Lender or any proposed purchaser or assignee of any WIFIA Loan in connection with any proposed sale or assignment of such WIFIA Loan.

Section 39. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 40. Survival. The indemnification requirements of Section 37 (*Indemnification*), the reporting and record keeping requirements of Section 15(j) (*Affirmative Covenants of the Borrower – Access; Records*) and Section 17(p) (*Affirmative Covenants of the District – 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 41. 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.

**SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING
CORPORATION**, by its authorized representative

By: _____
Name:
Title:

SANTA CLARA VALLEY WATER DISTRICT,
by its authorized representative

By: _____

Name:

Title:

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

By: _____
Name: Michael S. Regan
Title: Administrator

SCHEDULE I

MASTER PROGRAM

The Master Program consists of the District's anticipated improvements to the Water Utility System for the purpose of improving water supply reliability, safety and reducing aquifer depletion and flooding. The Master Program includes the development and construction of the following Project components, located in the County of Santa Clara, California:

1. Pacheco Reservoir Expansion: Planning, design and construction of a new dam, pump station, conveyance facilities, and related infrastructure (e.g., access roads).
2. Anderson Dam Seismic Retrofit: Planning, design and construction for the rebuild and rehabilitation of the Anderson dam and increase of the dam's spillway and outlet capacities.
3. Anderson Dam Coyote Percolation Dam Replacement: Planning, design and construction for the replacement of existing flashboard dam with an inflatable bladder dam that can be deployed and released to manage higher capacity flows from the new Anderson dam tunnel. This Project component is related to the Anderson Dam Seismic Retrofit.

SCHEDULE II
MASTER PROGRAM BUDGET²

Project Component Name	Total Project Component Cost	WIFIA Loan Commitment Amount (49%)	Percentage of Aggregate Master Program Amount
TOTAL	\$[•]	\$[•]	100%

² **NTD:** To be provided by the WIFIA Lender in coordination with the District.

SCHEDULE 7(d)

FLOW OF FUNDS

Reference is made to Section 2.2 (*Allocation of Water Utility System Revenues*) of the Master Resolution and Section 5.2 (*Allocation*) of each WIFIA IPA, and the applicable requirements and conditions contained therein as of the Effective Date, which, other than deletion of clauses (b), (c), (f) and (g) of Section 2.2 of the Master Resolution, which are no longer applicable, are set forth verbatim below. Capitalized terms used in this **Schedule 7(d)** shall have the respective meanings assigned to such terms in the Master Resolution or the WIFIA IPAs, as applicable.

Master Resolution

“Section 2.2. Allocation of Water Utility System Revenues. In order to carry out and effectuate the obligations of the District to pay Debt Service, the District agrees and covenants that all Current Water Utility System Revenues received by it shall be deposited when and as received in the Water Utility System Revenue Fund.

The District shall transfer or make payments from the Water Utility System Revenue Fund the amounts set forth below at the following times and in the following order of priority:

- (a) Such amounts at such times as the District shall require to provide for the payment of Maintenance and Operation Costs;
- (d) Debt Service at the times and in the amounts required by applicable Bonds or Contracts or the Trust Agreements securing each Bond or Contract;
- (e) To each Trustee for deposit in the applicable reserve fund with respect to such Bonds or Contracts, if any, an amount equal to the amount, if any, at such times as required to be deposited therein to build up or replenish such Bond or Contract reserve fund as and to the extent required by the applicable Bond or Contract or the resolutions, trust agreements, indentures or other instruments securing each Bond or Contract;
- (h) So long as the District reasonably determines that there will be sufficient Current Water Utility System Revenues to make the transfers in (a) through (e) above for the remainder of such Fiscal Year, for any purpose of the Water Utility System; and
- (i) So long as the District reasonably determines that there will be sufficient Current Water Utility System Revenues to make the transfers in (a) through (e) above for the remainder of such Fiscal Year, for any lawful purpose of the District.”

WIFIA IPA

“[Section 5.2. Allocation. In order to carry out and effectuate the pledge contained in the Water Utility Parity System Master Resolution, on or prior to each Installment Payment Date, Valley Water shall pay, in accordance with Section 2.2 of the Water Utility Parity System Master Resolution and on a pro rata basis with other Subordinate Bonds and Subordinate Contracts, from

Current Water Utility System Revenues remaining after making payments required by Section 2.2(a), (b), (c), (d) and (e) of the Water Utility Parity System Master Resolution, to the WIFIA Lender, as assignee of the Corporation, and deposit into the WIFIA Debt Service Account, the Installment Payments due and payable on such Installment Payment Date. Notwithstanding the foregoing, after the occurrence of a Bankruptcy Related Event, Valley Water shall deposit into the WIFIA Debt Service Account the Installment Payments due and payable on such Installment Payment Date on a pro rata basis with Bonds and Contracts in accordance with Section 2.2(d) of the Water Utility Parity System Master Resolution.]”³

³ **NTD:** To be updated as necessary to conform to the form of WIFIA IPA.”

SCHEDULE 12(f)

LITIGATION

[None.]⁴

⁴ **Note to Borrower:** Please confirm or advise.

SCHEDULE 12(u)

EXISTING WATER UTILITY SYSTEM INDEBTEDNESS⁵

A. Existing Senior Obligations

	Agreement/Series	Outstanding Principal ⁶
1.	Santa Clara Valley Water District Water System Refunding Revenue Bonds, Series 2016A, issued pursuant to the Indenture of Trust, dated as of February 1, 2016, by and between U.S. Bank National Association, as trustee, and the District	\$106,315,000
2.	Santa Clara Valley Water District Water System Refunding Revenue Bonds, Taxable Series 2016B, issued pursuant to the Indenture of Trust, dated as of February 1, 2016, by and between U.S. Bank National Association, as trustee, and the District	\$75,215,000
3.	Santa Clara Valley Water District Revenue Certificates of Participation (Water Utility System Improvement Projects), Series 2016C, issued pursuant to the Trust Agreement, dated as of February 1, 2016, by and among the Borrower, the District and U.S. Bank National Association, as trustee, and the related Installment Purchase Agreement, dated as of February 1, 2016, by and between the Borrower and the District	\$28,160,000
4.	Santa Clara Valley Water District Revenue Certificates of Participation (Water Utility System Improvement Projects), Taxable Series 2016D, issued pursuant to the Trust Agreement, dated as of February 1, 2016, by and among the Borrower, the District and U.S. Bank National Association, as trustee, and the related Installment Purchase Agreement, dated as of February 1, 2016, by and between the Borrower and the District	\$35,590,000
5.	Santa Clara Valley Water District Water System Refunding Revenue Bonds, Series 2017A, issued pursuant to the Indenture of Trust, dated as of March 1, 2017, by and between U.S. Bank National Association, as trustee, and the District	\$45,770,000
6.	Santa Clara Valley Water District Water System Refunding Revenue Bonds, Series 2019A, issued pursuant	\$14,500,000

⁵ **Note to Borrower:** Please update the outstanding principal amount in the table as necessary once the closing date is known.

⁶ **NTD:** As of the Effective Date.

	to the Indenture of Trust, dated as of March 1, 2019, by and between U.S. Bank National Association, as trustee, and the District	
7.	Santa Clara Valley Water District Water System Refunding Revenue Bonds, Taxable Series 2019B, issued pursuant to the Indenture of Trust, dated as of March 1, 2019, by and between U.S. Bank National Association, as trustee, and the District	\$75,020,000
8.	Santa Clara Valley Water District Water System Refunding Revenue Bonds, Taxable Series 2019C, issued pursuant to the Indenture of Trust, dated as of November 1, 2019, by and between U.S. Bank National Association, as trustee, and the District	\$32,990,000
9.	Santa Clara Valley Water District Water System Refunding Revenue Bonds, Series 2020A, issued pursuant to the Indenture of Trust, dated as of September 1, 2020, by and between U.S. Bank National Association, as trustee, and the District	\$24,120,000
10.	Santa Clara Valley Water District Water System Refunding Revenue Bonds, Taxable Series 2020B, issued pursuant to the Indenture of Trust, dated as of September 1, 2020, by and between U.S. Bank National Association, as trustee, and the District	\$68,530,000
11.	Santa Clara Valley Water District Revenue Certificates of Participation (Water Utility System Improvement Projects), Series 2020C, issued pursuant to the Trust Agreement, dated as of September 1, 2020, by and among the Borrower, the District and U.S. Bank National Association, as trustee, and the related Installment Purchase Agreement, dated as of September 1, 2020, by and between the Borrower and the District	\$40,080,000
12.	Santa Clara Valley Water District Revenue Certificates of Participation (Water Utility System Improvement Projects), Taxable Series 2020D, issued pursuant to the Trust Agreement, dated as of September 1, 2020, by and among the Borrower, the District and U.S. Bank National Association, as trustee, and the related Installment Purchase Agreement, dated as of September 1, 2020, by and between the Borrower and the District	\$78,320,000

B. Existing Parity Obligations

	Agreement/Series	Outstanding Principal ⁷

⁷ NTD: As of the Effective Date.

1.	\$225,000,000 Santa Clara Valley Water District 2022-2023 Tax-Exempt Tax and Revenue Anticipation Note and \$160,000,000 Taxable Tax and Revenue Anticipation Note which secure up to (a) \$150,000,000 Santa Clara Valley Water District Commercial Paper Certificates, Series A (Tax-Exempt) and Series B (Taxable), issued pursuant to the Amended and Restated Reimbursement Agreement, dated as of March 1, 2016 (as amended), by and among the Borrower, the District and MUFG Bank, Ltd., f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd., acting through its New York Branch; (b) \$129,000,000 Santa Clara Valley Water District Revolving Certificates, Series C (Tax-Exempt) (Non-Syndicated) and Series D (Taxable) (Non-Syndicated), issued pursuant to the Certificate Purchase and Reimbursement Agreement, dated as of April 1, 2022, by and among the Borrower, the District, the lenders party thereto and U.S. Bank National Association, as administrative agent and sole lead arranger; and (c) \$41,000,000 Santa Clara Valley Water District Revolving Certificates, Series C (Tax-Exempt) (Syndicated) and Series D (Taxable) (Syndicated), issued pursuant to the Certificate Purchase and Reimbursement Agreement, dated as of October 1, 2020, by and among the Borrower, the District, the lenders party thereto and U.S. Bank National Association, as administrative agent and sole lead arranger, as amended by the First Amendment to Certificate Purchase and Reimbursement Agreement, dated as of April 29, 2022	\$220,195,000 ⁸
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⁸ As of October 1, 2022, there was \$220,195,000 aggregate principal amount of Commercial Paper Certificates and Revolving Certificate outstanding consisting of \$150,000,000 of Commercial Paper Certificates and \$70,195,000 of Revolving Certificates. The Commercial Paper Notes and Revolving Certificates are secured by the Tax-Exempt and Taxable Tax and Revenue Anticipation Notes of Valley Water.

EXHIBIT A

FORM OF WIFIA NOTE

SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION

WATER RELIABILITY PROGRAM

(WIFIA ID – [●])
WIFIA NOTE

Maximum Principal Amount: \$[●] ([●] Dollars) (excluding capitalized interest)

Effective Date: [●]

Interest Rate Per Annum: [●]%

Due: [●]

SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under the Nonprofit Public Benefit Corporation Law of the State of California (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the “**WIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the WIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the WIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the WIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the WIFIA Loan Agreement in accordance with Exhibit A (*WIFIA Loan Amortization Schedule*) to the WIFIA Loan Agreement, as revised from time to time in accordance with the WIFIA Loan Agreement and that certain WIFIA Master Agreement, dated as of [●] 2022, by and among the Borrower, the District and the WIFIA Lender (the “**WIFIA Master Agreement**”), until paid in full (which Exhibit A, as modified from time to time in accordance with the terms of the WIFIA Loan Agreement and the WIFIA Master Agreement, is incorporated in and is a part of this WIFIA Note). The WIFIA Lender is hereby authorized to modify the WIFIA Loan Amortization Schedule included in Exhibit A to the WIFIA Loan Agreement from time to time in accordance with the terms of the WIFIA Master Agreement and the WIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on Exhibit A to the WIFIA Loan Agreement shall be conclusive evidence thereof; provided that neither the failure to make any such

recording nor any error in such recording shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document (as defined in the WIFIA Master Agreement).

