

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA LOAN AGREEMENT

For Up to \$96,926,900

With

**LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT**

For the

**MORRIS FORMAN WATER QUALITY TREATMENT CENTER
BIOSOLIDS PROCESSING SOLUTION PROJECT
(WIFIA – N18101KY)**

Dated as of [_____], 2020

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WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of [_____], 2020, is by and between **LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT**, a public body corporate and political subdivision of the Commonwealth of Kentucky (the “**Commonwealth**”), with an address at 700 West Liberty Street, Louisville, Kentucky 40203 (the “**Borrower**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time, the “**Act**” or “**WIFIA**”), which is codified as 33 U.S.C. §§ 3901-3914;

WHEREAS, the Act authorizes the WIFIA Lender to enter into agreements to provide financial assistance with one or more eligible entities to make secured loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower has requested that the WIFIA Lender make the WIFIA Loan (as defined herein) in a principal amount not to exceed \$96,926,900 (excluding interest that is capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for WIFIA financial assistance dated December 22, 2019 (the “**Application**”);

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of the WIFIA Loan, subject to the terms and conditions contained herein;

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Lender proposes to make funding available to the Borrower through the purchase of the WIFIA Bond (as defined herein), upon the terms and conditions set forth herein;

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Bond in accordance with the terms and provisions hereof and of the WIFIA Bond; and

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

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Lender as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1. Definitions.

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

“**Account**” means an Account established pursuant to Section 5.2 (*Establishment of Funds or Accounts*) of the General Bond Resolution.

“**Accreted Value**” means, with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond (determined on the basis of the principal amount per \$5,000 at maturity thereof) plus the amount assuming semiannual compounding of earnings which would be produced on the investment of such principal amount, beginning on the dated date of such Capital Appreciation Bond and ending at the maturity date thereof, at a yield which, if produced until maturity, will produce \$5,000 at maturity. As of any Valuation Date, the Accreted Value of any Capital Appreciation Bonds shall mean the amount set forth for such date in the Supplemental Resolution authorizing such Capital Appreciation Bonds and as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date and (2) the difference between the Accreted Values for such Valuation Dates.

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

“**Additional Bonds**” means Bonds authenticated and delivered upon original issuance pursuant to Section 2.4 or Section 2.5 of the General Bond Resolution and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to Article 3 or Section 4.6 or Section 11.6 of the General Bond Resolution.

“**Additional Principal Project Contracts**” means (a) any contract, agreement, letter of intent, understanding or instrument listed in Part B of **Schedule 12(n)** (*Principal Project Contracts*) and (b) any other contract, agreement, letter of intent, understanding or instrument entered into by (or on behalf of) the Borrower after the Effective Date with respect to the Project, in the case of this clause (b), (i) pursuant to which the Borrower has payment obligations in excess of \$3,000,000 in the aggregate or (ii) the termination of which could reasonably be expected to have a Material Adverse Effect, but excluding, in the case of this clause (b), any (A) insurance policies or documents pertaining to the Borrower’s self-insurance program (as applicable),

(B) Governmental Approvals and (C) agreements, documents and instruments (1) providing for, governing or evidencing any Permitted Debt and any related Permitted Lien for such Permitted Debt or (2) entered into to consummate any Investment Securities.

“**Additional Senior Debt**” means any Additional Bonds permitted to be issued under Section 15(a) (*Negative Covenants – Indebtedness*) and under the General Bond Resolution, which Senior Debt is issued after the Effective Date.

“**Additional Subordinated Debt**” means any debt of the Borrower, including any additional Senior Subordinated Debt or any additional General Subordinated Debt, that is fully subordinated to the Bonds (including the WIFIA Bond) and permitted under to be issued or incurred under Section 15(a) (*Negative Covenants – Indebtedness*), which Subordinated Debt is issued or incurred on or after the Effective Date.

“**Adjusted Net Revenues**” for any period shall mean Revenues, less Operating Expenses Excluding Subordinated Debt Service for such period.

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

“**Aggregate Debt Service**” for any period means, as of any date of calculation and with respect to all Bonds, the sum of the amounts of Debt Service for such period.

“**Aggregate Net Debt Service**” for any period means, as of any date of calculation and with respect to all Bonds, the Aggregate Debt Service for such period, less any amounts available or expected to be available in the ordinary course for the payment of Debt Service during such period pursuant to Article 5 of the General Bond Resolution (including but not limited to interest or other income available or expected to be available for payment of Debt Service during such period from the Reserve Account); provided, however, that in computing Aggregate Net Debt Service there shall not be subtracted any amounts constituting Net Revenues.

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

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

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

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

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

“**Appreciated Value**” means, with respect to any Capital Appreciation and Income Bond up to the Interest Commencement Date, an amount equal to the principal amount of such Capital

Appreciation and Income Bond (determined on the basis of the principal amount per \$5,000 at the Interest Commencement Date thereof) plus the amount, assuming semi-annual compounding of earnings which would be produced on the investment of such principal amount, beginning on the dated date of such Capital Appreciation and Income Bond and ending on the Interest Commencement Date, at a yield which, if produced until the Interest Commencement Date, will produce \$5,000 at the Interest Commencement Date. As of any Valuation Date, the Appreciated Value of any Capital Appreciation and Income Bond shall mean the amount set forth for such date in the Supplemental Resolution authorizing such Capital Appreciation Bonds and as of any date other than a Valuation Date, the sum of (a) the Appreciated Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date and (2) the difference between the Appreciated Values for such Valuation Dates.

“**Authorized Officer of the Borrower**” means any person authorized by the Borrower to perform the act or sign the document in question.

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

“**Bankruptcy Related Event**” means, with respect to the Borrower, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 8 (*Payment of Principal and Interest*) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Property may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Debt, or (ii) any Person shall commence a process pursuant to which all or a

substantial part of the Pledged Property may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Property in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the Bondholders, funds on deposit in any of the System Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under the General Bond Resolution for application to the prepayment or repayment of any principal amount of the Senior Debt other than in accordance with the provisions of the General Bond Resolution.

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

“Bond” or **“Bonds”** means any bonds (including the WIFIA Bond) or any other evidences of indebtedness for borrowed money (other than Subordinated Debt) issued by the Borrower from time to time pursuant to the General Bond Resolution and the terms of the applicable Supplemental Resolution.

“Bond Anticipation Notes” means (a) the Borrower’s Sewer and Drainage System Subordinated Bond Anticipation Notes, Series 2019 and (b) such other bond anticipation notes of the Borrower as may be issued pursuant to the Subordinated Debt Resolution of the Borrower adopted on June 30, 1993, as the same may be amended from time to time.

“Bond Fund” means the Bond Fund established in Section 5.2 of the General Bond Resolution.

“Bond Registrar” means The Bank of New York Mellon Trust Company, N.A., Louisville, Kentucky, and any other bank or trust company organized under the laws of any state of the United States of America or national banking association appointed by the Borrower to perform the duties of Bond Registrar enumerated in Section 3.5 of the General Bond Resolution.

“Bondholder” or **“Holder of Bonds”** or **“Holder”** means, when used with respect to the WIFIA Bond, the WIFIA Lender (and any subsequent registered holder of the WIFIA Bond) and, when used with respect to any other Bond, means any person who shall be the registered owner of any Bond or Bonds, and when used with respect to any other Obligation, means any person who shall be the registered owner of any System Debt.

“Book-Entry Form” or **“Book-Entry System”** means, with respect to the Bonds, a form or system, as applicable, under which (i) the ownership of beneficial interests in Bonds and bond service charges may be transferred only through a book entry and (ii) physical Bond certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as Holder, with the physical Bond certificates in the custody of a Securities Depository.

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

“**Borrower Fiscal Year**” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Lender in accordance with Section 15(f) (*Negative Covenants – Fiscal Year*).

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

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the Commonwealth 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 Louisville, Kentucky.

“**Capital Appreciation Bonds**” means any Bonds issued under the General Bond Resolution as to which interest is payable only at the maturity or prior redemption of such Bonds, as further described in Article 13 of the General Bond Resolution.

“**Capital Appreciation and Income Bond**” means any Bonds issued under the General Bond Resolution as to which interest is deferred prior to the Interest Commencement Date, as further described in Article 13 of the General Bond Resolution.

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

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

“**Commercial Paper Notes**” means (a) the Borrower’s Subordinated Program Notes, Commercial Paper Sub-Series 2018 and (b) such other commercial paper notes of the Borrower as may be issued pursuant to the Resolution of the Borrower adopted on May 29, 2018, as the same may be amended, restated or replaced from time to time.

“**Commonwealth**” means the Commonwealth of Kentucky.

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

“**Construction and Acquisition Fund**” means the Construction and Acquisition Fund established in Section 5.2 of the General Bond Resolution.

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

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

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

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

“**Cost of Construction and Acquisition**” means, with respect to a System Project, the Borrower’s costs, expenses and liabilities paid or incurred or to be paid or incurred by the Borrower in connection with the planning, engineering, designing, acquiring, constructing, installing and financing, of a System Project and the obtaining of all government approvals, certificates, permits and licenses with respect thereto, including, but not limited to, all costs relating to the acquisition, construction and installation of a System Project and the cost of any demolitions or relocations necessary in connection therewith, any good faith or other similar payment or deposits required in connection with the purchase of a System Project, the cost of acquisition by or for the Borrower of real and personal property or any interests therein, and costs of the Borrower incidental to such construction, acquisition or installation all costs relating to injury and damage claims relating to a System Project, the cost of any indemnity or surety bonds and premiums on insurance, preliminary investigation and development costs, engineering fees and expenses, contractors’ fees and expenses, the costs of labor, materials, equipment and utility services and supplies, legal and financial advisory fees and expenses, interest and financing costs, including, without limitation, bank commitment, line of credit, and letter of credit fees, bond insurance and indemnity premiums, and any other means of providing credit enhancement or credit support, costs incurred in connection with interest rate exchanges, futures contracts or other similar financing arrangements, fees and expenses of the Fiduciaries, including reasonable fees and expenses of counsel to the Fiduciaries, administration and general overhead expense and costs of keeping accounts and making reports required by the General Bond Resolution prior to or in connection with the completion of construction of a System Project, amounts, if any, required by the General Bond Resolution to be paid into the Bond Fund to provide, among other things, for interest accruing on Bonds and to provide for the Debt Service Reserve Requirement or to be paid into the Renewal and Replacement Account for any of the respective purposes thereof, payment when due (whether at the maturity of principal or the due date of interest or upon redemption or purchase) on any indebtedness of the Borrower, including Bonds, notes and Subordinated Debt, incurred in respect of any of the foregoing, and working capital and reserves therefor, and all federal, state and local taxes and payments in lieu of taxes legally required to be paid in connection with a System Project and shall include reimbursements to the Borrower for any of the above items theretofore paid by or on behalf of the Borrower. It is intended that this definition of Cost of Construction and Acquisition be broadly construed to encompass all costs, expenses and liabilities of the Borrower related to a System Project which on the date of adoption of the General Bond Resolution or in the future shall be permitted to be funded with the proceeds of Bonds pursuant to the provisions of the laws of the Commonwealth.

“**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>.

“**Credit Facility**” means a letter of credit, surety bond, loan agreement, standby purchase agreement or other credit agreement, facility or insurance or guaranty arrangement which has been rated not lower than “A” by Moody’s or S&P’s, or which is issued by an entity whose unsecured long term debt or claims paying ability is rated not lower than “A” by Moody’s or S&P’s, in either case, pursuant to which the Borrower or another person is entitled to obtain funds to pay Bonds and interest thereon tendered to the Borrower or a third party for payment, purchase or redemption in accordance with the General Bond Resolution.