Payments hereon are to be made in accordance with Section 8(e) (*Payment of Principal and Interest – Manner of Payment*) and Section 36 (*Notices*) of the WIFIA Master Agreement as the same become due. Principal of and interest on this WIFIA Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Substantial Completion Date occurs on any date prior to [●], the due date of this WIFIA Note shall be deemed to be amended to the Principal Payment Date immediately preceding the date that is thirty-five (35) years following such Substantial Completion Date without any further action required on the part of the Borrower or the WIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this WIFIA Note without the prior written agreement of the WIFIA Lender. Any such amendment shall be reflected in a revised WIFIA Loan Amortization Schedule.

This WIFIA Note has been executed under and pursuant to that certain WIFIA Loan Agreement (WIFIA ID – [●]), dated as of the date hereof, among the WIFIA Lender, the Borrower and the District (the "**WIFIA Loan Agreement**") and is issued to evidence the obligation of the Borrower under the WIFIA Loan Agreement to repay the loan made by the WIFIA Lender and any other payments of any kind required to be paid by the Borrower under the WIFIA Loan Agreement or the other WIFIA Loan Documents referred to therein. Reference is made to the WIFIA Master Agreement and the WIFIA Loan Agreement for all details relating to the Borrower's obligations hereunder. All capitalized terms used in this WIFIA Note and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

This WIFIA Note may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Loan Agreement; provided such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Lender all or part of the principal amount of the WIFIA Note in accordance with the WIFIA Loan Agreement.

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

Payment of the obligations of the Borrower under this WIFIA Note is secured pursuant to the WIFIA Master Agreement and the WIFIA Loan Agreement.

This WIFIA Note is a limited obligation of the Borrower, payable solely from the Corporation Revenues, and does not constitute a debt of the State or any of its political subdivisions (including the District), except the Borrower. Notwithstanding anything to the contrary set forth in this WIFIA Note, the District is not a borrower with respect to this WIFIA Note and the District has no obligation to make any payment or provision for payment of this WIFIA Note. This WIFIA Note does not constitute a contract between the District and the WIFIA Lender by which the District has incurred an indebtedness.

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

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this WIFIA Note have happened, exist and have been performed as so required. This WIFIA Note 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, SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION has caused this WIFIA Note to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

**SANTA CLARA VALLEY WATER
DISTRICT PUBLIC FACILITIES
FINANCING CORPORATION,**
by its authorized representative

(SEAL)

By _____

Name: _____
Title: _____

ATTEST:

Secretary

EXHIBIT B

REQUISITION PROCEDURES

This **Exhibit B** sets out the procedures which the Borrower and the District agree to follow in submitting Requisitions for the disbursement of WIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with each Project. The Borrower and the District expressly agree to the terms hereof, and further agree 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 (x) that certain WIFIA Master Agreement, dated as of [●], 2022, by and among the Borrower, the District and the WIFIA Lender (the “**WIFIA Master Agreement**”) and (y) the WIFIA Loan Agreement by and among the Borrower, the District and the WIFIA Lender with respect to the applicable Project (the “**WIFIA Loan Agreement**”), and (ii) nothing contained herein shall be construed to limit the rights of the WIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower or the District if it fails to carry out its obligations under the WIFIA Loan Agreement during the term thereof. All capitalized terms used and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

PART A. General Requirements.

(a) Manner of Request: All requests by the District, as agent of the Borrower pursuant to the WIFIA Installment Purchase Agreement by and between the Borrower and the District with respect to the applicable Project (the “**WIFIA IPA**”), for a disbursement of a WIFIA Loan shall be made in writing by electronic submission to the WIFIA Lender, in accordance with Section 36 (*Notices*) of the WIFIA Master Agreement.

(b) Required Documentation: Any request by the District, as agent of the Borrower pursuant to the WIFIA IPA, should include the submission of:

(i) a Requisition, in the form attached as Appendix One (*Form of Requisition*), completed and executed by the District’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 Section 20(c)(iii) (*Reporting Requirements of the District – Construction Reporting – Quarterly Certification of Eligible Project Costs*) of the WIFIA Master Agreement.

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

(i) the first (1st) Business Day of a calendar month in order to obtain the requested disbursement of such WIFIA Loan by the fifteenth (15th) day of such calendar month;

(ii) the fifteenth (15th) day of a calendar month, in order to obtain the requested disbursement of such WIFIA Loan by the first (1st) day of the immediately following calendar month;

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

PART B. WIFIA Lender Review Process.

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

(b) If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the District, as agent of the Borrower pursuant to the WIFIA IPA, 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 District, 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 Requisition will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Lender will so notify the District.

(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 or the District (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 and the District with applicable law pertaining to the relevant Project or with the terms and conditions of the relevant WIFIA Loan Agreement; (3) fails to observe or comply with any applicable law, or any term or condition of the relevant WIFIA Loan Agreement; (4) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent to Disbursements*) of the relevant WIFIA Loan Agreement; or (5) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Lender at the times and in the manner specified by the relevant 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 District, as agent of the Borrower pursuant to the WIFIA IPA, 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 District'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 District, as agent of the Borrower pursuant to the WIFIA IPA, 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.

APPENDIX ONE TO EXHIBIT B
FORM OF REQUISITION

VIA EMAIL

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Water Reliability Program – Project [●] (WIFIA ID – [●])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of (i) that certain WIFIA Master Agreement, dated as of [●]. 2022 (the “**WIFIA Master Agreement**”), by and among SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION (the “**Borrower**”), SANTA CLARA VALLEY WATER DISTRICT (the “**District**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”) and (ii) that certain WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●] (the “**WIFIA Loan Agreement**”), by and among the Borrower, the District and the WIFIA Lender, the District, as agent of the Borrower pursuant to the WIFIA IPA, hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the District, as agent of the Borrower pursuant to the WIFIA IPA. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

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

1.	Project name	Water Reliability Program – Project [●]
2.	Borrower name	Santa Clara Valley Water District Public Facilities Financing Corporation
3.	District name	Santa Clara Valley Water District
4.	WIFIA Loan ID	[__]
5.	District Unique Entity Identifier	[__]
6.	District FEIN number	[__]
7.	Requisition number	[__]
8.	Requested Disbursement amount	\$[__]
9.	Requested date of Disbursement	[__]

	(the “Disbursement Date”)⁹	
10.	Total amounts previously disbursed under the WIFIA Loan Agreement	\$[____]
11.	Wire or ACH transfer instructions (please specify method)	[____]

12. 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.
13. No District Material Adverse Effect, or any event or condition that could reasonably be expected to have a District Material Adverse Effect, has occurred since the Effective Date.
14. The aggregate amount of all disbursements of the WIFIA Loan (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 aggregate amount of Eligible Project Costs with respect to the Project paid or incurred by the District, as agent of the Borrower pursuant to the WIFIA IPA.
15. The Eligible Project Costs with respect to the Project for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of (a) any WIFIA Loan proceeds or (b) any other source of funding for the Project as identified in the Project Budget for the Project.
16. The District, and each of its contractors and subcontractors at all tiers with respect to the relevant Project, have 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.
17. The representations and warranties of the District set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document are true and correct as of the date hereof and as of the date of the requested disbursement of the WIFIA Loan proceeds, 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).

⁹ 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 District has delivered all required deliverables under and in compliance with the requirements of Section 20 (*Reporting Requirements of the District*) of the WIFIA Master Agreement, except as has been otherwise agreed by the WIFIA Lender.

19. Eligible Project Costs Documentation evidencing Eligible Project Costs in an amount equal to the amount requested for such disbursement either (a) has been previously submitted to and approved by the WIFIA Lender in accordance with Exhibit B (*Requisition Procedures*) and Section 20 (*Reporting Requirements of the District*) of the WIFIA Master Agreement or (b) has been submitted to the WIFIA Lender, together with (i) a brief description of the type¹⁰ and nature of the activity covered by such Eligible Project Costs and (ii) a summary of such Eligible Project Costs in the format set out below, in each case for approval by the WIFIA Lender:

									WIFIA USE ONLY	
Vendor or Contractor Name ¹¹	Invoice Number ¹²	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ¹³	Account Number	Account Description	Approved Amount	Notes	

The undersigned acknowledges that if the District 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 District the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.

Date: _____

SANTA CLARA VALLEY WATER DISTRICT,

By its authorized representative

By: _____

Name: _____

Title: _____

¹⁰ 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 of such activity.

¹¹ If seeking reimbursement for internal costs, enter "Internally financed activities."

¹² Vendor's number indicated on the invoice sent to the Borrower.

¹³ 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.

APPENDIX TWO TO EXHIBIT B
FORM OF BORROWER'S DISBURSEMENT CERTIFICATE

United States Environmental Protection Agency
WJC-E 7334A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director

Re: Water Reliability Program – Project [●] (WIFIA ID – [●])

Ladies and Gentlemen:

Reference is made to (i) that certain WIFIA Master Agreement, dated as of [●] 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Santa Clara Valley Water District (the “**District**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”) and (ii) that certain WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●] (the “**WIFIA Loan Agreement**”), by and among the Borrower, the District and the WIFIA Lender. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

Pursuant to Section 11(b)(iii) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Master Agreement, the undersigned, as the Borrower’s Authorized Representative, hereby represents and certifies the following:

1. As of the date hereof and on the requested disbursement date (immediately after giving effect to the requested disbursement of WIFIA Loan proceeds), (a) no Default or Event of Default, and no event of default under any other Related Document to which the Borrower is a party 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 Related Document to which the Borrower is a party, in each case, has occurred and is continuing.
2. No Borrower Material Adverse Effect, or any event or condition that could reasonably be expected to have a Borrower Material Adverse Effect, has occurred or arisen since the Effective Date.
3. The representations and warranties of the Borrower set forth in the WIFIA Master Agreement (including Section 12 (*Representations and Warranties of the Borrower*)) and in each other WIFIA Loan Document to which the Borrower is a party are true and correct as of the date hereof and as of the requested disbursement date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

4. The Borrower has delivered all required deliverables under and in compliance with the requirements of Section 19 (*Reporting Requirements of the Borrower*) of the WIFIA Master Agreement, except as has been otherwise agreed by the WIFIA Lender.

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

Date: _____

SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING CORPORATION,
By its authorized representative

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF CERTIFICATION OF ELIGIBLE PROJECT COSTS DOCUMENTATION

VIA EMAIL

United States Environmental Protection Agency¹⁴
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Water Reliability Program – Project [●] (WIFIA ID – [●])

Ladies and Gentlemen:

Pursuant to Section 20 (*Reporting Requirements of the District*) of the WIFIA Master Agreement, dated as of [●] (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Santa Clara Valley Water District (the “**District**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”), the District, as agent of the Borrower pursuant to the WIFIA IPA, hereby presents this certificate in connection with the District’s delivery of Eligible Project Costs Documentation to the WIFIA Lender. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●] (the “**WIFIA Loan Agreement**”), by and among the Borrower, the District and the WIFIA Lender or, if not defined therein, the WIFIA Master 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:]

WIFIA USE ONLY								
Vendor or Contractor Name ¹⁵	Invoice Number ¹⁶	Invoice Date	Payment Date	Invoice Amount	Account Number	Account Description	Approved Amount	Notes

¹⁴ If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.

¹⁵ If the expectation is to seek reimbursement for internal costs, enter “Internally financed activities.”

¹⁶ Vendor’s number indicated on the invoice sent to the Borrower.

3. The following is a brief description of the type¹⁷ and nature of the activity covered by such Eligible Project Costs: [insert description].
4. The anticipated sources of funding for such Eligible Project Costs are [listed below][set forth in the attached excel sheet].
5. Supporting Eligible Project Costs Documentation for the above Eligible Project Costs for the Quarterly Period are also attached hereto.
6. The most recently delivered Construction Monitoring Report delivered in accordance with Section 20 (*Reporting Requirements of the District*) of the WIFIA Master 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 District is otherwise in compliance with Section 20(c) (*Reporting Requirements of the District – Construction Reporting*) of the WIFIA Master Agreement.

Dated: [●]

SANTA CLARA VALLEY WATER DISTRICT,
by its authorized representative

By: _____
Name:
Title:

¹⁷

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 of such activity.

EXHIBIT D
FORM OF WIFIA LOAN REQUEST

[Letterhead of Borrower]

[Date]¹⁸

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

Project: Water Reliability Program – Project [●] (WIFIA ID – [●])

Dear WIFIA Director:

This loan request is provided pursuant to Section 4(a) (*Disbursement Conditions*) of that certain WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Santa Clara Valley Water District (the “**District**”) 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 District’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 Water Reliability Program – Project [●] (the “**Project**”).

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

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

SANTA CLARA VALLEY WATER DISTRICT,
by its authorized representative

By: _____
Name:
Title:

ANNEX A TO EXHIBIT D
UPDATED FINANCIAL MODEL/PLAN

EXHIBIT E-1¹⁹

FORM OF OPINION OF BORROWER'S GENERAL COUNSEL

[●], [2022]

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

*Re: Water Reliability Program – Santa Clara Valley Water District Public Facilities
Financing Corporation (WIFIA ID – [●])*

Ladies and Gentlemen:

I have acted as legal counsel to the Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”) in connection with the execution and delivery by the Borrower of (a) the WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among the Borrower, Santa Clara Valley Water District (“**Valley Water**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”), (b) the WIFIA Installment Purchase Agreement, dated as of [●], [●] (the “**WIFIA IPA**”), by and between the Borrower and Valley Water, (c) the WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●], [●] (the “**WIFIA Loan Agreement**”), by and among the Borrower, Valley Water and the WIFIA Lender, (d) the WIFIA Note, dated as of [●], [●] (the “**WIFIA Note**” and, collectively with the WIFIA Master Agreement, the WIFIA IPA and the WIFIA Loan Agreement, the “**WIFIA Borrower Documents**”), delivered to the WIFIA Lender by the Borrower, and (e) Resolution No. [●], adopted by the Board of Directors of the Borrower on [●], 2022 (the “**WIFIA Borrower Resolution**”). In arriving at the opinions expressed below, I have reviewed and am familiar with (i) the Articles of Incorporation of the Borrower, dated December 16, 1987 and filed in the office of the Secretary of State of the State on December 21, 1987, as amended by the Certificate of Amendment of Articles of Incorporation, dated September 30, 2008 and filed in the office of the Secretary of State of the State on October 2, 2008 (as amended, the “**Articles of Incorporation**”), (ii) the Bylaws of the Borrower, dated as of January 26, 1988, as amended by the Certificate of First Amendment to the Bylaws of the Borrower, dated as of September 9, 2008 (as amended, the “**Bylaws**” and, together with the Articles of Incorporation, the “**Organizational Documents**”), (iii) the WIFIA Borrower Documents and the WIFIA Borrower Resolution and (iv) such other information and documents as I have deemed necessary to render the opinions set forth herein on behalf of the Borrower. The opinions, statements and representations herein made are on behalf of the Borrower. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

¹⁹ **NTD:** The forms of opinions in Exhibits E-1 through E-4 remain subject to EPA team’s review and comment in all respects.

In rendering the opinions herein I have relied only on my examination of the foregoing documents and I have made no independent verification of the factual matters set forth in such documents or the representations and certifications relied upon by the undersigned. In rendering the opinions expressed below, I have assumed, but not independently verified, that the signatures on all documents which I have examined are genuine.

Based upon the foregoing and my review of such other matters of law as I considered necessary, I am of the opinion that:

1. The Borrower has been duly created and validly exists as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law of the State of California.

2. The Borrower has all requisite power and authority to conduct its business and to adopt, execute and deliver, and to perform its obligations under, the Related Documents to which it is a party.

3. The adoption of the WIFIA Borrower Resolution and the execution and delivery by the Borrower of the other Related Documents, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action.

4. The Borrower has duly adopted the WIFIA Borrower Resolution and has duly executed and delivered each other Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms.

5. 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 adoption of the WIFIA Borrower Resolution and the execution and delivery by the Borrower of, and the performance of the Borrower under, any Related 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.

6. The adoption of the WIFIA Borrower Resolution and the execution and delivery by the Borrower of, and compliance by the Borrower with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents, (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 me to which the Borrower is a party, or to the best of my knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject.

7. To my knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Water Utility System that are pending.

8. The Borrower is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Borrower Documents or the WIFIA Borrower Resolution.

I am licensed to practice law only in the State of California. Accordingly, the foregoing opinions apply only with respect to the laws of the State of California and the United States and I express no opinion with respect to the laws of any other jurisdiction.

By delivering this letter, I am not expressing any opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the WIFIA Borrower Resolution, the WIFIA Borrower Documents or any other Related Document. The opinions expressed herein are based upon my analysis and interpretation of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. I call attention to the fact that the rights and obligations under the WIFIA Borrower Resolution, the WIFIA Borrower Documents and the other Related Documents are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State of California.

The opinions expressed herein are solely for your benefit in connection with the above-referenced matter and may not be relied on in any manner or for any purpose by any other person or entity, nor may copies be delivered or furnished to any other party nor may all or portions of this opinion be quoted, circulated, or referred to in any other document without my prior written consent, except (a) to the extent disclosure of this opinion is required pursuant to applicable law, (b) to your accountants, attorneys and other professional advisors, and (c) that this opinion may be included in applicable closing transcript. No attorney-client relationship has existed or exists between me and you in connection with the WIFIA Borrower Resolution, the WIFIA Borrower Documents, the other Related Documents or by virtue of this letter. I note you were represented by separate counsel retained by you in connection with the transaction described herein.

Respectfully,

EXHIBIT E-2

FORM OF OPINION OF BORROWER'S BOND COUNSEL

[●], [2022]

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *Water Reliability Program – Santa Clara Valley Water District Public Facilities Financing Corporation (WIFIA ID – [●])*

Ladies and Gentlemen:

We have acted as Special Counsel to Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”) in connection with the execution and delivery, or adoption, by the Borrower of (a) the WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among the Borrower, Santa Clara Valley Water District (“**Valley Water**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”), (b) that certain WIFIA Installment Purchase Agreement, dated as of [●], [●] (the “**WIFIA IPA**”), by and between the Borrower and Valley Water, (c) the WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●], [2022] (the “**WIFIA Loan Agreement**”), by and among the Borrower, Valley Water and the WIFIA Lender, (d) that certain WIFIA Note, dated as of [●], [●] (the “**WIFIA Note**” and, collectively with the WIFIA Master Agreement, the WIFIA IPA and the WIFIA Loan Agreement, the “**WIFIA Borrower Documents**”), delivered to the WIFIA Lender by the Borrower, and (e) Resolution No. [●], adopted by the Board of Directors of the Borrower on [●], 2022 (the “**WIFIA Borrower Resolution**”). All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

Based upon the foregoing and our review of such other information, documents and matters of law as we considered necessary and in reliance on the foregoing, as appropriate, we are of the opinion that:

1. The Borrower has all requisite power and authority under the laws of the State to adopt the WIFIA Borrower Resolution, to execute and deliver the WIFIA Borrower Documents and to issue the WIFIA Note, and each WIFIA Borrower Document and the WIFIA Resolution has been duly authorized, executed and delivered by the Borrower, and each WIFIA Borrower Document and the WIFIA Borrower Resolution is in full force and effect, and constitutes a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions.

2. (a) The WIFIA Loan (as evidenced by the WIFIA Note) is secured by the Liens on the Corporation Revenues, all of the Borrower’s right, title and interest in the WIFIA Debt Service Account and all of the Borrower’s rights and remedies to enforce the WIFIA IPA

upon an event of default thereunder, and (b) the WIFIA Loan (as evidenced by the WIFIA Note) is enforceable under the laws of the State without any further action by the Borrower or any other Person.

3. The WIFIA Master Agreement creates a valid and binding pledge of and lien on the Corporation Revenues, all of the Borrower's right, title and interest in the WIFIA Debt Service Account and all of the Borrower's rights and remedies to enforce the WIFIA IPA upon an event of default thereunder to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Loan in accordance with the WIFIA Master Agreement and the WIFIA Loan Agreement, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act.

4. All actions by the Borrower that are required for the application of the Corporation Revenues as required under the WIFIA Master Agreement and the WIFIA Loan Agreement have been duly and lawfully authorized.

5. The Borrower has complied with the requirements of State law to lawfully pledge the Corporation Revenues, all of the Borrower's right, title and interest in the WIFIA Debt Service Account and all of the Borrower's rights and remedies to enforce the WIFIA IPA upon an event of default thereunder and to authorize the use of the Corporation Revenues as required by the terms of the WIFIA Master Agreement and the WIFIA Loan Agreement.

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

The opinions expressed herein are based upon our analysis and interpretation of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. Such conclusions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform you or any other person, whether any such actions are taken or omitted after the date hereof or whether such events do occur or any other matters come to our attention after the date hereof. We have assumed, but not independently verified, that the signatures on all documents, letters, opinions and certificates which we have examined are genuine, that all documents submitted to us are authentic and were duly and properly executed by the parties thereto. As to any facts relevant to the opinions stated herein that we did not independently establish or verify, we have relied upon, without independent verification, the accuracy of the factual matters represented, warranted or certified in such documents.

This opinion is limited to matters governed by the laws of California and the United States of America, and we assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction. We call attention to the fact that the rights and obligations under the WIFIA Master Agreement, the WIFIA Loan Agreement, the other WIFIA Borrower Documents and the WIFIA Borrower Resolution are subject to bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance or transfer and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State.

By delivering this letter, we are not expressing any opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the WIFIA Borrower Documents, nor are we expressing any opinion with respect to the state or quality of title to or interest in any assets, other than the Corporation Revenues, and the WIFIA Borrower Documents or the accuracy or sufficiency of the description of such assets, other than the Corporation Revenues, and the WIFIA Borrower Documents, or the remedies available to enforce liens on any such assets, other than the Corporation Revenues under the WIFIA Master Agreement, the WIFIA Loan Agreement and the WIFIA Note. Our services as Special Counsel to the Borrower did not involve the rendering of financial or other non-legal advice to you, the Borrower, Valley Water or any other party to the transaction.

This letter is furnished by us to you solely for your benefit and we are not assuming any professional responsibility to any other person whomsoever. This letter is not to be used, circulated, quoted or otherwise referred to for any other purpose, except (a) to the extent disclosure of this opinion is required pursuant to applicable law, (b) to your accountants, attorneys and other professional advisors, and (c) that this opinion may be included in applicable closing transcript. We note that you were represented by counsel on this transaction. No attorney-client relationship has existed or exists between our firm and you in connection with the WIFIA Borrower Documents or the WIFIA Borrower Resolution or by virtue of this letter.