“**Debt Service**” for any period means, as of any date of calculation and with respect to any Series, an amount equal to (i) the interest accruing during such period on Bonds of such Series plus (ii) the portion of each Principal Installment for such Series which would accrue during such period if such Principal Installment were deemed to accrue periodically in equal amounts from the next preceding Principal Installment due date for such Series (or, if there shall be no such preceding Principal Installment due date, from a date one year preceding the due date of such Principal Installment or from the date of issuance of the Bonds of such Series, whichever date is later). For Variable Interest Rate Bonds, the annual interest rate thereon and the resulting Debt Service shall be calculated by an Authorized Officer of the Borrower and evidenced by a certificate from such Authorized Officer of the Borrower in accordance with the following procedure: for any Variable Interest Rate Bonds Outstanding on the date such certificate is delivered, an Authorized Officer of the Borrower shall estimate the Debt Service on such Bonds upon reliance upon a written estimate of such Debt Service by the Borrower’s financial advisor which estimate shall include assumptions with respect to the interest rate or rates to be borne by such Bonds and the amounts and due dates of the Principal Installments for such Bonds; provided, however, that the interest rate or rates assumed to be borne by any Variable Interest Rate Bonds shall not be less than the interest rate borne by such Variable Interest Rate Bonds at the time that an Authorized Officer of the Borrower delivers such certificate. The principal and interest portions of the Accreted Value and Appreciated Value of Capital Appreciation Bonds and Capital Appreciation and Income Bonds, respectively, becoming due at maturity or by virtue of a Sinking Fund Installment shall be included in the calculations of accrued and unpaid and accruing interest or Principal Installments in such manner and during such period of time as is specified in the Supplemental Resolution authorizing such Bonds.

“**Debt Service Account**” means the Debt Service Account of the Bond Fund.

“**Debt Service Payment Commencement Date**” means the earliest to occur of either (a) May 15, 2030; (b) if the Capitalized Interest Period ends pursuant to Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*) due to the occurrence of an Event of Default, the first Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

“**Debt Service Reserve Requirement**” as of a particular date of computation means an amount, computed on an aggregate basis for all Series of Bonds, equal to the least of (i) ten percent

(10%) of the face amount of all Bonds issued hereunder, (ii) one hundred percent (100%) of the maximum Aggregate Net Debt Service (as of the computation date) in the current or any future Borrower Fiscal Year and (iii) one hundred twenty-five percent (125%) of average Aggregate Net Debt Service (as of the computation date) in the current or any future Borrower Fiscal Year. For Variable Interest Rate Bonds, the Debt Service Reserve Requirement shall be the maximum permitted amount with interest calculated at the lesser of the 30-year Revenue Bond Index (published by The Bond Buyer no more than two weeks prior to the date of sale of such Variable Interest Rate Bonds) or the Maximum Interest Rate. If any Variable Interest Rate Bond shall be converted to a fixed rate Bond for the remainder of the term thereof, and as a result thereof a nominal deficiency shall be created in the Bond Fund, the Debt Service Reserve Requirement shall be adjusted so as to exclude the amount of such deficiency, but the Debt Service Reserve Requirement shall be increased in each Borrower Fiscal Year or portion thereof after the date of such conversion by an amount equal to one hundred percent (100%) of the nominal deficiency, until there is no longer a nominal deficiency.

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

“**Default Rate**” means an interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 200 basis points.

“**Development Default**” means (a) the Borrower abandons work or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to the Project or (b) the Borrower fails to achieve Substantial Completion of the Project by June 30, 2027.

“**Direct Purchase Notes**” means (a) the Borrower’s Subordinated Program Notes, Direct Purchase Sub-Series 2018 and (b) such other direct purchase notes of the Borrower as may be issued pursuant to the Resolution of the Borrower adopted on May 29, 2018, as the same may be amended, restated or replaced from time to time.

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

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

“**Eligible Project Costs**” means amounts in the Project Budget approved by the WIFIA Lender, which are paid by or for the account of the Borrower in connection with the Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance), which shall arise from the following:

- (a) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, and replacement activities;
- (c) the acquisition of real property or an interest in real property (including water rights, land relating to the Project and improvements to land), environmental

mitigation (including acquisitions pursuant to Section 3905(8) of Title 33 of the United States Code), construction contingencies, and acquisition of equipment; or

(d) capitalized interest (with respect to System Debt other than the WIFIA Loan) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

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

“**Eligible Project Costs Documentation**” has the meaning provided in Section 1 of Exhibit D-1 (Requisition Procedures).

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

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

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

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

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

“**Existing Hedging Agreements**” means collectively (a) the ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, entered into by the Borrower and Bank of America, N.A., reference number 3274543, with an effective date of November 15, 2009 and a termination date of May 16, 2033, and an initial notional amount of \$56,433,000, (b) the ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, entered into by the Borrower and Wells Fargo Bank, N.A., reference number 157718/239604, with a trade date of March 27, 2001, an effective date of November 15, 2009 and a termination date of May 15, 2033, and (c) any other documentation directly relating to the foregoing.

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

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

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

“**Fiduciary**” or “**Fiduciaries**” means the Bond Registrar, the Paying Agents, or any or all of them, as may be appropriate or any bank, trust company, national banking association, savings and loan association, savings bank or other banking association selected by the Borrower as a depository of monies and securities held under the provisions of the General Bond Resolution, and may include the Bond Registrar.

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

“**Final Maturity Date**” means the earlier of (a) May 15, 2060 (or such earlier date as is set forth in an updated **Exhibit F** (*WIFIA Debt Service*) pursuant to Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*)); (b) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date; and (c) the Payment Date immediately preceding the date that is forty (40) years following the date of issuance of the WIFIA Bond.

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

“**Fund**” or “**Funds**” means, as the case may be, each or all of the Funds established in Section 5.2 (*Establishment of Funds or Accounts*) of the General Bond Resolution.

“**Future Hedging Agreements**” means, collectively (a) any agreements to be entered into after the Effective Date by the Borrower for a Hedging Transaction and (b) any documentation directly related to the foregoing.

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

“**General Bond Resolution**” means, collectively, that certain Revenue Bond Resolution adopted by the Borrower on December 7, 1992, as amended March 4, 1993, June 30, 1993, December 14, 1994, January 25, 1996 and February 24, 2003, and as further supplemented and amended from time to time.

“**General Subordinated Debt**” means (a) Existing Indebtedness constituting KIA Assistance Agreements that have been incurred or assumed by the Borrower prior to the Effective

Date, (b) the Oldham County Assistance Agreements, (c) the KACo Sublease, and (d) any other debt of the Borrower that is fully subordinated to the Senior Subordinated Debt.

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

“**Government Obligations**” means (i) any direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) or obligations the principal and interest on which are unconditionally guaranteed by the United States of America, and (ii) bonds, debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following federal agencies (including stripped obligations thereof if such obligations have been stripped by the issuing agency itself) provided such obligations are backed by the full faith and credit of the United States of America: (1) Farmer’s Home Administration; (2) General Services Administration; (3) United States Maritime Administration - Guaranteed Title XI Financing; (4) Federal Financing Bank; (5) United States Department of Housing and Urban Development; (6) U.S. Export - Import Bank; (7) Federal Housing Administration Debentures, and (8) Government National Mortgage Association guaranteed mortgage-backed bonds and guaranteed pass-through obligations.

“**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 Commonwealth 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.

“**Hedging Agreements**” means collectively (a) the Existing Hedging Agreements and (b) any Future Hedging Agreements.

“**Hedging Termination Obligations**” means the aggregate amount payable to the Hedging Agreement counterparties by the Borrower upon the early termination of all or a portion of the Hedging Agreement, net of all amounts payable to the Borrower by such Hedging Agreement counterparties upon such early termination.

“**Hedging Transaction**” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases; provided that in no event shall any such transaction be for any speculative purpose.

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

“Interest Commencement Date” means, with respect to any particular Capital Appreciation and Income Bond, the date specified in the Supplemental Resolution authorizing such Bonds (which date must be prior to the maturity date for such Bonds), after which interest ceases to be deferred and compounds and the interest becomes currently payable.

“Interest Payment Date” means each May 15 and November 15, commencing on the Debt Service Payment Commencement Date.

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

“Investment Securities” means any of the following securities, to the extent legal for investment of the Borrower’s funds: (a) Government Obligations and, to the extent from time to time permitted by law, (b) obligations of (i) Federal Home Loan Banks, senior debt obligations, (ii) Federal Home Loan Mortgage Corporation, participation certificates and senior debt obligations, (iii) Student Loan Marketing Association, senior debt obligations, (iv) Resolution Funding Corporation and (v) Federal National Mortgage Association mortgage-backed securities and senior debt obligations; (c) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, as amended, and having a rating by Standard and Poor’s of AAAM-G, AAAM or AAM; (d) certificates of deposit or time deposits of any bank, any branch of any bank, trust company or national banking association or any savings and loan association; provided, however, that such certificates of deposit or time deposits shall be fully secured, to the extent not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, by Government Obligations in which the Bond Registrar has a perfected first security interest, (e) investment agreements (for investment of moneys held in the Construction and Acquisition Fund) or other investments approved in writing by the Insurer, (f) commercial paper rated at the time of purchase, “Prime-1” by Moody’s and “A-1” or better by S&P, (g) bonds or notes issued by any state or municipality which are rated by Moody’s and S&P in one of the two highest rating categories assigned by such agencies, (h) federal funds or banker acceptances with a maximum term of 1 year with a rating of “Prime-1” or “A-3” or better by Moody’s and “A-1” or “A” or better by S&P, and (i) any repurchase agreement approved in writing by the Insurer or any repurchase agreement with a term not in excess of 30 days that is a legal investment for public funds under state law (as determined by a written legal opinion delivered to the Issuer) and is with a primary dealer on the Federal Reserve reporting dealer list rated A or better by Moody’s and S&P or any bank or trust company (including the Bond Registrar) rated “A” or better by Moody’s and S&P for Government Obligations or obligations described in clause (b) above in which the Bond Registrar shall be given a first security interest and on which no third party shall have a lien. The underlying repurchase obligations must be valued weekly and marked to market at a current market price plus accrued interest of at least 104% (105% if the underlying securities are Federal National Mortgage Association Mortgage-backed securities and senior debt obligations) of the amount of the repurchase obligations of the bank or trust company. All obligations purchased must be transferred to the Bond Registrar or a third party agent by physical delivery or by an entry made on the records of the issuer of such obligations. Any investment in a repurchase agreement shall be considered to mature on the date the obligor providing the repurchase agreement is obligated to repurchase the obligations. Any investment in obligations described in clauses (a) and (b) above may be made in the form of an entry made on the records of the issuer of the particular obligation. The Bond

Registrar, any Paying Agent, other Fiduciaries, or other custodian of funds of the Borrower, respectively, may trade with itself in the purchase and sale of securities for such investment and may charge its ordinary and customary fees for such trades, including cash sweep account fees. In the absence of any direction from the Borrower, the Bond Registrar, any Paying Agent, other Fiduciaries, or other custodian of funds of the Borrower, respectively, shall invest all funds in sweep accounts, money market funds and similar short-term investments, provided that all such investments shall constitute Investment Securities.

“**KACo Sublease**” means the Sublease Agreement dated as of June 30, 2020, by and between the Borrower and the County of Oldham, Kentucky.

“**KIA Assistance Agreements**” means collectively each of the financial assistance agreements entered into by and between the Kentucky Infrastructure Authority and the Borrower in respect of Permitted Debt that is fully subordinated to the Senior Subordinated Debt. The KIA Assistance Agreements as of the Effective Date are set forth in **Schedule III** (*Existing Indebtedness*).

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

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

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

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

“**Maximum Interest Rate**” means, with respect to any particular Variable Interest Rate Bond, an annual rate of interest, which shall be set forth in the Supplemental Resolution authorizing such Bond, that shall be the maximum rate of interest such Bond may at any time bear.

“**Moody’s**” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, if any.

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

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

“**NEPA Determination**” means the Categorical Exclusion for the Project issued by EPA on [____], 20[] in accordance with NEPA.

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

“**Net Revenues**” for any period shall mean Revenues, less Operating Expenses for such period.

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

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

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

“**Oldham County Assistance Agreements**” means each of the financial assistance agreements by and between the Borrower and the County of Oldham, Kentucky in respect of Permitted Debt that is fully subordinated to the Senior Subordinated Debt, as set forth in **Schedule III** (*Existing Indebtedness*).