Respectfully submitted,

EXHIBIT E-3

FORM OF OPINION OF DISTRICT'S GENERAL COUNSEL

[●], [2022]

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

*Re: Water Reliability Program – Santa Clara Valley Water District Public Facilities
Financing Corporation (WIFIA ID – [●])*

Ladies and Gentlemen:

Acting in my capacity as District Counsel to the Santa Clara Valley Water District (“**Valley Water**”) in connection with the execution and delivery by Valley Water of (a) the WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Valley Water and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”), (b) the WIFIA Installment Purchase Agreement, dated as of [●], [●] (the “**WIFIA IPA**”), by and between the Borrower and Valley Water, (c) the WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●], [●] (the “**WIFIA Loan Agreement**” and, collectively with the WIFIA Master Agreement and the WIFIA IPA and the WIFIA Loan Agreement, the “**WIFIA District Documents**”), by and among the Borrower, Valley Water, and the WIFIA Lender, (d) Resolution No. [●] of the Board of Directors of Valley Water, adopted on [●], 2022 (the “**WIFIA District Resolution**”) and (e) Resolution No. 16-10 of the Board of Directors of Valley Water, adopted on February 23, 2016, as amended by Resolution No. 16-82 of the Board of Directors of Valley Water, adopted on December 13, 2016 (the “**Parity Master Resolution**” and, collectively with the WIFIA District Resolution, the “**District Resolutions**”). In arriving at the opinions expressed below, I have examined and am familiar with the following documents: (i) documents relating to the existence, organization and operation of Valley Water provided to me by Valley Water, (ii) the District Closing Certificate, dated the date hereof and executed by Valley Water’s Authorized Officer or other duly authorized officer, (iii) the WIFIA District Documents, (iv) the District Resolutions, (v) all necessary documentation of Valley Water relating to the adoption of the District Resolutions and the authorization, execution and delivery of the WIFIA District Documents, (vi) certain consents to the adoption of the District Resolutions and execution and delivery of the WIFIA District Documents, and (vii) other documents as I have deemed necessary to render the opinions set forth herein. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

In rendering the opinions herein I have relied only on my examination of the foregoing documents and I have made no independent verification of the factual matters set forth in such documents or the representations and certifications relied upon by the undersigned. In addition, I have relied on discussions with the Authorized Officer and other officers of Valley Water and information made available in the ordinary course of business in my role as District Counsel. In

rendering the opinions expressed below, I have assumed, but not independently verified, that the signatures on all documents which we have examined are genuine.

Based upon the foregoing and such other matters of law as I have deemed necessary for purposes of rendering this opinion, and subject to the qualifications set forth below, I am of the opinion that:

1. Valley Water is a special district duly organized and validly existing under the Constitution and the laws of the State of California.

2. Valley Water has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under, the District Resolutions and the WIFIA District Documents.

3. The adoption of the District Resolutions and the execution and delivery by Valley Water of, and the performance of its obligations under, the WIFIA District Documents and the District Resolutions have been duly authorized by all necessary organizational or regulatory action.

4. Valley Water has duly adopted the District Resolutions and has executed and delivered each WIFIA District Document, and each such District Resolution and WIFIA District Document constitutes the legal, valid and binding obligation of Valley Water, enforceable against Valley Water in accordance with its respective terms.

5. 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 Valley Water for the adoption of the District Resolutions and the execution and delivery by Valley Water of, and the performance of Valley Water under, the WIFIA District Documents and the District Resolutions other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by Valley Water.

6. The adoption of the District Resolutions and the execution and delivery by Valley Water of, and compliance by Valley Water with the provisions of, the WIFIA District Documents and the District Resolutions do not (i) violate the law of the United States of America or of the State, (ii) violate any ordinance, regulation or other legislative action of Valley Water or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to me to which Valley Water is a party, or to the best of my knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which Valley Water is subject.

7. To my knowledge after due inquiry, there are no actions, suits, proceedings or investigations against Valley Water by or before any court, arbitrator or any other Governmental Authority in connection with the District Resolutions, the WIFIA District Documents or the Water Utility System that are pending.

8. Valley Water is not entitled to claim governmental immunity under the California Government Claims Act or any other law of the State, or under any ordinance, regulation or other

legislative action of Valley Water in any breach of contract action under the District Resolutions or the WIFIA District Documents.

I am licensed to practice law only in the State of California. Accordingly, the foregoing opinions apply only with respect to the laws of the State of California and the United States and I express no opinion with respect to the laws of any other jurisdiction.

By delivering this letter, I am not expressing any opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the District Resolutions and the WIFIA District Documents. The opinions expressed herein are based upon my analysis and interpretation of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. I call attention to the fact that the rights and obligations under the District Resolutions and the WIFIA District Documents are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State of California.

The opinions expressed herein are solely for your benefit in connection with the above-referenced matter and may not be relied on in any manner or for any purpose by any other person or entity, nor may copies be delivered or furnished to any other party nor may all or portions of this opinion be quoted, circulated, or referred to in any other document without my prior written consent, except (a) to the extent disclosure of this opinion is required pursuant to applicable law, (b) to your accountants, attorneys and other professional advisors, and (c) that this opinion may be included in applicable closing transcript. No attorney-client relationship has existed or exists between me and you in connection with the District Resolutions, the WIFIA District Documents or by virtue of this letter. We note you were represented by separate counsel retained by you in connection with the transaction described herein.

Respectfully,

EXHIBIT E-4

FORM OF OPINION OF DISTRICT'S BOND COUNSEL

[●], [2022]

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Ladies and Gentlemen:

We have acted as Special Counsel to Santa Clara Valley Water District (“**Valley Water**”) in connection with the execution and delivery, or adoption, by the District of (a) the WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Valley Water and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”), (b) that certain WIFIA Installment Purchase Agreement, dated as of [●], [●] (the “**WIFIA IPA**”), by and between the Borrower and Valley Water, (c) that certain WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●], [●] (the “**WIFIA Loan Agreement**” and collectively with the WIFIA Master Agreement and the WIFIA IPA, the “**WIFIA District Documents**”), by and among the Borrower, Valley Water and the WIFIA Lender, and (d) Resolution No. [●] of the Board of Directors of Valley Water, adopted on [●], 2022 (the “**WIFIA District Resolution**”), in each case relating to the Master Program. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

Based upon the foregoing and our review of such other information, documents and matters of law as we considered necessary and in reliance on the foregoing, as appropriate, we are of the opinion that:

1. Valley Water has all requisite power and authority under the laws of the State to adopt the WIFIA District Resolution and to execute and deliver the WIFIA District Documents. Each WIFIA District Document has been duly authorized, executed and delivered by Valley Water, and each WIFIA District Document and the WIFIA District Resolution is in full force and effect and constitutes a legal, valid and binding obligation of Valley Water enforceable against Valley Water in accordance with its respective terms and conditions.

2. The WIFIA Installment Payments (a) are secured by liens on the Pledged Collateral, (b) are payable from Water Utility System Revenues, (c) are Parity Obligations under the WIFIA Master Agreement and “Subordinate Contracts” under the WIFIA IPA, (d) are enforceable under the laws of the State without any further action by Valley Water or any other Person, (e) rank subordinate in right of payment and right of security only to the Senior Obligations and (f) are *pari passu* in right of payment and right of security with all other Parity Obligations; provided that upon a Bankruptcy Related Event, the WIFIA Installment Payments shall constitute Senior Obligations under the WIFIA Master Agreement and “Contracts” under the Master

Resolution and shall not be subordinate in right of payment or in right of security to any Lien on the Pledged Collateral, automatically and without the need for any notice to or from any Person, physical delivery, recordation, filing or further act.

3. The WIFIA IPA creates a valid and binding assignment of the Pledged Collateral and pledge of and lien on the Pledged Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Installment Payments, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act.

4. All actions by Valley Water that are required for the application of the Pledged Collateral as required under the WIFIA IPA have been duly and lawfully authorized.

5. Valley Water has complied with the requirements of State law to lawfully pledge the Pledged Collateral and to authorize the use of the Water Utility System Revenues as required by the terms of the WIFIA IPA.

6. Valley Water is not an investment company required to register under the Investment Company Act of 1940, as amended.

The opinions expressed herein are based upon our analysis and interpretation of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. Such conclusions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform you or any other person, whether any such actions are taken or omitted after the date hereof or whether such events do occur or any other matters come to our attention after the date hereof. We have assumed, but not independently verified, that the signatures on all documents, letters, opinions and certificates which we have examined are genuine, that all documents submitted to us are authentic and were duly and properly executed by the parties thereto. As to any facts relevant to the opinions stated herein that we did not independently establish or verify, we have relied upon, without independent verification, the accuracy of the factual matters represented, warranted or certified in such documents.

This opinion is limited to matters governed by the laws of the State and the laws of the United States of America, and we assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction. We call attention to the fact that the rights and obligations under the WIFIA District Documents and the WIFIA District Resolution are subject to bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance or transfer and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State.

By delivering this letter, we are not expressing any opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the WIFIA District Documents, nor are we expressing any opinion with respect to the state or quality

of title to or interest in any assets, other than the Pledged Collateral, and the WIFIA IPA, described in or as subject to the lien of the WIFIA District Documents, or the accuracy or sufficiency of the description of such assets, other than the Pledged Collateral and the WIFIA District Documents, or the remedies available to enforce liens on any such assets, other than the Pledged Collateral, under the WIFIA IPA. Our services as Special Counsel to Valley Water did not involve the rendering of financial or other non-legal advice to you, Valley Water, the Borrower or any other party to the transaction.

This letter is furnished by us to you solely for your benefit and we are not assuming any professional responsibility to any other person whomsoever. This letter is not to be used, circulated, quoted or otherwise referred to for any other purpose, except (a) to the extent disclosure of this opinion is required pursuant to applicable law, (b) to your accountants, attorneys and other professional advisors, and (c) that this opinion may be included in applicable closing transcript. We note that you were represented by counsel on this transaction. No attorney-client relationship has existed or exists between our firm and you in connection with the WIFIA District Documents or the WIFIA District Resolution or by virtue of this letter.

Respectfully submitted,

EXHIBIT F-1

FORM OF CLOSING CERTIFICATE OF BORROWER

[●], 2022

Reference is made to that certain WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation, as Borrower (the “**Borrower**”), Santa Clara Valley Water District, and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (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 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)(vii) 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 a party and make the certifications of the Borrower delivered in connection therewith, and who have been appointed as a Borrower’s Authorized Representative in accordance with Section 25 (*Borrower’s Authorized Representative*) of the WIFIA Master Agreement;

(b) pursuant to Section 11(a)(iii) of the WIFIA Master Agreement, the Borrower has delivered to the WIFIA Lender a copy of the Borrower’s Organizational Documents, as in effect on the Effective Date, each of which Organizational Documents is in full force and effect;

(c) pursuant to Section 11(a)(v) of the WIFIA Master Agreement, the Borrower has delivered to the WIFIA Lender a copy of the WIFIA Borrower Resolution, the WIFIA Borrower Resolution is in full force and effect, and no further instruments or documents (including any resolutions, ordinances, and supplements) are necessary for the Borrower to execute and deliver, and to perform its obligations under, the WIFIA Master Agreement and each other WIFIA Loan Document to which the Borrower is a party and to consummate and implement the transactions contemplated by the WIFIA Master Agreement and each other WIFIA Loan Document to which the Borrower is a party;

(d) pursuant to Section 11(a)(vii)(A) 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

(e) pursuant to Section 11(a)(vii)(B) of the WIFIA Master Agreement, no Borrower Material Adverse Effect, or any event or condition that could reasonably be expected to have a Borrower Material Adverse Effect, has occurred or arisen since the date of the Application.

[Signature Page Follows]

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

**SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING
CORPORATION**

By:_____

Name:

Title:

ANNEX A TO EXHIBIT F-1
INCUMBENCY CERTIFICATE

The undersigned certifies that she is the Secretary of Santa Clara Valley Water District Public Facilities Financing Corporation, a nonprofit public benefit corporation duly organized and existing under the Nonprofit Public Benefit Corporation Law of the State of California (the “**Borrower**”), and as such 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. 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 to which the Borrower is a party on behalf of the Borrower as the Borrower’s Authorized Representative:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	President	_____
Steve M. Mullen	Vice President	_____
Rick Callendar	Chief Executive Officer/General Manager	_____
Darin Taylor	Chief Financial Officer	_____

Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Master Agreement, dated as of the date hereof, by and among the Borrower, Santa Clara Valley Water District, and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency.

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

**SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING
CORPORATION**

By: _____
Name: Michele L. King
Title: Secretary

EXHIBIT F-2

FORM OF CLOSING CERTIFICATE OF DISTRICT

[●], 2022

Reference is made to that certain WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation, as Borrower (the “**Borrower**”), Santa Clara Valley Water District (the “**District**”), and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (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. Notwithstanding anything to the contrary set forth in the WIFIA Master Agreement, the District is not a borrower with respect to any WIFIA Loan, any WIFIA Note, or any WIFIA Loan Agreement and the District has no obligation to make any payment or provision for payment of any WIFIA Loan or any WIFIA Note. No WIFIA Loan Agreement shall constitute a contract between the District and the WIFIA Lender by which the District has incurred an indebtedness.

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

(a) pursuant to Section 11(a)(viii) 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 District to execute the WIFIA Loan Documents to which the District is a party and make the certifications of the District delivered in connection therewith, and who have been appointed as a District’s Authorized Representative in accordance with Section 26 (*District’s Authorized Representative*) of the WIFIA Master Agreement;

(b) pursuant to Section 11(a)(ii) of the WIFIA Master Agreement, the District has delivered to the WIFIA Lender a copy of the adopted Master Resolution, together with any amendments, waivers or modifications thereto, that has been adopted on or prior to the Effective Date, and the Master Resolution is complete and in full force and effect, and all conditions contained in the Master Resolution and the WIFIA Resolutions that are necessary to the closing of the WIFIA transactions contemplated by the WIFIA Loan Agreement have been fulfilled;

(c) pursuant to Section 11(a)(iii) of the WIFIA Master Agreement, the District has delivered to the WIFIA Lender a copy of the District’s Organizational Documents, as in effect on the Effective Date, each of which Organizational Documents is in full force and effect;

(d) pursuant to Section 11(a)(iv) of the WIFIA Master Agreement, the District has delivered to the WIFIA Lender a copy of the WIFIA District Resolution, the WIFIA District Resolution is in full force and effect, and no further instruments or documents (including any resolutions, ordinances, and supplements) are necessary for the District to execute and deliver, and

to perform its obligations under, the WIFIA Master Agreement and each other WIFIA Loan Document to which the District is a party and to consummate and implement the transactions contemplated by the WIFIA Master Agreement and each other WIFIA Loan Document to which the District is a party.

(e) pursuant to Section 11(a)(viii)(A) of the WIFIA Master Agreement, (i) the District's Federal Employer Identification Number is 94-1695531, as evidenced by the District's Form W-9 which is attached hereto as Annex B-1, (ii) the District's Unique Entity Identifier is RL6RZWJN7C83, and (iii) the District has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), which confirmation is attached hereto as Annex B-2;

(f) pursuant to Section 11(a)(viii)(B) of the WIFIA Master Agreement, the representations and warranties of the District set forth in the WIFIA Master Agreement and in each other WIFIA Loan Document to which the District 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)(viii)(C) of the WIFIA Master Agreement, no District Material Adverse Effect, or any event or condition that could reasonably be expected to have a District Material Adverse Effect, has occurred or arisen since the date of the Application.

[Signature Page Follows]

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

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Name:
Title:

ANNEX A TO EXHIBIT F-2
INCUMBENCY CERTIFICATE

The undersigned certifies that she is the Clerk of the Board of Santa Clara Valley Water District, a special district created by the Legislature of the State of California, duly organized and existing under the Constitution and laws of the State of California (the “**District**”), and as such 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 District in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. 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 to which the District is a party on behalf of the District as the District’s Authorized Representative:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Rick Callender	Chief Executive Officer	_____
Darin Taylor	Chief Financial Officer	_____
Charlene Sun	Treasury, Debt and Grants Officer	_____
Melanie Richardson	Assistant Chief Executive Officer, Operations	_____

Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Master Agreement, dated as of the date hereof, by and among the District, Santa Clara Valley Water District Public Facilities Financing Corporation, and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency.

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

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Name: Michele L. King
Title: Clerk of the Board of Directors

EXHIBIT F-3

FORM OF PROJECT CLOSING CERTIFICATE OF BORROWER

[●], 202[●]

Reference is made to that certain WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Santa Clara Valley Water District (the “**District**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”) and that certain WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●] (the “**WIFIA Loan Agreement**”), by and among the Borrower, the District 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*) of the WIFIA Loan Agreement, the undersigned, [●], as Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(b)(vii) of the WIFIA Master Agreement, [the Borrower’s Authorized Representative previously designated and such person’s position and incumbency previously provided to the WIFIA Lender remain unchanged and in full force and effect] [attached hereto as Annex [●] 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 25 (*Borrower’s Authorized Representative*) of the WIFIA Master Agreement];

(b) pursuant to Section 11(b)(iv) of the WIFIA Master Agreement, attached hereto as Annex [●] are copies of each Related Document (to the extent not previously delivered to the WIFIA Lender) and Existing Construction Contract to which it is a party 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)(vii)(A) 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 of the WIFIA Master Agreement and the WIFIA Loan Agreement), 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 and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms of the WIFIA Master Agreement and the WIFIA Loan Agreement), does not exceed eighty percent (80%) of Total Project Costs for the Project;

(d) pursuant to Section 11(b)(vii)(B) 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]];

(e) pursuant to Section 11(b)(vii)(C) of the WIFIA Master Agreement, the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document to which the Borrower is a party are true and correct on and as of the 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;

(f) pursuant to Section 11(b)(vii)(D) of the WIFIA Master Agreement, no Borrower Material Adverse Effect, or any event or condition that could reasonably be expected to have a Borrower Material Adverse Effect, has occurred or arisen since the Effective Date; [and]

(g) pursuant to Section 11(b)(ix) of the WIFIA Master Agreement, none of ratings in the rating letters delivered to the WIFIA Lender pursuant to such Section 11(b)(ix) has been reduced, withdrawn or suspended as of the WIFIA Loan Agreement Effective Date[; and][.]

(h) *[any other attachments and provision as may apply to the WIFIA Loan Agreement].*

[Signature Page Follows]

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

**SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING
CORPORATION**

By:_____

Name:

Title:

EXHIBIT F-4

FORM OF PROJECT CLOSING CERTIFICATE OF DISTRICT

[●], 202[●]

Reference is made to that certain WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Santa Clara Valley Water District (the “**District**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”) and that certain WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●] (the “**WIFIA Loan Agreement**”), by and among the Borrower, the District 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*) of the WIFIA Loan Agreement, the undersigned, [●], as District’s Authorized Representative, does hereby certify on behalf of the District and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(b)(viii) of the WIFIA Master Agreement, [the District’s Authorized Representative previously designated and such person’s position and incumbency previously provided to the WIFIA Lender remain unchanged and in full force and effect] [attached hereto as Annex [●] is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the District to execute the WIFIA Loan Documents to which the District is or will be a party, and who have been appointed as a District’s Authorized Representative in accordance with Section 26 (*District’s Authorized Representative*) of the WIFIA Master Agreement];

(b) pursuant to Section 11(b)(iv) of the WIFIA Master Agreement, attached hereto as Annex [●] are copies of each Related Document (to the extent not previously delivered to the WIFIA Lender) and Existing Construction Contract to which it is a party 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)(viii)(A) 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 of the WIFIA Master Agreement and the WIFIA Loan Agreement), 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 and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms of the WIFIA Master Agreement and the WIFIA Loan Agreement), does not exceed eighty percent (80%) of Total Project Costs for the Project;

(d) pursuant to Section 11(b)(viii)(B) of the WIFIA Master Agreement, the District is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

(e) pursuant to Section 11(b)(viii)(C) of the WIFIA Master Agreement, the District has maintained (i) the Federal Employer Identification Number provided to the WIFIA Lender as a condition precedent to the Effective Date, (ii) the Unique Entity Identifier provided to the WIFIA Lender as a condition precedent to the Effective Date, and (iii) active registration status with the federal System for Award Management (www.SAM.gov);

(f) pursuant to Section 11(b)(viii)(D) of the WIFIA Master Agreement, the representations and warranties of the District set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document to which the District 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]

(g) pursuant to Section 11(b)(viii)(E) of the WIFIA Master Agreement, no District Material Adverse Effect, or any event or condition that could reasonably be expected to have a District Material Adverse Effect, has occurred or arisen since the Effective Date[; and][.]

(h) *[any other attachments and provision as may apply to the WIFIA Loan Agreement].*

[Signature Page Follows]

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

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Name:
Title:

EXHIBIT G

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

United States Environmental Protection Agency
WJC-E 7334A
1200 Pennsylvania Avenue NW
Washington, DC 20460
Attention: WIFIA Director

Project: Water Reliability Program – Project [●] (WIFIA ID – [●])

Dear Director:

This certificate is provided pursuant to Section 20(f)(i)(A) (*Reporting Requirements of the District – Notices – Substantial Completion*) of that certain WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Santa Clara Valley Water District (the “**District**”) and the United States Environmental Protection Agency, acting by and through its Administrator (the “**WIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this certificate have the meanings assigned to those terms in that certain WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●] (the “**WIFIA Loan Agreement**”), by and among the Borrower, the District and the WIFIA Lender or, if not defined therein, the WIFIA Master Agreement.

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

- (a) on *[insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the Construction Contracts for the Project;
- (b) Substantial Completion has been declared under each of the Construction Contracts for the Project and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion for the Project has been achieved and the Substantial Completion Date of the Project 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.

SANTA CLARA VALLEY WATER DISTRICT,
by its authorized representative

By: _____
Name:
Title:

EXHIBIT H

FORM OF CONSTRUCTION MONITORING REPORT

VIA EMAIL

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

Re: Water Reliability Program – Project [●] (WIFIA ID – [●])

This Construction Monitoring Report for the period of [insert relevant period] (the “**Quarterly Period**”) is provided pursuant to Section 20(c)(ii) (*Reporting Requirements of the District – Construction Reporting – Construction Monitoring Report*) of that certain WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Santa Clara Valley Water District (the “**District**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”). Unless otherwise defined herein, all capitalized terms in this Construction Monitoring Report have the meanings assigned to those terms in that certain WIFIA Loan Agreement (WIFIA ID – [●]), dated as of [●] (the “**WIFIA Loan Agreement**”), by and among the Borrower, the District and the WIFIA Lender or, if not defined therein, the WIFIA Master 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 Master Agreement and 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: _____

**SANTA CLARA VALLEY WATER
DISTRICT**

By: _____
Name: _____
Title: _____

APPENDIX A TO EXHIBIT H²⁰

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
Total										

²⁰ 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.

EXHIBIT I
FORM OF PUBLIC BENEFITS REPORT

Pursuant to Section 11(b)(xi) and Section 20(d) of that certain WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), by and among Santa Clara Valley Water District Public Facilities Financing Corporation (the “**Borrower**”), Santa Clara Valley Water District (the “**District**”), and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”), the District is providing this Public Benefits Report in connection with Water Reliability Program – Project [●] (WIFIA ID – [●]). Capitalized terms used in this Public Benefits Report and not defined shall have the respective meanings ascribed to such terms in that certain WIFIA Loan Agreement, dated as of [●], by and among the Borrower, the District and the WIFIA Lender or, if not defined therein, the WIFIA Master Agreement.

Reporting Period: [Prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) days following the fifth (5th) 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 WIFIA Loan Agreement Effective Date and the Substantial Completion Date:

WIFIA projects that the Project will create [__] total jobs, of which the District projects [__] will be direct jobs.

(ii) Indicate (yes or no) whether the Project will assist the District 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 District with the following environmental measure:²¹

[__]

²¹ NTD: WIFIA Lender to provide applicable measure.

EXHIBIT J
FORM OF WIFIA PROJECT TERM SHEET

[Attached.]

EXHIBIT K
FORM OF WIFIA LOAN AGREEMENT

[Attached.]

EXHIBIT L
FORM OF WIFIA IPA²²

[Attached.]