“**Operating Expenses**” means the Borrower’s reasonable, ordinary, usual or necessary current expenses of maintenance, repair and operation of the System, determined in accordance with generally accepted accounting principles and the enterprise basis of accounting. Operating Expenses shall include, without limiting the generality of the foregoing, (i) expenses not annually recurring, (ii) administrative and engineering expenses (to the extent not paid or reimbursed as a Cost of Construction and Acquisition), payments to pension or retirement funds properly chargeable to the System, insurance premiums, fees and expenses of Paying Agents and legal expenses, (iii) interest on, redemption premium on, or principal of, Subordinated Debt, (iv) any other expenses required to be paid by the Borrower under the provisions of the General Bond

Resolution or by law and (v) amounts reasonably required to be set aside in reserves for operating items or expenses the payment of which is not then immediately required. However, Operating Expenses do not include (1) reserves for extraordinary maintenance or repair, or any allowance for depreciation, or any deposits or transfers to the credit of the Bond Fund or the Renewal and Replacement Account, nor any amounts paid or required to be paid to the United States of America pursuant to Section 7.17 of the General Bond Resolution (except to the extent such rebate amounts must be paid from Revenues other than the investment income that generated the liability to the United States), (2) non-capital Costs of Acquisition and Construction or other costs, to the extent composed of non-capital expenses, salaries, wages and fees that are necessary or incidental to capital improvements for which debt has been issued and which may be paid from proceeds of such debt or (3) losses from the sale, abandonment, reclassification, revaluation or other disposition of properties of the System nor such property items, including taxes and fuel, which are capitalized pursuant to the then existing accounting practice of the Borrower.

“Operating Expenses Excluding Subordinated Debt Service” for any period shall mean Operating Expenses excluding interest on, redemption premium on, or principal of, Subordinated Debt.

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

“Option Bonds” means Bonds which by their terms may be tendered by and at the option of the Holder thereof for payment or purchase by the Borrower or a third party prior to the stated maturity thereof, or the maturities of which may be extended by and at the option of the Holder thereof.

“Organizational Documents” means: (a) the constitutional and statutory provisions that are the basis for the existence and authority of the Borrower, including any enabling statutes, ordinances or public charters and any other organic laws establishing the Borrower and (b) the resolutions, bylaws, code of regulations or other organizational documents (including any amendments, modifications or supplements thereto) of or adopted by the Borrower by which the Borrower, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

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

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

“Paying Agent” means any bank or trust company organized under the laws of any state of the United States of America or any national banking association designated as paying agent for the Bonds of any Series, and its successor or successors hereafter appointed in the manner provided in the General Bond Resolution.

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

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

“Payment Period” means the six (6) month period beginning on November 15, 2029 and ending on May 14, 2030 and each succeeding six (6) month period thereafter; provided, that, if the Debt Service Payment Commencement Date occurs earlier than May 15, 2030, the first Payment Period shall be the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“Permitted Debt” means:

- (a) Existing Indebtedness;
- (b) the WIFIA Loan;
- (c) Additional Senior Debt that satisfies the requirements of Section 15(a) (*Negative Covenants – Indebtedness*) and the General Bond Resolution;
- (d) Additional Subordinated Debt that satisfies the requirements of Section 15(a) (*Negative Covenants – Indebtedness*); and
- (e) indebtedness incurred in respect of Hedging Transactions permitted under this Agreement.

“Permitted Liens” means:

- (a) Liens imposed pursuant to the WIFIA Loan Documents in respect of the WIFIA Loan;
- (b) Liens imposed pursuant to the General Bond Resolution in respect of Permitted Debt that is Senior Debt and Liens imposed in respect of Permitted Debt that is Subordinated Debt;
- (c) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(j) (*Affirmative Covenants – Material Obligations*);
- (d) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 14(j) (*Affirmative Covenants – Material Obligations*);

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

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

(g) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 17(a)(vi) (*Events of Default and Remedies – Material Adverse Judgment*); and

(h) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower.

“**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 Property**” means and includes the following property, as and when received by or for the account of the Borrower, in each case pending the application or expenditure thereof in accordance with the General Bond Resolution: (i) the proceeds of sale of Bonds, (ii) all Revenues, (iii) all amounts on deposit in the Funds or Accounts established under the General Bond Resolution, (iv) such other amounts as may be pledged from time to time by the Borrower as security for the payment of Bonds and (v) all proceeds of the foregoing.

“**Principal Installment**” means, as of the date of calculation and with respect to any Series, so long as any Bonds thereof are Outstanding, (i) the principal amount of Bonds of such Series due on a certain future date for which no Sinking Fund Installments have been established (including the principal amount of Option Bonds tendered for payment and not purchased), (ii) the Sinking Fund Installment due on a certain future date for Bonds of such Series and (iii) if such future dates coincide, the sum of such principal amount and such Sinking Fund Installment.

“**Principal Payment Date**” means each May 15, commencing on May 15, 2030.

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

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

“**Project**” means the design and construction of a new biosolids processing solution at the Morris Forman Water Quality Treatment Center, located in Louisville, Kentucky, with an average design capacity of approximately 120 million gallons per day, a peak wet weather capacity of approximately 350 million gallons per day, and an anticipated maximum month solids loading of approximately 150 dry tons per day. The Project will replace the outdated existing biosolids dryers

with a reconfigured solids treatment process including new thermal hydrolysis pretreatment facilities and associated new equipment, and repurposed facilities and equipment from the existing treatment train.

“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, 2025, as such date may be adjusted in accordance with Section 16(d) (*Reporting Requirements – Construction Reporting*).

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

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

“Related Documents” means the General Bond Resolution, the WIFIA Loan Documents, the Hedging Agreements (if any) and the Principal Project Contracts.

“Renewal and Replacement Account” means the account of that name which is maintained pursuant to Section 5.8 of the General Bond Resolution.

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

“Reserve Account” means the Reserve Account of the Bond Fund.

“Revenue Fund” means the Revenue Fund which is maintained pursuant to Section 51 of the General Bond Resolution.

“Revenues” means all revenues, rates, fees, rents, charges and other operating income and receipts, as derived by or for the account of the Borrower from or for the operation, use or services of the System, determined in accordance with generally accepted accounting principles and the enterprise basis of accounting. Revenues shall include, without limiting the generality of the foregoing, (i) revenue from capital charges recovered or reimbursed to the Borrower, capacity charges and service connection fees, (ii) acquisition surcharges and assessments levied by the Borrower (regardless of whether any of the same are allocated or designated by the Borrower for capital expenditures) and (iii) interest or other income received or to be received from any source, including but not limited to interest or other income received or to be received on any monies or securities held pursuant to the General Bond Resolution. Revenues shall not include customer deposits and contributions in aid of construction, except to the extent the same would constitute revenues or income in accordance with generally accepted accounting principles.

“S&P” means S&P Global Ratings, a S&P Global Inc. business, a corporation organized and existing under the laws of the State of New York, and its successors and their assigns, if any.

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

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

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

“Secured Parties” means the WIFIA Lender and any other Bondholders.

“Securities Depository” means any securities depository that is a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act, operating and maintaining, with its participants or other-wise, a Book-Entry System to record ownership of beneficial interests in bonds and bond service charges, and to effect transfers of bonds in Book-Entry Form, and means, initially, The Depository Trust Company (a limited purpose trust company), New York, New York.

“Senior Debt” means (a) the WIFIA Bond, (b) the Existing Indebtedness consisting of Bonds that have been issued prior to the Effective Date and (c) Additional Senior Debt, in each case, that ranks senior in right of payment and right of security to the Subordinated Debt.

“Senior Subordinated Aggregate Debt Service” means, at any time the same is to be determined, with respect to all Senior Subordinated Debt with respect to a particular Borrower Fiscal Year, the aggregate of the amounts to be paid or set aside in such Borrower Fiscal Year for the payment or retirement of the principal of, premium, if any, and interest (to the extent not capitalized) on Senior Subordinated Debt.

“Senior Subordinated Debt” means (a) the Bond Anticipation Notes, (b) the Commercial Paper Notes, (c) the Direct Purchase Notes and (d) any other debt of the Borrower that is fully subordinated to the Bonds (including the WIFIA Bond) and payable from the Senior Subordinated Debt Fund.

“Senior Subordinated Debt Fund” means the Senior Subordinated Debt Fund which is maintained pursuant to Section 5.7 of the General Bond Resolution.

“Series” means all of the Bonds authenticated and delivered on original issuance and identified pursuant to the General Bond Resolution or any Supplemental Resolution authorizing such Bonds as a separate Series of Bonds, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to Article 3 or Section 4.6 or Section 11.6 of the General Bond Resolution, regardless of variations in maturity, interest rate, Sinking Fund Installments, or other provisions.

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

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

“**Servicing Set-Up Fee**” has the meaning set forth in Section 10(a)(i) (*Fees and Expenses – Fees*).

“**Sinking Fund Installment**” means an amount so designated which is established pursuant to subsection A of Section 2.2 of the General Bond Resolution.

“**Subordinated Debt**” means (a) the Existing Indebtedness consisting of the Senior Subordinated Debt and the General Subordinated Debt that has been issued or incurred prior to the Effective Date and (b) any Additional Subordinated Debt, in each case, that is fully subordinated to the Bonds (including the WIFIA Bond).

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

“**Substantial Completion Date**” means the date on which the Borrower certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender, that Substantial Completion has occurred.

“**Supplemental Resolution**” means a supplement to or modification of the provisions of the General Bond Resolution adopted into by the Borrower in accordance with the terms of the General Bond Resolution, authorizing the issuance of Additional Bonds or amending the terms of the General Bond Resolution, including the WIFIA Supplemental Resolution.

“**System**” means (i) the sewer facilities, drainage facilities and all appurtenant facilities or any other facilities owned, operated or controlled by the Borrower from time to time, (ii) any System Project, including the Project and (iii) all improvements, additions, extensions and betterments to the foregoing which may be hereafter acquired by the Borrower by any means whatsoever.

“**System Accounts**” means all funds, accounts or subaccounts holding Revenues, including the Revenue Fund, the Bond Fund (and within the Bond Fund, the Debt Service Account and the Reserve Account), the Construction and Acquisition Fund, the Renewal and Replacement Account and the Senior Subordinated Debt Fund, and such additional funds, accounts or subaccounts that may be established in connection with the System for Revenues.

“**System Debt**” means debt of the Borrower that is secured by a pledge and lien on all or a portion of the Revenues, including the Senior Debt and the Subordinated Debt (including the Senior Subordinated Debt).

“**System Project**” means any project directly or indirectly related to the facilities provided or to be provided by the Borrower which is to be included as part of the System and is permitted by the Act, and any modification or substitution of such facilities by the Borrower, and including without limitation, the Project.

“Total Project Costs” means (a) the costs paid or incurred or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing (including costs of issuance); (b) amounts, if any, required by the General Bond Resolution or the WIFIA Loan Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan, any Senior Debt or any Subordinated Debt, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional prepayment) during the Construction Period in respect of any indebtedness of the Borrower, in each case in connection with the Project (other than the WIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“Uncontrollable Force” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, epidemic or pandemic, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided, that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided, that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

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

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

“Valuation Date” means with respect to any Capital Appreciation Bonds and Capital Appreciation and Income Bonds, the date or dates set forth in the Supplemental Resolution authorizing such Bonds on which specific Accreted Values or Appreciated Values are assigned to the Capital Appreciation Bonds and Capital Appreciation and Income Bonds, as the case may be.

“Variable Interest Rate” means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the Supplemental Resolution pursuant to which such Permitted Debt is incurred. Such Supplemental Resolution 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 Bonds” for any period, means bonds which during such period bear a Variable Interest Rate, provided that Bonds the interest rate on which shall have been fixed for the remainder of the term thereof shall no longer be Variable Interest Rate Bonds.

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

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

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

“**WIFIA Debt Service**” means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the WIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on **Exhibit F** (*WIFIA Debt Service*) and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*).

“**WIFIA Debt Service Account**” means the subaccount within the Debt Service Account established for the benefit of the WIFIA Lender in accordance with the terms of the General Bond Resolution.

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

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

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

“**WIFIA Loan**” means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed \$96,926,900 (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by the Borrower.

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

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

“**WIFIA Supplemental Resolution**” means the Supplemental Resolution adopted by the Borrower on [_____], 2020, authorizing the execution and delivery of this Agreement, the WIFIA Bond, and certain related actions by the Borrower in connection with the issuance of the WIFIA Loan, which Supplemental Resolution shall contain the reservation of rights set forth in Section 17(e) (*Events of Default and Remedies*).