²² **Note to Borrower:** Please provide a draft of the form of WIFIA IPA.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA LOAN AGREEMENT

for up to \$[173,282,249]

with

**SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING
CORPORATION and**

SANTA CLARA VALLEY WATER DISTRICT

for the

**WATER RELIABILITY PROGRAM – PROJECT 1
(WIFIA ID – 22115CA)**

Dated as of [●], 2022

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND INTERPRETATION	2
Section 1. Definitions.....	2
Section 2. Interpretation.....	3
ARTICLE II THE WIFIA LOAN.....	4
Section 3. WIFIA Loan Amount.....	4
Section 4. Disbursement Conditions.....	4
Section 5. [Reserved]	4
Section 6. Interest Rate	4
Section 7. [Reserved]	4
Section 8. Payment of Principal and Interest	4
Section 9. Prepayment	5
Section 10. Fees and Expenses	5
ARTICLE III CONDITIONS PRECEDENT	5
Section 11. Conditions Precedent	5
ARTICLE IV REPRESENTATIONS AND WARRANTIES	6
Section 12. Representations and Warranties of the Borrower	6
Section 13. Representations and Warranties of the District	6
Section 14. Representations and Warranties of WIFIA Lender	7
ARTICLE V COVENANTS	7
Section 15. Covenants of the Borrower	7
Section 16. [Reserved]	7
Section 17. Covenants of the District	7
Section 18. [Reserved]	7
Section 19. [Reserved]	7
Section 20. [Reserved]	7
ARTICLE VI EVENTS OF DEFAULT	8
Section 21. Events of Default and Remedies.....	8
ARTICLE VII MISCELLANEOUS	8
Section 22. Governing Law	8
Section 23. Effectiveness	8
Section 24. Survival.....	8
Section 25. Miscellaneous	8

SCHEDULES

SCHEDULE I – Project Budget

SCHEDULE II – Construction Schedule

SCHEDULE III – Project

SCHEDULE 13(m) – Existing Construction Contracts

EXHIBIT

EXHIBIT A – WIFIA Loan Amortization Schedule

WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of [●], 2022, is by and among **SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION**, a nonprofit public benefit corporation duly organized and existing under the Nonprofit Public Benefit Corporation Law of the State of California (the “**State**”), with an address at 5750 Almaden Expressway, San Jose, CA 95118 (the “**Borrower**”), **SANTA CLARA VALLEY WATER DISTRICT**, a special district created by the State Legislature duly organized and existing under the laws of the State, with an address at 5750 Almaden Expressway, San Jose, CA 95118 (the “**District**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency, 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, § 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. §§ 3901-3915;

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, the District and the WIFIA Lender entered into that certain WIFIA Master Agreement, dated as of [●], 2022 (the “**WIFIA Master Agreement**”), pursuant to which the parties thereto have set forth certain common terms and conditions applicable to each WIFIA Loan and Project under the Master Program;

WHEREAS, the District, as agent of the Borrower pursuant to the WIFIA IPA (as defined below), has requested that the WIFIA Lender make the WIFIA Loan (as defined below) in a principal amount not to exceed \$[173,282,249] (excluding interest to be capitalized in accordance with the terms hereof and of the WIFIA Master Agreement) to be used to pay a portion of the Eligible Project Costs for the Project;

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of the WIFIA Loan, subject to the terms and conditions contained herein 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 purchase of the WIFIA Note (as defined below) to be issued by the Borrower, upon the terms and conditions set forth herein and in the WIFIA Master Agreement;

WHEREAS, the Borrower has entered into that certain Installment Purchase Agreement, dated as of [●], 2022 (the “**WIFIA IPA**”), with the District for the WIFIA Loan, pursuant to which (i) the Borrower agrees to purchase the Project from the District in exchange for the provision of

funds, in the amount of the WIFIA Loan, and (ii) the District agrees to purchase the Project from the Borrower in exchange for the payment of WIFIA Installment Payments by the District to the Borrower, such payments being secured by the Pledged Collateral;

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Note in accordance with the terms and provisions of this Agreement, the WIFIA Master Agreement and the WIFIA Note; and

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the Borrower and the District set forth in the Application, the WIFIA Master Agreement, and the supporting information provided by the Borrower and the District (as the case may be).

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 among the Borrower, the District and the WIFIA Lender as follows:

ARTICLE I **DEFINITIONS AND INTERPRETATION**

Section 1. **Definitions.** Each capitalized term 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:

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

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

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II (Construction Schedule)**, and (b) any updates thereto included in the Construction Monitoring Report most recently submitted to the WIFIA Lender in accordance with Section 20(c)(ii) (*Reporting Requirements of the District – Construction Reporting – Construction Monitoring Report*) of the WIFIA Master Agreement.

“**Debt Service Payment Commencement Date**” means the earliest to occur of (a) [December 1, 2032]; (b) if the Capitalized Interest Period ends pursuant to Section 8(b) (*Payment of Principal and Interest – Capitalized Interest*) of the WIFIA Master Agreement due to the occurrence of an Event of Default, the first Payment Date immediately following the end of the Capitalized Interest Period; and (c) the Payment Date falling closest to, but not later than, the fifth (5th) anniversary of the Substantial Completion Date.

“**Final Maturity Date**” means the earlier of (a) [June 1, 2067] (or such earlier date as is set forth in an updated **Exhibit A (WIFIA Loan Amortization Schedule)**) pursuant to Section 8(f)

(*Payment of Principal and Interest – Adjustments to WIFIA Loan Amortization Schedule*) of the WIFIA Master Agreement); and (b) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

“Interest Only Period” means the period commencing on the Debt Service Payment Commencement Date and ending on [May 31, 2055] (or on such earlier date as all amounts due or to become due to the WIFIA Lender under this Agreement and the WIFIA Master Agreement have been irrevocably paid in full in cash).

“Interest Payment Date” means each June 1 and December 1.

“Principal Payment Date” means each June 1.

“Project” means the Water Reliability Program – Project 1, located in the County of Santa Clara, California, which consists of the following Project components to improve the Water Utility System by improving water supply reliability and safety and reducing aquifer depletion and flooding: (a) the Anderson Dam Seismic Retrofit and (b) the Anderson Dam Coyote Percolation Dam Replacement, as described in further detail in **Schedule III (Project)**.

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

“Projected Substantial Completion Date” means [June 30, 2032], as such date may be adjusted in accordance with Section 20(c)(ii) (*Reporting Requirements of the District – Construction Reporting – Construction Monitoring Report*) of the WIFIA Master Agreement.

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

“WIFIA Loan” means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, in the WIFIA Master Agreement and in the WIFIA Note, pursuant to the Act, in a principal amount not to exceed \$[173,282,249] (excluding interest to be capitalized in accordance with the terms hereof and of the WIFIA Master Agreement), to be used in respect of Eligible Project Costs with respect to the Project.

“WIFIA Loan Agreement Effective Date” means the date of this Agreement.

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

“WIFIA Master Agreement” has the meaning provided in the recitals hereto.

“WIFIA Note” means the note issued and delivered by the Borrower in substantially the form of Exhibit A (*Form of WIFIA Note*) to the WIFIA Master Agreement.

Section 2. Interpretation.

(a) Except as otherwise expressly provided herein, the rules of interpretation set forth in Section 2 (*Interpretation*) 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 Note” were a reference, respectively, to the WIFIA Loan or the WIFIA Note 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 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed \$[173,282,249] (excluding interest to be capitalized in accordance with the terms hereof and of the WIFIA Master Agreement). 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 4. Disbursement Conditions. The WIFIA Loan shall be disbursed in accordance with Section 4 (*Disbursement Conditions*) of the WIFIA Master Agreement.

Section 5. [Reserved].

Section 6. Interest Rate. The interest rate with respect to the Outstanding WIFIA Loan Balance for the WIFIA Loan shall be [●] and [●] hundredths percent ([●%]) per annum. Interest will accrue and be computed on the Outstanding WIFIA Loan Balance from time to time pursuant to, and otherwise in accordance with, Section 6 (*Interest Rate*) of the WIFIA Master Agreement.

Section 7. [Reserved].

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service. Payments of WIFIA Installment Payments under the WIFIA IPA shall be made by the District on each Installment Payment Date occurring on or after the Debt Service Payment Commencement Date in accordance with Section 8(a) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*) of the WIFIA Master Agreement. Payments of WIFIA Debt Service shall be made by the Borrower on each Payment Date occurring on or after the Debt Service Payment Commencement Date in the amounts and manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule and otherwise in accordance with Section 8(a) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*) of the WIFIA Master Agreement.

(b) WIFIA Note. 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 Note, having a maximum principal amount of

\$[173,282,249] (excluding interest to be capitalized in accordance with the terms hereof and of the WIFIA Master Agreement).

(c) Interest Only Period. During the Interest Only Period, the WIFIA Debt Service payable by the Borrower shall consist of one hundred percent (100%) of the amount of interest then due and payable on the Outstanding WIFIA Loan Balance, and no payment of principal will be due and payable.

Section 9. Prepayment. The WIFIA Note shall be prepaid in accordance with Section 9(a) (*Prepayment – Mandatory Prepayment from Insurance Proceeds or Eminent Domain Proceeds*) of the WIFIA Master Agreement. The Borrower may prepay the WIFIA Loan in accordance with Section 9(b) (*Prepayment – Optional Prepayments*) of the WIFIA Master Agreement.

Section 10. Fees and Expenses.¹ The District shall pay, on behalf of the Borrower, to the WIFIA Lender, in each case pursuant to and in accordance with Section 10 (*Fees and Expenses*) of the WIFIA Master Agreement:

(a) a one-time Servicing Set-Up Fee equal to \$[●];

(b) an annual Construction Period Servicing Fee equal to \$[●] per annum; provided that the initial Construction Period Servicing Fee shall be in a pro-rated amount equal to \$[●]² in accordance with Section 10(a)(ii) (*Fees and Expenses – Fees*) of the WIFIA Master Agreement; and

(c) an Operating Period Servicing Fee equal to \$[●] per annum; and

(d) 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 11. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. 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 Note," or any "WIFIA Loan Agreement" were a reference, respectively, to the Project, the WIFIA Loan, the WIFIA Note, or this Agreement (as such terms are defined in this Agreement)).

¹ **NTD:** The amount of fees under this Section 10 are subject to EPA team's review.

² **NTD:** This pro-rated amount assumes a closing date in [●] 2022.

(b) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender's obligation to make any disbursement of the WIFIA Loan to the Borrower (including the initial disbursement hereunder) 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 disbursements 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)).

ARTICLE IV **REPRESENTATIONS AND WARRANTIES**

Section 12. Representations and Warranties of the Borrower. The representations and warranties set out in Section 12 (*Representations and Warranties of the 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 IPA", (c) any "WIFIA Loan" or (d) any "WIFIA Note" were a reference, respectively, to (i) the Project, (ii) the WIFIA IPA, (iii) the WIFIA Loan or (iv) the WIFIA Note (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 13. Representations and Warranties of the District. The representations and warranties set out in Section 13 (*Representations and Warranties of the District*) 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 13 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 IPA" or (c) any "WIFIA Loan" were a reference, respectively, to (i) the Project, (ii) the WIFIA IPA or (iii) the WIFIA Loan (as such terms are defined in this Agreement)). The District 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 14. Representations and Warranties of WIFIA Lender. The representations and warranties set out in Section 14 (*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 and the District 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 15. Covenants of the Borrower. The Borrower covenants and agrees, until the date the WIFIA Loan and all of the obligations of the Borrower under the WIFIA Loan Documents 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 15 (*Affirmative Covenants of the Borrower*), Section 16 (*Negative Covenants of the Borrower*) and Section 19 (*Reporting Requirements of the Borrower*) 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 IPA”, (c) any “WIFIA Loan” or (d) any “WIFIA Note” were a reference, respectively, to (i) the Project, (ii) the WIFIA IPA, (iii) the WIFIA Loan or (iii) the WIFIA Note (as such terms are defined in this Agreement)).

Section 16. [Reserved].

Section 17. Covenants of the District. The District covenants and agrees, until the date the WIFIA Loan and all of the obligations of the Borrower and the District under the WIFIA Loan Documents 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 or the District, unless the WIFIA Lender waives compliance in writing, to comply with each of the covenants set forth in the WIFIA Master Agreement, including Section 17 (*Affirmative Covenants of the District*), Section 18 (*Negative Covenants of the District*) and Section 20 (*Reporting Requirements of the District*) 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 IPA”, (c) any “WIFIA Loan” or (d) any “WIFIA Note” were a reference, respectively, to (i) the Project, (ii) the WIFIA IPA, (iii) the WIFIA Loan or (iv) the WIFIA Note (as such terms are defined in this Agreement)).

Section 18. [Reserved].

Section 19. [Reserved].

Section 20. [Reserved].

ARTICLE VI EVENTS OF DEFAULT

Section 21. Events of Default and Remedies.

(a) Each Borrower Event of Default set out in Section 21(a) (*Events of Default and Remedies*) of the WIFIA Master Agreement shall constitute an Event of Default hereunder, except as otherwise expressly provided in Section 21(a) (*Events of Default and Remedies*) of the WIFIA Master Agreement.

(b) Each District Event of Default set out in Section 21(b) (*Events of Default and Remedies*) of the WIFIA Master Agreement shall constitute an Event of Default hereunder, except as otherwise expressly provided in Section 21(b) (*Events of Default and Remedies*) of the WIFIA Master Agreement.

(c) Upon the occurrence and during the continuation of any Event of Default hereunder, the WIFIA Lender 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 21 (*Events of Default and Remedies*) of the WIFIA Master Agreement.

ARTICLE VII MISCELLANEOUS

Section 22. 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 23. Effectiveness. This Agreement shall be effective on the WIFIA Loan Agreement Effective Date.

Section 24. Survival. The indemnification requirements of Section 37 (*Indemnification*) of the WIFIA Master Agreement, as incorporated herein, the reporting and record keeping requirements of Sections 15(j) (*Affirmative Covenants of the Borrower – Access; Records*) and 17(p) (*Affirmative Covenants of the District – Access; Records*) of the WIFIA Master Agreement, 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 25. Miscellaneous. Article VII (*Miscellaneous*) of the WIFIA Master Agreement (other than Sections 30 (*Governing Law*), 39 (*Effectiveness*) and 40 (*Survival*) 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 Note” were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Note (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.

**SANTA CLARA VALLEY WATER DISTRICT
PUBLIC FACILITIES FINANCING
CORPORATION**, by its authorized representative

By: _____

Name:

Title:

SANTA CLARA VALLEY WATER DISTRICT,
by its authorized representative

By: _____

Name:

Title:

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

By: _____

Name: Michael S. Regan

Title: Administrator

SCHEDULE I
PROJECT BUDGET

SOURCES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
WIFIA Loan	\$173,282,249	49.00%
Revenue Bonds	\$32,922,945	9.31%
Borrower Cash	\$32,446,098	9.17%
Previously Incurred Eligible Costs	\$100,985,951	28.56%
Safe Clean Water Fund Transfer	14,000,000	3.96%
Total Sources of Funds	\$353,637,243	100.00%
USES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
Design	\$63,803,893	18.04%
Planning	\$48,068,472	13.59%
Land Acquisition	\$28,548,046	8.07%
Other Capital Costs	\$213,048,832	60.25%
Financing Costs	\$168,000	0.05%
Total Uses of Funds	\$353,637,243	100.00%
Total Eligible Project Costs	\$353,637,243	100.00%
Total Project Costs	\$353,637,243	100.00%

SCHEDULE II
CONSTRUCTION SCHEDULE³

Projected Substantial Completion Date: [June 30, 2032]

Project Component	Design Start	Design End	Construction Start	Construction End

³ **Note to Borrower:** Please complete this schedule.

SCHEDULE III

PROJECT

The Project is the Water Reliability Program – Project 1, located in the County of Santa Clara, California, which consists of the following Project components to improve the Water Utility System by improving water supply reliability and safety and reducing aquifer depletion and flooding:

- (a) Anderson Dam Seismic Retrofit: Design and planning for the rebuild and rehabilitation of the Anderson dam and increase of the dam's spillway and outlet capacities; and
- (b) Anderson Dam Coyote Percolation Dam Replacement: Design and planning for the replacement of existing flashboard dam with an inflatable bladder dam that can be deployed and released to manage higher capacity flows from the new Anderson dam tunnel.

SCHEDULE 13(m)
EXISTING CONSTRUCTION CONTRACTS⁴

Contract Name	Effective Date	Construction Contractor	Amount	Description

⁴ **Note to Borrower:** Please complete the table.

EXHIBIT A
WIFIA LOAN AMORTIZATION SCHEDULE⁵

[*See attached*]

⁵ NTD: WIFIA Lender to provide on the WIFIA Loan Agreement Effective Date.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[●], 2022

Santa Clara Valley Water District Public Facilities Financing Corporation
 5750 Almaden Expressway
 San Jose, CA 95118
 Attention: Treasurer
 Email: Wifia-loan-admin@valleywater.org

Santa Clara Valley Water District
 5750 Almaden Expressway
 San Jose, CA 95118
 Attention: Treasury, Debt and Grants Officer
 Email: Wifia-loan-admin@valleywater.org

RE: WIFIa Loan Term Sheet for Water Reliability Program – Project 1 with Santa Clara Valley Water District Public Facilities Financing Corporation and Santa Clara Valley Water District (WIFIa ID – 22115CA)

Ladies and Gentlemen:

This WIFIa Loan Term Sheet (this “**Term Sheet**”) constitutes (a) the approval of the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “**USEPA**”), of the application for credit assistance of the Borrower (as defined below) received on June 17, 2022, as supplemented on [●], 2022 (the “**Application**”) and (b) the agreement of USEPA to provide financing for the above-referenced project (as further described below, the “**Project**”) in the form of a secured loan (the “**WIFIa Loan**”), pursuant to the Water Infrastructure Finance and Innovation Act (“**WIFIa**”), § 5021 *et seq.* of Public Law 113-121 (as amended, and as may be amended from time to time, the “**Act**”), codified as 33 U.S.C. §§ 3901-3915, subject in all respects to (i) the terms and conditions contained herein, (ii) the terms and conditions contained in that certain WIFIa Master Agreement, dated as of [●], 2022, by and among the WIFIa Lender (as defined below), the Borrower and the District (as defined below) (the “**WIFIa Master Agreement**”), and (iii) the execution and delivery of the WIFIa loan agreement with respect to the Project to be entered into on or after the date hereof (the “**WIFIa Loan Agreement**”) on terms and conditions acceptable to USEPA contained therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WIFIa Loan Agreement or, if not defined therein, the WIFIa Master Agreement.

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

This Term Sheet shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable, and the internal laws of the State of California,

if and to the extent such federal laws are not applicable. This Term Sheet, and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Electronic delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

INDICATIVE TERMS OF THE WIFIA LOAN

WIFIA LENDER	United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “ WIFIA Lender ”).
BORROWER	Santa Clara Valley Water District Public Facilities Financing Corporation, a nonprofit public benefit corporation duly organized and existing under the Nonprofit Public Benefit Corporation Law of the State of California (the “ Borrower ”).
DISTRICT	Santa Clara Valley Water District, a special district created by the State Legislature duly organized and existing under the laws of the State of California (the “ District ”).
PROJECT	The “ Project ” means the Water Reliability Program – Project 1, located in the County of Santa Clara, California, which consists of the following Project components to improve the Water Utility System by improving water supply reliability and safety and reducing aquifer depletion and flooding: (a) the Anderson Dam Seismic Retrofit and (b) the Anderson Dam Coyote Percolation Dam Replacement, as further described in Schedule III (<i>Project</i>) to the WIFIA Loan Agreement.
WIFIA LOAN AMOUNT	A maximum principal amount (sum of disbursements) not to exceed \$[173,282,249]; <u>provided</u> that (a) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act, shall not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs for the Project, (b) the total federal assistance for the Project, including but not limited to the maximum principal amount of the WIFIA Loan and all federal grants, shall not exceed eighty percent (80%) of Total Project Costs for the Project and (c) such maximum principal amount does not include any interest that may be capitalized in accordance with the WIFIA Master Agreement and added to the principal amount of the WIFIA Loan.
INTEREST RATE	The WIFIA Loan shall bear interest at a fixed rate, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the WIFIA Loan) as published, on the execution date of the WIFIA Loan Agreement, in the United States Treasury Bureau of the Fiscal Service’s daily rate table for State and Local Government Series (SLGS) securities. The WIFIA Loan shall also bear default interest at a rate of two hundred (200) basis points above the otherwise applicable interest

	rate, at such times and upon such terms as provided in the WIFIA Master Agreement.
PAYMENT DATES	<p>Pursuant to the WIFIA Loan Documents, not later than the fifth (5th) day prior to each interest payment date occurring on or after the debt service payment commencement date (each such date, an “Installment Payment Date”), the District shall make installment payments of interest and principal scheduled to be paid by the District to the Borrower (“WIFIA Installment Payments”), which shall be assigned by the Borrower to the WIFIA Lender.</p> <p>Principal of the WIFIA Loan shall be repaid in annual installments on June 1 of each year, beginning on [June 1, 2055].</p> <p>Interest on the WIFIA Loan shall be paid in arrears on June 1 and December 1 of each year, beginning on [December 1, 2032].</p> <p>The debt service payment commencement date shall in no event be later than five (5) years after the Substantial Completion Date of the Project.</p> <p>Subject to the terms and conditions of the WIFIA Loan Agreement and the WIFIA Master Agreement, no principal or interest shall be paid during the capitalized interest period.</p> <p>During the Interest Only Period, the WIFIA Debt Service payable by the Borrower shall consist of one hundred percent (100%) of the amount of interest then due and payable on the Outstanding WIFIA Loan Balance, and no payment of principal will be due and payable.</p>
FINAL MATURITY DATE	The earlier of (a) [June 1, 2067] and (b) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.
PROJECTED SUBSTANTIAL COMPLETION DATE	[June 30, 2032].
DEDICATED SOURCE OF REPAYMENT	<p>The dedicated source of repayment for the WIFIA Installment Payments shall be Water Utility System Revenues (as defined below) in accordance with the terms of the WIFIA IPA and the WIFIA Master Agreement.</p> <p>“Water Utility System Revenues” means with respect to any District Fiscal Year or other period, (a) Current Water Utility System Revenues, <i>plus</i> (b) deposits to the Water Utility System Revenue Fund from amounts on deposit in the Rate Stabilization Reserve Fund, representing amounts other than Current Water Utility System Revenues, <i>minus</i> (c) any Current Water Utility</p>

	<p>System Revenues transferred from the Water Utility System Revenue Fund to the Rate Stabilization Reserve Fund.</p> <p>“Current Water Utility System Revenues” means with respect to any District Fiscal Year or other period, (a) all gross income and revenue of the Water Utility System, determined in accordance with GAAP, including all rates, fees, charges (including connection fees, contributions in aid of construction legally available for Debt Service, and charges and standby or water availability charges), amounts allocated to the District pursuant to Article XIII A of the Constitution of the State of California and Section 95 et seq. of the California Revenues and Taxation Code (or any successor or supplementary provisions) and allocated by the Board of Directors of the District to the Water Utility System and all other income and revenue howsoever derived by the District from the ownership or operation of the Water Utility System or arising from the Water Utility System, (b)(i) all income from the deposit or investment of any money in the Water Utility System Revenue Fund, the Rate Stabilization Reserve Fund and (ii) all income from the investment of money held in any construction or acquisition fund established pursuant to a Trust Agreement (as defined in the Master Resolution) to the extent such income is required to be deposited in the Water Utility System Revenue Fund, and (c) deposits to the Water Utility System Revenue Fund from amounts on deposit in Special Purpose Funds made in accordance with Section 2.4 (<i>Establishment of Special Purpose Funds</i>) of the Master Resolution; but excluding (x) benefit assessments and proceeds of taxes, including proceeds of taxes levied to pay costs with respect to the State Water Project, (y) any refundable deposits made to establish credit and (z) advances or contributions in aid of construction.</p>
<p>SECURITY OF WIFIA LOAN</p>	<p>The WIFIA Loan shall be secured by a pledge and assignment by the Borrower for the benefit of the WIFIA Lender of (a) all of the Borrower’s right, title and interest to receive the Corporation Revenues (as defined below), (b) all of the Borrower’s rights to receive amounts from the District from the WIFIA Debt Service Account and (c) all of the Borrower’s rights and remedies to enforce the WIFIA IPA upon an event of default under the WIFIA IPA.</p> <p>“Corporation Revenues” means (i) the WIFIA Installment Payments received by the Borrower pursuant to or with respect to the WIFIA IPA and (b) all interest or gain derived from the investment of amounts in any of the funds or accounts established under the WIFIA IPA or the WIFIA Master Agreement.</p>