Section 2. Interpretation.

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

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

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

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

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

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

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

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

(i) Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 31 (*Notices*) and signed by a duly authorized representative of such party.

(k) References to “disbursements of WIFIA Loan proceeds” or similar phrasing shall be construed as meaning the same thing as “paying the purchase price of the WIFIA Bond”.

(l) Whenever this Agreement requires a change in principal amount, interest rate or amortization schedule of the WIFIA Loan, it is intended that such change be reflected in the WIFIA

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

ARTICLE II THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed \$96,926,900 (excluding any interest that is capitalized in accordance with the terms hereof). WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*).

Section 4. Disbursement Conditions.

(a) WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the Borrower in connection with the Project. If the Borrower intends to utilize the WIFIA Loan proceeds to make progress payments for Project construction work performed under the Principal Project Contracts, the Borrower shall demonstrate to the satisfaction of the WIFIA Lender that such progress payments are commensurate with the cost of the work that has been completed. Each disbursement of the WIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** (*Form of Requisition*) to **Exhibit D-1** (*Requisition Procedures*), along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the WIFIA Lender, all in accordance with the procedures of **Exhibit D-1** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*); provided, that no disbursements of WIFIA Loan proceeds shall be made after the Final Disbursement Date.

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

(c) At the time of any disbursement, the sum of all prior disbursements of WIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current Federal Fiscal Year set forth in the Anticipated WIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Subject to this Section 4, any scheduled disbursement (as reflected in the Anticipated WIFIA Loan Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall automatically roll forward to be available in

the succeeding Federal Fiscal Year, having the effect of automatically updating the Anticipated WIFIA Loan Disbursement Schedule without need for the WIFIA Lender's approval. The Borrower may also amend the Anticipated WIFIA Loan Disbursement Schedule by submitting a revised version thereof (together with a modified Loan Amortization Schedule reflecting such amendments to the Anticipated WIFIA Loan Disbursement Schedule) to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated WIFIA Loan Disbursement Schedule (and such modified Loan Amortization Schedule proposed by the Borrower reflecting such amendments to the Anticipated WIFIA Loan Disbursement Schedule) shall become effective, and such modified Loan Amortization Schedule proposed by the Borrower shall be included in **Exhibit F** (*WIFIA Debt Service*) in accordance with Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*), upon the WIFIA Lender's approval thereof, which approval shall be granted in the WIFIA Lender's sole discretion.

(d) The initial disbursement hereunder shall be subject to satisfaction of the requirements of Section 11(b)(i) (*Conditions Precedent – Conditions Precedent to Disbursements*), including that the Borrower shall have issued the WIFIA Bond to the WIFIA Lender on the date of such initial disbursement.

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

Section 6. Interest Rate. The interest rate with respect to the WIFIA Loan Balance (the "**WIFIA Interest Rate**") shall be [_____] percent ([_____]%) per annum. Interest will accrue and be computed on the WIFIA Loan Balance (as well as on any past due interest) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the WIFIA Loan Balance at the Default Rate, (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and (b) in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement and (ii) the WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. For the avoidance of doubt, interest on the WIFIA Loan (and the corresponding WIFIA Bond) shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as have been approved by WIFIA Lender) have been disbursed to the Borrower for use on the Project in accordance with Section 4 (*Disbursement Conditions*).

Section 7. Security and Priority; Flow of Funds.

(a) As security for the WIFIA Loan, and concurrently with the issuance and delivery of this Agreement, the Borrower shall pledge, assign and grant to the WIFIA Lender for its benefit, Liens on the Pledged Property in accordance with the provisions of the General Bond Resolution and shall deliver to the WIFIA Lender, as the registered owner, the WIFIA Bond. The WIFIA Loan shall be secured by the Liens on the Pledged Property on a parity with the Senior

Debt and senior to all Subordinated Debt. The WIFIA Bond shall be a Bond under the General Bond Resolution, entitled to all of the benefits of a Bond under the General Bond Resolution.

(b) Except (i) for Permitted Liens, or (ii) to the extent otherwise provided in Section 7(a), the Pledged Property will 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 General Bond Resolution, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

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

(d) The General Bond Resolution provides that all Revenues shall be deposited into the Revenue Fund and applied in accordance with the requirements specified in Section 5.4 (*Application of Revenues*), Section 5.5 (*Bond Fund — Debt Service Account*), Section 5.6 (*Bond Fund — Reserve Account*), Section 5.7 (*Senior Subordinated Debt Fund*) and Section 5.8 (*Renewal and Replacement Account*) of the General Bond Resolution, which requirements are hereby incorporated herein and a copy of such section, as of the Effective Date, is attached hereto as **Schedule V** (*Flow of Funds*). For avoidance of doubt, interest on, redemption premium on, or principal of, Senior Subordinate Debt is intended to be paid under Paragraph B.[2] of Section 5.4 (*Application of Revenues*) of the General Bond Resolution and is not intended to be paid as an Operating Expense under Paragraph B.[3] of Section 5.4 (*Application of Revenues*) of the General Bond Resolution. Further, for avoidance of doubt, any payments under any Hedging Transactions (including without limitation, any Hedging Termination Obligations) are payable as an Operating Expense under Paragraph B.[3] of Section 5.4 (*Application of Revenues*) of the General Bond Resolution.

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service.

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

WIFIA Lender in such manner in order for the WIFIA Loan Balance to be reduced to \$0 on the Final Maturity Date.

(ii) Notwithstanding anything herein to the contrary, the WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the WIFIA Loan and corresponding WIFIA Bond are subject to mandatory redemption or prepayment prior to maturity thereof or accelerated pursuant to Section 17 (*Events of Default and Remedies*)).

(b) Capitalized Interest Period. No payment of the principal of or interest on the WIFIA Loan is required to be made during the Capitalized Interest Period. Interest on amounts capitalized pursuant to this Section 8(b) shall commence on the date such interest is added to the principal balance of the WIFIA Loan (and corresponding WIFIA Bond) during the Capitalized Interest Period. On each March 15 and November 15 occurring during the Capitalized Interest Period and on the day immediately following the end of the Capitalized Interest Period, interest accrued on the WIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the WIFIA Loan Balance. Within thirty (30) days after the end of the Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower stating the WIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other WIFIA Loan Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the Borrower by the WIFIA Lender that an Event of Default has occurred, in which case the provisions of this Section 8(b) shall no longer apply and payments of principal and interest shall be currently due and payable in accordance with the terms hereof and interest shall no longer be capitalized. For purposes of this subsection, an Event of Default under Section 17(a)(v) (*Events of Default and Remedies – Cross Default with Other Financing Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of principal of, interest on or redemption price of Senior Debt when due, regardless of whether the holders of the applicable System Debt, or any legal order, has waived, permitted deferral of, or forgiven any such payment.

(c) WIFIA Bond. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the initial disbursement hereunder, the WIFIA Bond substantially in the form of **Exhibit A** (*Form of WIFIA Bond*), having a maximum principal amount (excluding capitalized interest) of \$96,926,900, bearing interest at the WIFIA Interest Rate and having principal and interest payable on the same dates set forth herein. Any payment in respect of the WIFIA Bond shall be treated as a payment in respect of the WIFIA Loan and any prepayment of principal in respect of the WIFIA Loan shall be treated as a redemption in respect of the WIFIA Bond.

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

Borrower may make any such payment or portion thereof (or direct the Paying Agent to make such payment) with funds then on deposit in the WIFIA Debt Service Account.

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

(ii) The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** (*WIFIA Debt Service*) from time to time, in accordance with the principles set forth below in this Section 8(e), to reflect (A) any change to the WIFIA Loan Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (C) such other information as the WIFIA Lender may determine is necessary for administering the WIFIA Loan and this Agreement. The WIFIA Lender is hereby authorized to include the modified Loan Amortization Schedule proposed by the Borrower and delivered to the WIFIA Lender in connection with an amendment to the Anticipated WIFIA Loan Disbursement Schedule pursuant to Section 4(d)(ii) (*Disbursement Conditions – Adjustment to Loan Amortization Schedule*) or an optional prepayment of the WIFIA Loan pursuant to Section 9(b) (*Prepayment – Optional Prepayments*), in **Exhibit F** (*WIFIA Debt Service*) upon the WIFIA Lender's approval thereof, which approval shall be granted in each case in the WIFIA Lender's sole discretion. If the Borrower shall fail to timely deliver a proposed modified Loan Amortization Schedule together with the request for amendment to the Anticipated WIFIA Loan Disbursement Schedule pursuant to Section 4(d)(ii) (*Disbursement Conditions – Adjustment to Loan Amortization Schedule*) or the notice of optional prepayment pursuant to Section 9(b) (*Prepayment – Optional Prepayments*), as applicable, or the modified Loan Amortization Schedule proposed by the Borrower is not approved by the WIFIA Lender in its sole discretion, the WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule otherwise in accordance with the principles set forth in this Section 8(e). Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the Loan Amortization Schedule as a result of changes in the WIFIA Loan Balance shall be applied to reduce future payments due on the WIFIA Bond 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 F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. The WIFIA Lender shall provide the Borrower with a copy of **Exhibit F** (*WIFIA Debt Service*) as revised, but no failure to provide or delay in providing the

Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents.

Section 9. Prepayment.

(a) [Reserved]

(b) Optional Prepayments. The Borrower may prepay the WIFIA Loan in whole at any time or in part on any Payment Date (but in the case of a partial prepayment the Borrower is limited to one prepayment annually and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), from time to time, without penalty or premium, by paying to the WIFIA Lender such principal amount of the WIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, and shall further include payment of all other System Debt in respect of the WIFIA Loan, including fees and expenses, then due and payable. Each prepayment of the WIFIA Loan pursuant to this Section 9(b) shall be made on such Payment Date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Lender. At the time the Borrower delivers such notice of prepayment to the WIFIA Lender, the Borrower shall provide to WIFIA Lender a modified Loan Amortization Schedule reflecting such prepayment. Such modified Loan Amortization Schedule proposed by the Borrower reflecting such prepayment shall be included in **Exhibit F** (*WIFIA Debt Service*) in accordance Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*), upon the WIFIA Lender’s approval thereof, which approval shall be granted in the WIFIA Lender’s sole discretion. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 9(b) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) Borrower’s Certificate. Each prepayment pursuant to this Section 9 shall be effected pursuant to the WIFIA Bond and 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 WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a mandatory or optional prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or its representative at the principal office of the WIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender may make a notation on **Exhibit F** (*WIFIA Debt Service*) indicating the amount of principal of and interest on the WIFIA Loan then being prepaid. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such

recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. All such partial prepayments of principal shall be applied to the WIFIA Loan in inverse order of maturity. If such funds have not been so paid on the prepayment date, such principal amount of the WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 10. Fees and Expenses.

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

(i) a servicing set-up fee equal to \$10,410.00 (the "**Servicing Set-Up Fee**"), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan);

(ii) an annual construction period servicing fee equal to \$10,410.00 (the "**Construction Period Servicing Fee**"), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period (including the Federal Fiscal Year during which the Substantial Completion Date occurs); provided, that the initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan), in a pro-rated amount equal to \$[_____]¹; and

(iii) an annual operating period servicing fee equal to \$7,810.00 (the "**Operating Period Servicing Fee**"), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Maturity Date; provided, that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Maturity Date.

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

(c) Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal

¹ \$860 if we close in August and \$0 if we close in September.

counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Loan Documents and the transactions hereby and thereby contemplated, including attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with (i) the enforcement of or attempt to enforce, or the protection or preservation of any right or claim under, the Pledged Property or any provision of this Agreement or any of the other WIFIA Loan Documents or the rights of the WIFIA Lender thereunder; (ii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default.

(d) The obligations of the Borrower under this Section 10 shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other WIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

ARTICLE III CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The Borrower shall have duly executed and delivered to the WIFIA Lender this Agreement and the WIFIA Supplemental Resolution, each in form and substance satisfactory to the WIFIA Lender.

(ii) The Borrower shall have delivered to the WIFIA Lender complete and fully executed copies of the General Bond Resolution, the WIFIA Supplemental Resolution and any other Supplemental Resolution or other proceedings or issuance document authorizing System Debt in respect of the Project that has been entered into on or prior to the Effective Date, together with any amendments, waivers or modifications thereto, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect, and that all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled.

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

(iv) The Borrower shall have delivered to the WIFIA Lender (A) a copy of its Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the Commonwealth, to the extent applicable), along with a certification in the Closing Certificate that such Organizational Documents are in full force and effect, and (B) other than the WIFIA Supplemental Resolution, all further instruments and documents (including any resolutions, ordinances, and supplements) as are necessary for the Borrower to execute and deliver, and to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents.

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

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

(vii) The Borrower shall have delivered to the WIFIA Lender the Non-Lobbying Certificate and the Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance on EPA FORM 4700-4.

(viii) 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 I** (*Form of Closing Certificate*) (the "**Closing Certificate**") (A) designating the Borrower's Authorized Representative, (B) confirming such person's position and incumbency, and (C) certifying as to the satisfaction of the following conditions precedent:

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

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

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

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

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

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

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

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

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

(9) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since December 22, 2019.

(ix) The Borrower shall have delivered to the WIFIA Lender a duly executed certificate from the Paying Agent in the form attached hereto as **Exhibit H** (*Form of Certificate of Paying Agent*).

(x) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction, no more than thirty (30) days prior to the Effective Date, of the assignment by at least two (2) Nationally Recognized Rating Agencies of a public Investment Grade Rating to the Senior Debt then Outstanding and any Senior Debt proposed to be issued for the Project (including the WIFIA Loan), along with a certification in the Closing Certificate that no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(xi) The Borrower shall have delivered to the WIFIA Lender a Base Case Financial Model in form and substance acceptable to the WIFIA Lender, along with a certification in the Closing Certificate that such Base Case Financial Model (A) demonstrates that projected Net Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date and that the Net Revenues are equal to or greater than 110% of the estimated maximum Aggregate Net Debt Service with respect to all Series of Bonds which are then Outstanding for each Payment Period through the Final Maturity Date; (C) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender and (D) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project.

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

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

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

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

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

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

(i) For the initial disbursement hereunder only (A) the Borrower shall have duly issued to the WIFIA Lender the WIFIA Bond in form and substance satisfactory

to the WIFIA Lender, (B) the Borrower shall have obtained a CUSIP number for the WIFIA Bond for purposes of monitoring through EMMA and (C) counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-3** (*Opinions Required from Counsel to Borrower at First Disbursement*)) and bond counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-4** (*Opinions Required from Bond Counsel at First Disbursement*)).

(ii) The Borrower shall have provided to the WIFIA Lender evidence satisfactory to the WIFIA Lender that (A) the aggregate amount of all disbursements of the WIFIA Loan (including the requested disbursement but excluding any interest that is capitalized in accordance with the terms hereof) shall not exceed (1) \$96,926,900, (2) the amount of Eligible Project Costs paid or incurred by the Borrower, and (3) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule; (B) the Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs; and (C) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

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

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

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

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

(C) 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 shall have occurred and be continuing, (2) no event of default or

default that, with the giving of notice or the passage of time or both, would constitute an event of default, in each case, under any other Related Document, shall have occurred and be continuing, and (3) no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since December 22, 2019;

(D) the Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender; and

(E) the representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct as of each date on which any disbursement of the WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(v) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since December 22, 2019.

(vi) To the extent necessary to make the corresponding representations and warranties true, correct and complete as of the date of the applicable disbursement, the Borrower shall have delivered an updated version, in form and substance satisfactory to the WIFIA Lender, of **Schedule 12(p)** (*Environmental Matters*).

(vii) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender copies of any Supplemental Resolution in respect of any Additional Bonds (including any amendment, modification or supplement thereto) and any Supplemental Resolution or other proceedings or issuance document authorizing System Debt in respect of the Project (including any amendment, modification or supplement thereto) entered into after the Effective Date, along with a certification in the Requisition that each such document is complete, fully executed and in full force and effect.

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

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

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 12(b) (*Representations and Warranties of Borrower – Officers' Authorization*), the first sentence of Section 12(f) (*Representations and Warranties of Borrower – Litigation*), Section 12(k) (*Representations and Warranties of Borrower – Credit Ratings*), and the first sentence of Section 12(n) (*Representations and Warranties of Borrower – Principal Project Contracts*), as of each date on which any disbursement of the WIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a public body corporate and political subdivision of the Commonwealth duly organized and validly existing under its Organizational Documents and the laws of the Commonwealth, has full legal right, power and authority to do business in the Commonwealth and to enter into the Related Documents then in existence, to execute and deliver this Agreement and the WIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement, the WIFIA Bond, and the Related Documents.

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

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

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated by the Related Documents, and the fulfillment of or compliance with the terms and conditions of all of the Related Documents, will not (i) conflict with the Borrower's Organizational Documents, (ii)

conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

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

(f) Litigation. As of the Effective Date, except as set forth in **Schedule 12(f)**, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the System (including the Project) or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents which, in any case, (x) directly or indirectly relates to the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents, (y) involves claims in excess of \$5,000,000 (other than claims covered by insurance and where the insurance company has agreed to assume the defense of such claim), or (z) if successful, could reasonably be expected to result in a Material Adverse Effect. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the System (including the Project), the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending or, threatened against or affecting any of the Principal Project Parties, except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Updated Financial Model, to the extent any Updated Financial Model has been approved by the WIFIA Lender). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. (i) The General Bond Resolution and Section 76.150 of Kentucky Revised Statutes establish, and (ii) the Borrower has taken all necessary action to pledge,

assign, and grant, in each case in favor of the WIFIA Lender, legal, valid, binding and enforceable Liens on the Pledged Property purported to be created, pledged, assigned, and granted pursuant to and in accordance with the General Bond Resolution, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act, and the security interests created in the Pledged Property have been duly perfected under applicable Commonwealth law. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Pledged Property except for the Permitted Liens arising by operation of law, and not *pari passu* with any obligations other than the Senior Debt. The Borrower is not in breach of any covenants set forth in Section 14(b) (*Affirmative Covenants – Securing Liens*) or in the General Bond Resolution with respect to the matters described in Section 14(b) (*Affirmative Covenants – Securing Liens*). As of the Effective Date and as of each other date this representation and warranty is made, (A) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable and perfected Lien on the Pledged Property in favor of the Secured Parties to the extent contemplated by the General Bond Resolution, and (B) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any documents related to the General Bond Resolution or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Pledged Property granted pursuant to the General Bond Resolution is governed by Article 9 of the UCC. The Existing Hedging Agreements are not secured by any Lien on or security interest in any portion of the Pledged Property and are unsecured obligations of the Borrower.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R § 1532.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 11(a)(vi) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

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

(j) Compliance with Laws.

(i) The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To ensure such compliance, the Borrower has included in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j) (including without limitation with respect to the Davis-Bacon Act requirements).

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

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

(k) Credit Ratings. The WIFIA Bond and the Senior Debt then Outstanding have received a public Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, written evidence of such ratings has been provided to the WIFIA Lender prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

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

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

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

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

(p) Environmental Matters. Except as set forth in **Schedule 12(p)** (*Environmental Matters*), each of the Borrower and, to the Borrower's knowledge, each Principal Project Party, is in compliance with all laws applicable to the System (including the Project) relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the System (including the Project) (collectively, the "**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Except as set forth in **Schedule 12(p)** (*Environmental Matters*), the Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower with any such Environmental Law or Governmental Approval. The Borrower has provided to the WIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower's or the Project's compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Project and relate to Environmental Laws.

(q) Sufficient Rights. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the System (including the Project), in each case as is necessary and sufficient as of the date this

representation is made for the construction, operation, maintenance and repair of the System (including the Project). As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower sufficient to enable the Borrower to own, construct, operate, maintain and repair the System (including the Project) and to perform its obligations under the Principal Project Contracts to which it is a party.

(r) Insurance. The Borrower is in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower's self-insurance program is actuarially sound and the Borrower has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower's self-insurance program is actuarially sound.

(s) No Liens. Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Pledged Property, the System, the Project, the Revenues, or the properties or assets in relation to the Project.

(t) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the WIFIA Lender pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

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

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

(w) Sufficient Funds. The amount of the WIFIA Loan, when combined with all other funds committed for the development and construction of the Project as set forth under the various sources of funds in the Project Budget will be sufficient to carry out the Project, pay all Total Project Costs anticipated for the development and construction of the Project and achieve Substantial Completion by the Projected Substantial Completion Date.

(x) Sovereign Immunity. The Borrower either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the

obligations of the Borrower hereunder and thereunder, or, to the extent that the Borrower has such immunity, the Borrower has waived such immunity pursuant to Section 14(o) (*Affirmative Covenants – Immunity*).

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

(z) No Federal Debt. The Borrower has no delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

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

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

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

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

ARTICLE V COVENANTS

Section 14. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds, unless the WIFIA Lender waives compliance in writing:

(a) Rate Covenant.

(i) The Borrower shall fix, establish, maintain and collect rates, fees, rents and charges for services of the System during each Borrower Fiscal Year which comply with the requirements specified in Section 7.11 (*Rents, Rates, Fees and Charges*) of the General Bond Resolution, which requirements are hereby incorporated herein and a copy of such section, as of the Effective Date, is attached hereto as **Schedule VI** (*Rate Covenant*).

(ii) In addition, the Borrower shall at all times maintain rates and charges for the services furnished, provided and supplied by the System which shall comply with the provisions of the General Bond Resolution, be reasonable and non-discriminatory and produce Revenues in each Borrower Fiscal Year from the System

sufficient: (A) to pay the Operating Expenses Excluding Subordinated Debt Service; (B) to produce Adjusted Net Revenues of the System, collectively or individually, as the case may be, sufficient (1) to pay an amount equal to 110% of the Aggregate Net Debt Service for such Borrower Fiscal Year, and (2) to pay the amounts required to be deposited in any reserve or contingency fund created for the payment and security of the Bonds; (C) to produce Adjusted Net Revenues of the System (after satisfaction of the amounts required by clause (B)(1) above (i.e., 110% of the Aggregate Net Debt Service for such Borrower Fiscal Year)), equal to at least 110% of the Senior Subordinated Aggregate Debt Service for all Senior Subordinated Debt payable from and secured by a lien on and pledge of the Net Revenues of the System; and (D) to pay any other legal debt or obligation of the System as and when the same shall become due (collectively with the covenant set forth in clause (i) above, the “**Rate Covenant**”). For purposes of this clause (ii), the following assumptions shall apply: Senior Subordinated Debt shall be deemed to (i) be Outstanding in an aggregate amount equal to the greater of (A) the then Outstanding aggregate amount of Senior Subordinated Debt and (B) \$250,000,000, and (ii) be amortized over a twenty (20) year period on the basis of level debt service and an interest rate of 5% per annum.

(b) Securing Liens. The Borrower shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Pledged Property (whether now existing or hereafter arising) granted to the WIFIA Lender for its benefit pursuant to the General Bond Resolution, or intended so to be granted pursuant to the General Bond Resolution, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Pledged Property free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the General Bond Resolution, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Pledged Property granted pursuant to the General Bond Resolution and for the benefit of the WIFIA Lender under the General Bond Resolution against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(c) Use of Proceeds. The Borrower shall use the proceeds of the WIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, the Governmental Approvals in connection with the Project, and the highest standards of the Borrower’s industry.

(ii) The Borrower shall ensure that each Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to the Borrower

and shall ensure that any letter of credit provided pursuant to any Principal Project Contract meets the requirements therefor set forth in such Principal Project Contract.

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

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the System (including, but not limited to, the Project) (A) in a reasonable and prudent manner and (B) substantially in accordance with the Updated Financial Model most recently approved by the WIFIA Lender (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the System (including the Project) and (ii) maintain the System (including the Project) in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance.

(i) The Borrower shall at all times procure and maintain or cause to be maintained insurance on the System and the construction of the Project, with responsible insurers, or as part of a reasonable system of self-insurance that is adequately funded, in such amounts and against such risks (including damage to or destruction of the System) as are customarily available from commercial insurers with respect to works and properties of like character on a financially reasonable basis and maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties. All policies of insurance required to be maintained herein shall, to the extent reasonably obtainable, provide that the WIFIA Lender shall be given thirty (30) days written notice of any intended cancellation thereof or reduction of coverage provided thereby. The Borrower shall cause each Principal Project Party to obtain and maintain builders risk and casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

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

(iii) The Borrower shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any Principal Project Party), other than workers' compensation insurance, to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.

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

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

(g) Maintain Legal Structure. The Borrower shall maintain its existence as a public body corporate and political subdivision of the Commonwealth organized and existing under its Organizational Documents and the laws of the Commonwealth.

(h) System Accounts; Investment Securities.

(i) The Borrower shall maintain the Revenue Fund in accordance with the terms hereof and the General Bond Resolution. All Revenues received shall be deposited into the Revenue Fund when and as received in trust for the benefit of the holders of the System Debt, subject to the application of Revenues pursuant to Section 7(d) (*Security and Priority; Flow of Funds — Flow of Funds*).

(ii) The Borrower shall maintain the Reserve Account in an amount equal to the Debt Service Reserve Requirement in accordance with the provisions of the General Bond Resolution, including Section 5.6 (*Bond Fund — Reserve Account*) of the General Bond Resolution, which, as of the Effective Date, is set forth in **Schedule VII** (Bond Fund — Reserve Account) for reference.

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

(i) Compliance with Laws.

(i) The Borrower shall, and shall require its contractors and subcontractors at all tiers with respect to the Project, to comply with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To ensure such compliance, the Borrower shall include in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(i) and follow applicable federal

guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 14(i) (including without limitation with respect to the Davis-Bacon Act requirements).

(j) Material Obligations. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Revenues or other assets of the System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the Revenues or the Pledged Property; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(k) [Reserved]

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

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

(n) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the System (including the Project) or any part thereof, the Borrower shall (i) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such Event of Loss and (ii) apply all Net Loss Proceeds in respect of such Event of Loss to repair, reconstruct, and/or replace the portion of the System in respect of which the applicable Loss Proceeds were received. The Borrower shall begin such repair, reconstruction or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such repair, reconstruction or replacement as expeditiously as possible, and shall pay out of such Loss Proceeds all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and the System shall be free and clear of all claims and Liens. If such Net Loss Proceeds exceed the costs of such repair, reconstruction or replacement, then the excess Net Loss Proceeds shall be deposited in the Revenue

Fund and be available for other proper uses of funds deposited in the Revenue Fund. If such Net Loss Proceeds are insufficient to enable the Borrower to restore or replace the damaged portions of the System, the Borrower shall provide additional funds for that purpose.

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

(p) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (A) Revenues, operating expenses, 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 Borrower with regard to the Project, other sources of funding for the Project (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 for 2020 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the WIFIA Loan, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(q) Access; Records.

(i) So long as the WIFIA Loan or any portion thereof shall remain Outstanding and until five (5) years after the WIFIA Loan shall have been paid in full, the WIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any portion of the Project, to examine books of account and records of the Borrower relating to the Project, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts relating to the Project with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 14(q) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and

intervals as the WIFIA Lender may request. The Borrower agrees to pay all out-of-pocket expenses incurred by the WIFIA Lender in connection with the WIFIA Lender's exercise of its rights under this Section 14(q) at any time when an Event of Default shall have occurred and be continuing.

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

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

(a) Indebtedness.

(i) Except for Permitted Debt, the Borrower shall not without the prior written consent of the WIFIA Lender issue or incur indebtedness of any kind; provided, that the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Pledged Collateral, including Permitted Debt, without the prior written consent of the WIFIA Lender, while an Event of Default has occurred and is continuing.

(ii) The Borrower may not create, incur or suffer to exist (A) any indebtedness of any kind the payments of which is senior or prior in right to the payment by the Borrower of the Senior Debt, or (B) any indebtedness of any kind incurred in respect of the Project that is secured by a Lien on any assets or property of the Borrower other than the Pledged Collateral.

(iii) The Borrower shall comply with the requirements specified in Section 2.2 (*General Provisions for Issuance of Bonds*), Section 2.4 (*Additional Bonds*), Section 2.5 (*Refunding Bonds*), Section 2.6 (*Certificate of an Authorized Officer of the Borrower*) and Section 5.10 (*Subordinated Debt*) of the General Bond Resolution, which requirements are hereby incorporated herein and a copy of each such section, as of the Effective Date, is attached hereto as **Schedule VIII** (*Additional Bonds Test*). For purposes of computing Aggregate Debt Service when complying with such requirements for each proposed issuance of Additional Bonds, the Borrower shall assume that each Outstanding Series of Bonds is Outstanding in the aggregate principal amount included in the calculation made in accordance with Section 2.2.A.[7] of the General Bond Resolution at the time of initial issuance of such Additional Bonds.

(iv) Upon the issuance of any Additional Bonds, the Borrower shall provide to the WIFIA Lender a certificate signed by the Borrower's Authorized Representative, (A) specifying the closing date with respect to such proposed Additional Bonds and (B) confirming that the issuance of such proposed Additional Bonds is authorized pursuant to, and satisfies the conditions in, this Section 15(a).

(v) The Borrower shall not without the prior written consent of the WIFIA Lender issue or incur any Senior Debt that is to bear interest at a Variable Interest Rate, to the extent that such issuance would cause the principal amount of all Outstanding Variable Interest Rate Obligations with respect to which a Hedging Transaction providing for a fixed interest rate resulting in fixed payment amounts payable by the Borrower to the Hedging Transaction counterparties is not in effect, to exceed twenty-five percent (25%) of the principal amount of all Outstanding Senior Debt.

(vi) To the extent any Permitted Debt consists of Bonds that are Option Bonds, the Borrower must maintain a Credit Facility that will pay any amounts payable by the Borrower in respect of such Option Bonds.

(vii) In addition to the limitations set forth in Section 5.10 (*Subordinated Debt*) of the General Bond Resolution, any debt issued by the Borrower or any contract, lease, installment sale agreement or other instrument entered into by the Borrower or lending of credit to or guarantee of any debts, claims or other obligations of any person in connection with the acquisition of the assets and operations of the Oldham County Environmental Authority or any other sewer facilities or systems shall be payable out of, and secured by a pledge of Revenues subordinate and junior in all respects to the pledge and lien securing the Senior Subordinated Debt.

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i) extinguish the Rate Covenant; (ii) extinguish or impair the Liens on the Pledged Property or any dedicated source of repayment of the WIFIA Loan or any other System Debt (the proceeds of which are applied to fund Total Project Costs), in each case granted pursuant to the General Bond Resolution, (iii) amend, modify, replace or supplement any Related Document or permit a waiver of any provision thereof in a manner that could reasonably be expected to result in a Material Adverse Effect, or (iv) terminate, assign or replace any Related Document (other than the replacement of any Principal Project Contract permitted under Section 17(a)(xi) (*Events of Default and Remedies – Default Under Principal Project Contracts*)) in a manner that could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Project, the Pledged Property, the Revenues, or the Borrower's respective rights therein.

(d) Restricted Payments and Transfers. The Borrower shall not permit Revenues or other assets of the System, or any funds in any accounts held under the General Bond Resolution or in any other fund or account held by or on behalf of the Borrower, to be paid or

transferred or otherwise applied for purposes other than ownership, operation or maintenance of the System.

(e) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the System, a substantial portion of the assets included in the System, or its rights and obligations under any Principal Project Contract, in each case unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the Borrower in the ordinary course of business.

(f) Borrower Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the WIFIA Lender.

(g) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge into another Person unless (i) such reorganization, merger or consolidation is with or into another entity established by Commonwealth law and such reorganization, merger or consolidation is mandated by Commonwealth law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the Revenues or other elements of the Pledged Property or (B) the availability of the Revenues for the payment and security of the obligations of the Borrower under this Agreement; and (ii) the Borrower provides to the WIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the WIFIA Lender. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

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

(i) Hedging. The Borrower shall not enter into any Hedging Transaction with respect to or payable from the Revenues for any speculative purpose. The Borrower shall not create, incur, assume or permit to exist any Lien on any portion of the Pledged Property to secure payment of any Hedging Agreement (and any hedging obligations and Hedging Termination Obligations payable thereunder) other than a Lien on the Revenues on a parity with or subordinate to the Lien securing the General Subordinated Debt. The Borrower's obligations to pay any hedging obligations and Hedging Termination Obligations shall be payable as an Operating Expense under Paragraph B.[3] of Section 5.4 (*Application of Revenues*) of the General Bond Resolution.

Section 16. Reporting Requirements.

(a) Updated Financial Model.

(i) The Borrower shall provide to the WIFIA Lender not later than ninety (90) days after the beginning of each Borrower Fiscal Year, an updated Base Case Financial Model reflecting the then-current and projected conditions for a period not less than the lesser of (A) the next ten (10) succeeding Borrower Fiscal Years and (B) the remaining term of the WIFIA Loan.

(ii) The Updated Financial Model shall demonstrate to the satisfaction of the WIFIA Lender that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the Project over its useful life, and shall include: (A) the Borrower's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected operation and maintenance costs of the System; (B) evidence of compliance with the Rate Covenant for the most recent Borrower Fiscal Year and the projected Rate Covenant coverages through the period covered in the Updated Financial Model; (C) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model and (D) a certificate signed by the Borrower's Authorized Representative, certifying that (1) the Updated Financial Model, including the assumptions and supporting documentation, as of its date, is accurate and reasonable to the best of the Borrower's knowledge and belief, (2) the annual projected Net Revenues will be sufficient to meet the Loan Amortization Schedule and to satisfy the Rate Covenant through the period covered by the Updated Financial Model in accordance with this Section 16(a), and (3) the Borrower is in compliance with its obligations in respect of the Rate Covenant pursuant to Section 14(a) (*Affirmative Covenants – Rate Covenant*).

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

(b) Annual Financial Statements. The Borrower shall deliver to the WIFIA Lender, as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year:

(i) a copy of the audited income statement and balance sheet of the Borrower as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and (C) which shall be

complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein); and

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

provided, that the failure of the Borrower to deliver to the WIFIA Lender the annual audited financial statements required under this Section 16(b) during the period that is one hundred eighty (180) days after the end of the applicable Borrower Fiscal Year shall not constitute a Default or an Event of Default, so long as the Borrower provides such annual audited financial statements within ninety (90) days after the end of such period.

(c) Final Design Specifications. The Borrower shall deliver to the WIFIA Lender, no later than thirty (30) days prior to (i) bid advertisement, a copy of the final specifications relating to the development and construction of the Project, (ii) issuance of the final RFP, a copy of the updated debarment provisions from the final RFP and (iii) any notice to proceed for the Project, a copy of the executed construction contract related to such notice to proceed and the final Project specifications.

(d) Construction Reporting. The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation or other information as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information. During the period through Substantial Completion of the Project, the Borrower shall furnish to the WIFIA Lender, on a quarterly basis, a report on the status of the Project, substantially in the form of **Exhibit K** (*Form of Quarterly Report*). The report shall be executed by the Borrower's Authorized Representative and, for any quarter, shall be delivered to the WIFIA Lender within thirty (30) days of the following quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date later than the Projected Substantial Completion Date, the Borrower shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the System (if any), and that the new date could not reasonably be expected to result in a Material Adverse Effect.

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

(f) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the WIFIA Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than five percent (5%), which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the System. The Borrower’s notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the WIFIA Lender’s security or the Borrower’s ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

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

(h) Notices.

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

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

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

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim

against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower that could reasonably be expected to have a 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 the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

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

(F) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of (1) any proposed amendments to the provisions or definitions of the General Bond Resolution included in **Schedule V** (*Flow of Funds*), **Schedule VI** (*Rate Covenant*), **Schedule VII** (*Bond Fund — Reserve Account*) and **Schedule VIII** (*Additional Bonds Test*) or referenced in Section 1 (*Definitions*) at least thirty (30) days prior to the effective date thereof and (2) copies of fully executed amendments of any Related Document within ten (10) days following execution thereof; provided, that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(G) Related Document Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Related Document; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

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

(I) Ratings Changes: any change in the rating assigned to the Senior Debt, the WIFIA Loan or any Subordinated Debt, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies; provided, that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(J) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

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

(L) Issuance of System Debt: copies of any final issuing instrument (together with any continuing disclosure documents, resolutions, ordinances, official statement, certifications or cash flow projections in connection therewith), prepared in connection with the incurrence of any Permitted Debt; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

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

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

(O) Draws on Reserve Account: the occurrence of any draws on the Reserve Account to fund payments of interest on or principal of any Bonds when due; and

(P) Appointment of Paying Agents: the appointment of any other Paying Agents.

(ii) Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (A) (*Substantial Completion*), (F) (*Amendments*) or (I) (*Ratings Changes*) (in the case of a ratings upgrade), (K) (*Additional Principal Project Contracts*), (L) (*Issuance of Obligations*), and (M) (*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. The Borrower shall also provide the WIFIA Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters described in clause (i) above.

(i) Requested Information. The Borrower shall, at any time while the WIFIA Loan remains Outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project or the Revenues as the WIFIA Lender may from time to time reasonably request.

ARTICLE VI
EVENTS OF DEFAULT

Section 17. Events of Default and Remedies.

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

(i) Payment Default. The Borrower shall fail to pay when due any part of the principal amount of or interest on the WIFIA Loan (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 8 (*Payment of Principal and Interest*), and such failure continues for a period of five (5) days after the payment thereof shall be required under this Agreement or the WIFIA Bond or on the Final Maturity Date (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Bond or any other WIFIA Loan Document (other than in the case of any Payment Default, any Development Default or any failure to comply with the Rate Covenant), and such failure shall not be cured within 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, however, 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 17(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) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the WIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided, that no Event of Default shall be deemed to have occurred under this Section 17(a)(iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(h) (*Representations and Warranties of Borrower – No Debarment*), Section 12(j) (*Representations and Warranties of Borrower – Compliance with Laws*), or Section 12(y) (*Representations and Warranties of Borrower – Patriot Act*), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured and (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days

from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation.

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

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

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

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

(viii) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or 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) the General Bond Resolution 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 Property other than as a result of actions or a failure to act by, and within the control of, any Secured Party, and with the priority purported to be created thereby; or (C) any event occurs that results in the material impairment in the perfection or priority of the WIFIA Lender's security interest in the Pledged Property or in the value of such Pledged Property.

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

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

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

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

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

(b) Upon the occurrence of any Bankruptcy Related Event, all obligations of the WIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan shall automatically be deemed terminated, and the WIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents, 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.

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

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

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

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

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

(v) as set forth in and subject to Section 76.160 of Kentucky Revised Statutes and Section 8.2 of the General Bond Resolution, the holder or holders of twenty percent (20%) in principal amount or more of the Bonds (including the WIFIA Bond) then Outstanding pursuant to the General Bond Resolution may, by an instrument or instruments filed in the office of the County Clerk of Jefferson County, Kentucky, and approved or acknowledged in the same manner as a deed to be recorded, apply to a Judge in the Circuit Court of such County to appoint a trustee to represent all of the Bondholders. Upon such application, such Judge shall appoint a trustee and such trustee may, and upon the written request of the holder or holders of twenty percent (20%) in principal amount or more of the Bonds Outstanding under the General Bond Resolution, shall, in his or its name, (a) by mandamus or other suit, action or proceeding at law, or in equity, including mandatory injunction, enforce all rights of the Borrower to collect rates, rentals and other charges adequate to carry out any agreement as to, or pledge of, the revenues and income of the Borrower, and to require the Borrower and its officers to carry out any other agreement with the Bondholders and to perform its and their duties imposed by law; (b) bring suit upon the Bonds; (c) by action or suit in equity require the Borrower to account as if it were the trustee of an express trust for the Bondholders; (d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of Bondholders; (e) declare all Bonds due and payable; and (f) pursue any other rights or remedies available at law or in equity. For any Bonds registered in Book-Entry Form, notwithstanding the above definition of "Bondholder", the Paying Agent shall be entitled to rely upon written instructions from a majority of the beneficial owners of the Bonds with reference to consent, if any, required from Holders pursuant to the terms of the General Bond Resolution. Any such trustee, whether or not all Bonds have been declared due and payable, shall be entitled as of right upon application to such Court to the appointment of a receiver, who may enter upon and take possession of the System, or any part or parts thereof, and operate and maintain the same, and collect and receive all rentals, rates, and other charges, and other revenues and income, of the Borrower, thereafter arising therefrom, in the same manner as the Borrower and its officers might do, and shall deposit all such monies in a separate account and apply the same in such manner as such Court shall direct. In any suit, action or proceeding, by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute disbursements taxable as costs. All costs and disbursements allowed by the Court shall be a first charge on any revenue and income derived from the System. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the Bondholders in the enforcement and protection of their rights; and/or

(vi) subject to the provisions of Section 76.160 of Kentucky Revised Statutes and Section 8.2 of the General Bond Resolution, the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the WIFIA Bond or the other WIFIA Loan Documents, and may prosecute any such judgment or final decree against the

Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the WIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents.

(d) No action taken pursuant to this Section 17 shall relieve Borrower from its obligations pursuant to this Agreement, the WIFIA Bond or the other WIFIA Loan Documents, all of which shall survive any such action.

(e) Notwithstanding the provisions of Section 8.6 (*Limitation on Rights of Bondholders*) of the General Bond Resolution, the WIFIA Lender shall have the right in any manner whatever by its action to affect, disturb or prejudice the security of the General Bond Resolution, or to enforce any right thereunder or under law with respect to the Bonds or the General Bond Resolution, in the manner provided in this Agreement, and all proceedings at law or in equity shall be instituted, had and maintained in the manner provided in this Agreement and for the benefit of the WIFIA Lender. Further, notwithstanding the provisions of Section 8.6 (*Limitation on Rights of Bondholders*) of the General Bond Resolution, the WIFIA Lender by the acceptance of the WIFIA Bond shall not be deemed have agreed that any court in its discretion may require, in any suit for the enforcement of any right or remedy under the General Bond Resolution or any Series Resolution or Supplemental Resolution, the filing by any party litigant in such suit of an undertaking to pay the reasonable costs of such suit, and that such court may in its discretion assess such reasonable costs (including reasonable attorneys' fees) against any party litigant in any such suit having due regard to the merits and good faith of the claims or defenses made by such party litigant.

ARTICLE VII MISCELLANEOUS

Section 18. Disclaimer of Warranty. The WIFIA Lender makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Lender be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the System (including the Project) or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 19. No Personal Recourse. No official, employee or agent of the WIFIA Lender or the Borrower or any Person executing this Agreement or any of the other WIFIA Loan Documents shall be personally liable on this Agreement or such other WIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 20. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the WIFIA Lender, solely by virtue of the WIFIA Loan, and the Borrower agrees to indemnify and hold the WIFIA Lender, the Servicer (if any), the Administrator, and the Government harmless, to the extent permitted by law and in accordance with Section 32 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the WIFIA Loan, and that no third party creditor of the Borrower shall have any right against the WIFIA Lender with respect to the WIFIA Loan made pursuant to this Agreement.

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

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

Section 23. Servicer. The WIFIA Lender may from time to time designate another entity or entities to perform, or assist the WIFIA Lender in performing, the duties of the Servicer or specified duties of the WIFIA Lender under this Agreement and the WIFIA Bond. The WIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Lender shall have delegated to such Servicer. The WIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the WIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 24. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

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

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

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

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

Section 29. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the WIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Lender.

Section 30. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

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

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

If to Borrower: Louisville and Jefferson County Metropolitan Sewer District
700 W. Liberty Street
Louisville, Kentucky 40203
Attention: General Counsel
Email: paula.purifoy@louisvillemsd.org

If to the Paying Agent: The Bank of New York Mellon Trust Company, N.A.
4965 US-42 #1000
Louisville, Kentucky 40222
Attention: Susanna Patterson
Email: susanna.n.patterson@bnymellon.com

Unless otherwise instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email to the email address noted above for the WIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the WIFIA Lender's Authorized Representative, with respect to notices to the WIFIA Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 32. Indemnification. The Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender and any official, employee, agent or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement, the WIFIA Bond or any of the other Related Documents, (b) the WIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any 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 shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted

by applicable law, neither the Borrower nor the WIFIA Lender shall assert, and each of the Borrower and the WIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the WIFIA Loan or the use of the proceeds thereof, provided, that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 32 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 33. Sale of WIFIA Loan. The WIFIA Lender shall not sell the WIFIA Loan at any time prior to the Substantial Completion Date. After such date, the WIFIA Lender may sell the WIFIA Loan to another entity or reoffer the WIFIA Loan into the capital markets only in accordance with the provisions of this Section 33. Such sale or reoffering shall be on such terms as the WIFIA Lender shall deem advisable. However, in making such sale or reoffering the WIFIA Lender shall not change the terms and conditions of the WIFIA Loan without the prior written consent of the Borrower in accordance with Section 24 (*Amendments and Waivers*). The WIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of the WIFIA Loan, written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The Borrower shall have no obligation to provide any disclosure materials or to make any representations or agreements in connection with the consummation of such sale or reoffering. The provision of any notice pursuant to this Section 33 shall not (x) obligate the WIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell the WIFIA Loan.

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

Section 35. Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the Borrower of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto; provided, however, that the indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(q) (*Affirmative Covenants – Access; Records*) and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such Sections.

Section 36. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

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

**LOUISVILLE AND JEFFERSON
COUNTY METROPOLITAN SEWER
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: Andrew R. Wheeler
Title: Administrator

*[Signature Page to Louisville and Jefferson County Metropolitan Sewer District [Morris Forman Water Quality
Treatment Center Biosolids Processing Solution Project] – WIFIA Loan Agreement]*

SCHEDULE I
PROJECT BUDGET

SOURCES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
WIFIA Loan	\$ 96,926,900	49.0%
Commercial Paper	89,014,000	45.0%
Borrower Cash	11,869,000	6.0%
Total Sources of Funds	\$197,810,000	100.0%
USES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
Construction	\$131,000,000	66.2%
Design	\$14,410,000	7.3%
Other Capital Costs	\$13,100,000	6.6%
Contingency	\$39,300,000	19.9%
Total Uses of Funds	\$197,810,000	100.0%
Total Eligible Project Costs	\$197,810,000	100.0%
Total Project Costs	\$197,810,000	100.0%

SCHEDULE II
CONSTRUCTION SCHEDULE

<i>Activity / Milestone</i>	<i>Start</i>	<i>Finish</i>
INITIATION & PROCUREMENT		
Progressive Design Builder Selection / Negotiation	6/8/2020	1/4/2021
STAGE 1 SERVICES		
Preliminary Design		
Preliminary Design Phase	1/4/2021	7/20/2021
30% Design		
30% Design Phase	7/21/2021	1/20/2022
60% Design		
60% Design Phase	1/21/2022	7/22/2022
Guaranteed Maximum Price Negotiation	7/22/2022	9/21/2022
STAGE 2 SERVICES		
Final Design		
Final Design Phase	9/22/2022	5/23/2023
Construction		
Construction Period	9/22/2022	9/21/2025
Substantial Completion	6/30/2025	6/30/2025
Final Completion	9/21/2025	9/21/2025
Construction Closeout		
Statement of Final Payment Received	10/21/2025	10/21/2025

SCHEDULE III
EXISTING INDEBTEDNESS

A. Senior Debt

	Agreement/Series	Outstanding Principal
1.	Sewer and Drainage System Revenue Bonds, Series 2009C (Federally Taxable - Build America Bonds - Direct Payment), issued pursuant to the Fifteenth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated November 24, 2009, maturing on May 15, 2040	\$180,000,000
2.	Sewer and Drainage System Revenue Bonds, Series 2010A (Federally Taxable - Build America Bonds - Direct Payment), issued pursuant to the Sixteenth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated November 30, 2010, maturing on May 15, 2043	\$330,000,000
3.	Sewer and Drainage System Revenue Bonds, Series 2011A, issued pursuant to the Seventeenth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated August 24, 2011, maturing on May 15, 2034 ²	\$246,225,000
4.	Sewer and Drainage System Revenue Bonds, Series 2013A, issued pursuant to the Eighteenth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated May 23, 2013, maturing on May 15, 2036	\$115,790,000
5.	Sewer and Drainage System Revenue Bonds, Series 2013B, issued pursuant to the Eighteenth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated May 23, 2013, maturing on May 15, 2038	\$114,025,000
6.	Sewer and Drainage System Revenue Bonds, Series 2013C, issued pursuant to the Nineteenth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated November 27, 2013, maturing on May 15, 2044	\$99,375,000
7.	Sewer and Drainage System Revenue Bonds, Series 2014A, issued pursuant to the Twentieth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated November 25, 2014, maturing on May 15, 2045	\$79,800,000
8.	Sewer and Drainage System Revenue Bonds, Series 2015A, issued pursuant to the Twenty-First Supplemental Sewer and Drainage System Revenue Bond Resolution, dated October 21, 2015, maturing on May 15, 2046	\$173,535,000
9.	Sewer and Drainage System Revenue Refunding Bonds 2015B, issued pursuant to the Twenty-Second Supplemental Sewer and Drainage System Revenue Bond Resolution, dated October 21, 2015, maturing on May 15, 2038	\$74,040,000

² On March 25, 2020 the District entered into a Forward Delivery Bond Purchase Agreement with an institutional investor providing for the sale of the District's Series 2021A Bonds in the principal amount of \$246,555,000 to be issued and delivered on August 17, 2021. The proceeds of the sale of the Series 2021A Bonds will be used to redeem and refund on November 15, 2021 all of the District's Series 2011A Bonds outstanding on that date.

10.	Sewer and Drainage System Revenue Bonds, Series 2016A, issued pursuant to the Twenty-Third Supplemental Sewer and Drainage System Revenue Bond Resolution, dated August 30, 2016, maturing on May 15, 2046	\$149,520,000
11.	Sewer and Drainage System Revenue Refunding Bonds, Series 2016B Bonds, issued pursuant to the Twenty-Fourth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated August 30, 2016, maturing on May 15, 2036	\$26,185,000
12.	Sewer and Drainage System Revenue Refunding Bonds, Series 2016C, issued pursuant to the Twenty-Fourth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated August 30, 2016, maturing on May 15, 2023	\$50,515,000
13.	Sewer and Drainage System Revenue Bonds, Series 2017A, issued pursuant to the Twenty-Fifth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated August 29, 2017, maturing on May 14, 2048	\$167,625,000
14.	Sewer and Drainage System Revenue Refunding Bonds, Series 2017B, issued pursuant to the Twenty-Sixth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated August 29, 2017, maturing on May 15, 2025	\$33,735,000
15.	Sewer and Drainage System Revenue Refunding Bonds, Series 2018A, issued pursuant to the Twenty-Seventh Supplemental Sewer and Drainage System Revenue Bond Resolution, dated May 31, 2018, maturing on May 15, 2038	\$60,380,000
16.	Sewer and Drainage System Revenue Refunding Bonds, Series 2019, issued pursuant to the Twenty-Eighth Supplemental Sewer and Drainage System Revenue Bond Resolution, dated August 19, 2019, maturing on May 15, 2023	\$24,770,000
17.	Sewer and Drainage System Revenue Refunding Bonds, Series 2020A, issued pursuant to the Thirty-First Supplemental Sewer and Drainage System Revenue Bond Resolution, dated July 30, 2020, maturing on May 15, 2050	\$225,000,000

B. Senior Subordinated Debt³

	Agreement/Series	Outstanding Principal
1.	Louisville and Jefferson County Metropolitan Sewer District Sewer and Drainage System Subordinated Bond Anticipation Notes, Series 2019, issued pursuant to the Sewer and Drainage System Subordinated Debt Sale Resolution, Series 2019, dated September 26, 2019, maturing on October 23, 2020	\$226,340,000
2.	Louisville and Jefferson County Metropolitan Sewer District Sewer and Drainage System Subordinated Commercial Paper Notes, Series 2018 authorized in a maximum principal amount of	\$45,000,000 ⁴

³ MSD Comment: To be updated closer to closing.

⁴ An additional \$15,000,000 of Notes are expected to be redeemed on October 7, 2020 using the proceeds of the District's Sewer and Drainage System Revenue Bonds, Series 2020A.

	\$500,000,000 (combined limit with the Subordinated Program Notes, Direct Purchase Series 2018)	
3.	Louisville and Jefferson County Metropolitan Sewer District Sewer and Drainage System Subordinated Program Notes, Direct Purchase Series 2018 authorized in a maximum principal amount of \$500,000,000 (combined limit with the Subordinated Commercial Paper Notes, Series 2018)	\$100,000

C. General Subordinated Debt

	Agreement/Series	Outstanding Principal
1.	Assistance Agreement between the Kentucky Infrastructure Authority and the District dated December 20, 2019 (KIA Loan #A19-015)	\$0**
2.	Assistance Agreement between the Kentucky Infrastructure Authority and the District dated December 20, 2019 (KIA Loan #A19-028)	\$0**
3.	Assistance Agreement between the Kentucky Infrastructure Authority and the City of Crestwood, Kentucky dated August 1, 1998 (KIA Loan #A98-04), assumed by the District pursuant to an Assumption Agreement dated May 31, 2019	\$453,833
4.	Assistance Agreement between the Kentucky Infrastructure Authority and the Oldham County Environmental Authority, dated September 1, 2011 (KIA Loan #A10-04), assumed by the District pursuant to an Assumption Agreement dated June 30, 2020	\$1,973,834.76
5.	Assistance Agreement between the Kentucky Infrastructure Authority and the Oldham County Environmental Authority, dated February 1, 2012 (KIA Loan #A10-05), assumed by the District pursuant to an Assumption Agreement dated June 30, 2020	\$715,294.27
6.	Assistance Agreement between the Kentucky Infrastructure Authority and the Oldham County Environmental Authority, dated February 1, 2012 (KIA Loan #A10-06), assumed by the District pursuant to an Assumption Agreement dated June 30, 2020	\$81,439.55
7.	Assistance Agreement between the Kentucky Infrastructure Authority and the Oldham County Environmental Authority, dated March 1, 2012 (KIA Loan #A10-07), assumed by the District pursuant to an Assumption Agreement dated June 30, 2020	\$1,821,368.79
8.	Assistance Agreement between the Kentucky Infrastructure Authority and the Oldham County Environmental Authority, dated August 1, 2012 (KIA Loan #A11-15), assumed by the District pursuant to an Assumption Agreement dated June 30, 2020	\$465,550.03
9.	Assistance Agreement between the Kentucky Infrastructure Authority and the Oldham County Environmental Authority, dated March 1, 2015 (KIA Loan #A12-29), assumed by the District pursuant to an Assumption Agreement dated June 30, 2020	\$5,519,618.94

10.	Assistance Agreement between the Kentucky Infrastructure Authority and the Oldham County Environmental Authority, dated March 1, 2018 (KIA Loan #A17-28), assumed by the District pursuant to an Assumption Agreement dated June 30, 2020	\$2,012,724.94**
11.	Assistance Agreement between the Kentucky Infrastructure Authority and the Oldham County Environmental Authority, dated July 1, 2019 (KIA Loan #A18-010), assumed by the District pursuant to an Assumption Agreement dated June 30, 2020	\$1,115,879.99**
12.	Assistance Agreement, dated as of June 30, 2020, by and between the Borrower and the County of Oldham, Kentucky ⁵	\$5,761,946
13.	Assistance Agreement, dated as of June 30, 2020, by and between the Borrower and the County of Oldham, Kentucky ⁶	\$7,865,000
14.	Sublease Agreement dated as of June 30, 2020 by and between the Borrower and the County of Oldham, Kentucky	\$2,180,000

D. Unsecured System Debt

	Agreement/Series	Outstanding Principal ⁷
1.	The ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, entered into by the Borrower and Bank of America, N.A., reference number 3274543, with an effective date of November 15, 2009 and a termination date of May 16, 2033 and an initial notional amount of \$56,433,000	n/a
2.	The ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, entered into by the Borrower and Wells Fargo Bank, N.A., reference number 157718/239604, with a trade date of March 27, 2001, an effective date of November 15, 2009 and a termination date of May 15, 2033	n/a

** Still in draw-down period.

⁵ The Borrower agreed in this Assistance Agreement to support debt service on the outstanding (i) County of Oldham, Kentucky General Obligation Refunding Bonds (Oldham County Sewer District Project), Series 2009 and (ii) County of Oldham, Kentucky General Obligation Refunding Bonds, Series 2017 (Oldham County Environmental Authority Project), dated September 5, 2017, the proceeds of each of which were used by the County to benefit Oldham County Environmental Authority.

⁶ The Borrower agreed in this Assistance Agreement to support debt service on the outstanding County of Oldham, Kentucky General Obligation Bonds (Oldham County Environmental Authority Project), Series 2014, the proceeds of which were used by the County to benefit Oldham County Environmental Authority.

⁷ As of Effective Date

SCHEDULE IV

WIFIA PAYMENT INSTRUCTIONS

Acceptable Methods for WIFIA Payments to EPA

Option 1 PAY.GOV

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

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

Option 2 FEDWIRE

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

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

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

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

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

1. Send checks to:

USPS Mailing Address

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

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

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

2. Provide the following information on your check payment to ensure proper credit please:


Schedule IV-1

- Company/remitter's name (borrower name as it appears on EPA document)
 - Complete address, including city, state, zip
 - Remitter's point of contact person and phone number
 - EPA WIFIA Loan # (NOT the remitter's number)
 - Payment Type/Reason for payment from the Fee Notice letter
 - Reference number from the Fee Notice letter.
3. Send an email to OCFO-OC-ACAD-WIFIA@epa.gov and wifia_portfolio@epa.gov informing that a payment has been submitted.

NOTES:

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

Attachment 1 – FedWire Payment Form and Instructions

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

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

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

****Important: Failure to initiate the FedWire electronic wire transaction properly with the above fields included, will result in untimely or non-receipt of funds at EPA.***

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

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

Email: OCFO-OC-ACAD-WIFIA@epa.gov

For questions about the WIFIA program:

Email: wifia@epa.gov

SCHEDULE V
FLOW OF FUNDS

All terms used in this Schedule V shall have the meaning assigned to such terms as provided in the General Bond Resolution. All section references used in this Schedule V shall be references to the appropriate section in the General Bond Resolution. All references to "this Resolution" in this Schedule V shall be references to the General Bond Resolution.

SECTION 5.4 Application of Revenues.

A. All Revenues shall be promptly deposited by the District upon receipt thereof into the Revenue Fund.

B. There shall first be withdrawn in each month from the Revenue Fund such amounts as are required to be deposited in [i] the Sewer Revenue Bond Fund pursuant to Section 5 of the 1949 Bond Resolution to pay principal and interest on any Original Bonds or to make up deficiencies therein and [ii] the Sewer Revenue Bond Sinking Fund pursuant to Sections 11(C) and 11(E) of the 1971 Bond Resolution to pay principal and interest on the 1971 Bonds or to make up deficiencies therein. Thereafter, there shall be withdrawn in each month the following amounts, for deposit as set forth below and in the order of priority set forth below.

[1] To the Bond Fund, [i] for credit to the Debt Service Account, the amount, if any, required so that the balance in such Account shall equal the Accrued Aggregate Debt Service as of the last day of the then current month or, if interest or principal are required to be paid to Holders of Bonds during the next succeeding month on a day other than the first day of such month, Accrued Aggregate Debt Service as of the day through and including which such interest or principal is required to be paid and [ii] for credit to the Reserve Account, the amount, if any, required for such Account, after giving effect to any surety bond, insurance policy, letter of credit or other similar obligation deposited in such Account pursuant to subsection D of Section 5.6, to equal one-twelfth (1/12) of the difference between [a] the amount then in the Reserve Account immediately preceding such deposit and [b] the actual Debt Service Reserve Requirement as of the last day of the then current month; and

[2] To the Senior Subordinated Debt Fund the amount, if any, required to pay the scheduled base and additional rental payments when due on the Senior Subordinated Debt and make deposits, if any, for reserves therefor, in accordance with the