	The debt obligation of the Borrower under the WIFIA Loan shall be evidenced through the issuance by the Borrower of the WIFIA Note.
SECURITY AND LIEN PRIORITY OF WIFIA INSTALLMENT PAYMENTS; WIFIA SPRINGING LIEN	<p>The obligation of the District to make the WIFIA Installment Payments under the WIFIA IPA shall (a) be secured by the Liens on the Pledged Collateral (as defined below), (b) not be subordinate in right of payment or in right of security to any Lien on the Pledged Collateral other than, during any period when a Bankruptcy Related Event has not occurred, the Liens on the Pledged Collateral for the benefit of the Senior Obligations and with respect to Maintenance and Operation Costs, and (c) (i) during any period when a Bankruptcy Related Event has not occurred, be <i>pari passu</i> in right of payment and right of security only to the Lien on the Pledged Collateral for the benefit of the Parity Obligations and (ii) during any period when a Bankruptcy Related Event has occurred, be <i>pari passu</i> in right of payment and right of security only to the Lien on the Pledged Collateral for the benefit of the Senior Obligations, in the case of each of clauses (i) and (ii) above, without the need for any notice to or from any Person, physical delivery, recordation, filing or further act.</p> <p>Prior to the occurrence of a Bankruptcy Related Event, (A) the obligation of the District to make the WIFIA Installment Payments under the WIFIA IPA constitutes Parity Obligations under the WIFIA Master Agreement and “Subordinate Contracts” under the WIFIA IPA, and (B) the WIFIA IPA constitutes a “Subordinate Contract” under the WIFIA IPA. Upon the occurrence of a Bankruptcy Related Event, (1) the obligation of the District to make the WIFIA Installment Payments under the WIFIA IPA shall constitute Senior Obligations under the WIFIA Master Agreement and “Contracts” under the Master Resolution and shall not be subordinate in right of payment or in right of security to any Lien on the Pledged Collateral, and (2) the WIFIA IPA shall constitute a “Contract” under the Master Resolution.</p> <p>“Pledged Collateral” means (v) all Water Utility System Revenues, the Water Utility System Revenue Fund and all amounts on deposit in the Water Utility System Revenue Fund, (w) the Rate Stabilization Reserve Fund and all amounts on deposit in the Rate Stabilization Reserve Fund, (x) each Special Purpose Fund and all amounts on deposit in such Special Purpose Fund, (y) the Project Acquisition Fund and all amounts on deposit in the Project Acquisition Fund and (z) the WIFIA Debt Service Account and all amounts on deposit in the WIFIA Debt Service Account.</p>
PREPAYMENT	The WIFIA Loan shall be subject to mandatory prepayment, without prepayment premium, from and in the amount of any

	<p>prepayments of the WIFIA Installment Payments received from the District pursuant to the WIFIA IPA and Section 17(f)(vi) (<i>Affirmative Covenants of the District – Insurance; Eminent Domain; Net Proceeds</i>) of the WIFIA Master Agreement.</p> <p>After the Final Disbursement Date, the Borrower may prepay the WIFIA Loan in whole or in part, from time to time, but not more than annually, without penalty or premium; <u>provided</u> that any such prepayment shall be made in a minimum principal amount of \$1,000,000 or any integral multiple of \$1.00 in excess thereof, and otherwise in accordance with the WIFIA Loan Agreement and the WIFIA Master Agreement.</p>
RATE COVENANT	<p>(a) To the fullest extent permitted by law, the District shall fix and prescribe rates, fees and charges for Water Service at the commencement of each District Fiscal Year, which, together with other Current Water Utility System Revenues or Net Water Utility System Revenues, as the case may be, are reasonably expected to be at least sufficient to yield during each District Fiscal Year (i) Current Water Utility System Revenues in an amount sufficient to meet the Maintenance and Operation Costs, the Debt Service for the then current District Fiscal Year and the interest and principal payable for the then current District Fiscal Year in respect of any obligations that are secured by a Lien on the Pledged Collateral or payable from the Pledged Collateral, in each case on a basis subordinate to the Parity Obligations, (ii) Net Water Utility System Revenues equal to one hundred twenty-five percent (125%) of the Senior Debt Service for such District Fiscal Year and (iii) Net Water Utility System Revenues for such District Fiscal Year equal to one hundred ten percent (110%) of the Debt Service for such District Fiscal Year. For purposes of clause (iii) above, Net Water Utility System Revenues may be increased by Budgeted Transfers (measured as of the last day of the immediately preceding District Fiscal Year) in an amount no greater than ten percent (10%) of Debt Service referred to in clause (iii) above. The District may make adjustments from time to time in such rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Current Water Utility System Revenues or Net Water Utility System Revenues, as the case may be, from such reduced rates, fees and charges are reasonably expected to be sufficient to meet the requirements of this clause (a). (b) For avoidance of doubt, so long as the District has complied with its obligations set forth in clause (a) above, the failure of Current Water Utility System Revenues to meet the threshold set forth in clause (a)(i) above or the failure of Net Water Utility System Revenues to meet the thresholds set forth in</p>

	<p>clause (a)(ii) or clause (a)(iii) above at the end of an District Fiscal Year shall not constitute a Default or an Event of Default so long as the District has complied with clause (a) above at the commencement of the succeeding District Fiscal Year.</p> <p>(c) The District shall charge and collect or cause to be collected the rates, fees and charges applicable to the Water Service and will not permit any part of the Water Utility System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the Government, the State and any city, county, district, political subdivision, public corporation or agency of any thereof) if such use would prevent the District from complying with the requirements of clause (a) above.</p> <p>Budgeted Transfers means, for any District Fiscal Year, lawfully available amounts, including in the Rate Stabilization Reserve Fund, as of the last day of such District Fiscal Year, in each case, (a) which may be lawfully used to pay the WIFIA Installment Payments and (b) that have been transferred to the Water Utility System Revenue Fund, pursuant to a budget process where such amounts have been budgeted and approved by the Board of Directors of the District (and which removal from the Water Utility System Revenue Fund would require a separate budget and approval process by the Board of Directors of the District prior to any such removal), for application solely to the Water Utility System.</p>
<p>ADDITIONAL OBLIGATIONS OF THE DISTRICT</p>	<p>(a) The District shall not create, incur or suffer to exist (i) any obligations which are senior or prior in right of payment or right of security with respect to the Pledged Collateral to the Parity Obligations, other than the Senior Obligations (prior to the occurrence of a Bankruptcy Related Event); (ii) any obligations, all or a portion of the proceeds of which are or will be applied at any time to fund all or any portion of Total Project Costs of any Project, that are secured by a Lien on any assets or property of the District other than the Pledged Collateral; or (iii) any obligations, all or a portion of the proceeds of which are or will be applied at any time to fund any purchase, construction, condemnation, acquisition or expansion of the Water Utility System, that are secured by a Lien on the Pledged Collateral or payable from the Pledged Collateral except in either case, Senior Obligations, Parity Obligations, or obligations so secured on a basis subordinate to the Parity Obligations. While an Event of Default relating to a Payment Default or a Bankruptcy Related Event has occurred and is continuing, the District shall not incur any indebtedness of any kind payable from, secured or supported by</p>

the Pledged Collateral without the prior written consent of the WIFIA Lender.

(b) The District may incur Senior Obligations in accordance with Section 3.1 (*Additional Bonds and Contracts*) of the Master Resolution.

(c) The District may incur Additional Parity Obligations in accordance with the terms of the WIFIA Master Agreement; provided that:

(i) the Net Water Utility System Revenues for the most recent audited District Fiscal Year preceding the date of adoption by the Board of Directors of the District of the resolution authorizing the incurrence of such Additional Parity Obligations (or if no such resolution exists, the date of incurrence of such Additional Parity Obligations), adjusted to reflect any change in rates and charges for the Water Service approved and in effect as of the date of calculation, remaining after payment of amounts under Sections 2.2(d) (*Allocation of Water Utility System Revenues*) and 2.2(e) (*Allocation of Water Utility System Revenues*) of the Master Resolution due and payable in such District Fiscal Year as evidenced by a calculation prepared by the District, shall be equal to at least one hundred ten percent (110%) of the sum of (1) the Parity Debt Service for such District Fiscal Year, (2) the Parity Debt Service which would have been payable on any Parity Obligations incurred since the end of such District Fiscal Year assuming such Parity Obligations had been incurred at the beginning of such District Fiscal Year and (3) the Parity Debt Service which would have been payable had such Additional Parity Obligations been incurred at the beginning of such District Fiscal Year; and

(ii) the estimated Net Water Utility System Revenues for the then current District Fiscal Year and for each District Fiscal Year thereafter to and including the first complete District Fiscal Year after the latest Date of Operation of any uncompleted Parity Project, as evidenced by a certificate of an Authorized Officer of the District on file with the District, including (after giving effect to the completion of all such uncompleted Parity Projects) an allowance for estimated Net Water Utility System Revenues for each such District Fiscal Year arising from any increase in the income, rents, fees, rates and charges estimated to be fixed, prescribed or received for the Water Service and which are economically feasible and reasonably considered necessary based on projected operations for such period, as evidenced by a certificate of an Authorized Officer on file with the District, shall be equal to at least one hundred ten percent (110%) of the estimated Debt Service for each of such District

	<p>Fiscal Years, after giving effect to the incurrence of all Obligations estimated to be required to be incurred to pay the costs of completing all uncompleted Parity Projects within such District Fiscal Years, assuming that all such Obligations have maturities, interest rates and proportionate principal repayment provisions similar to the Obligation last incurred or then being incurred for the purpose of acquiring and constructing any of such uncompleted Parity Projects. For the purposes of this clause (ii), Net Water Utility System Revenues may be increased by Budgeted Transfers (measured as of the last day of the immediately preceding District Fiscal Year) in an amount no greater than ten percent (10%) of the estimated Debt Service referred to in the preceding sentence.</p> <p>(d) Notwithstanding clause (b) and clause (c) above, Obligations may be incurred to refund outstanding Obligations if the Average Annual Debt Service on Obligations after the refunding is not greater than the Average Annual Debt Service on Obligations outstanding prior to the refunding.</p>
RESTRICTED PAYMENTS AND TRANSFERS	The District shall not permit Water Utility System Revenues or any funds in any other fund or account held by or on behalf of the District with respect to the Water Utility System, to be paid or transferred or otherwise applied for purposes that would violate the terms of the Master Resolution.
WIFIA LOAN DOCUMENTATION	The WIFIA Loan shall be subject to the preparation, execution and delivery of the WIFIA Loan Agreement, the WIFIA IPA, the WIFIA Note and any other loan documentation required by the WIFIA Lender in connection therewith, in each case acceptable to the WIFIA Lender, the Borrower and the District, which will contain certain conditions precedent, representations and warranties, affirmative and negative covenants, events of default, in each case, with respect to the Borrower and the District, and other provisions as agreed among the WIFIA Lender, the Borrower and the District, in each case in accordance with the terms of the WIFIA Master Agreement.
GOVERNING LAW	Federal laws of the United States of America, if and to the extent such federal laws are applicable, and the internal laws of the State of California, if and to the extent such federal laws are not applicable.

[Signature pages follow]

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

Sincerely,

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

By: _____

Name: Michael S. Regan

Title: Administrator

ACKNOWLEDGED AND AGREED:

SANTA CLARA VALLEY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION,
by its authorized representative

By: _____

Name:

Title:

ACKNOWLEDGED AND AGREED:

SANTA CLARA VALLEY WATER DISTRICT,
by its authorized representative

By: _____

Name:

Title: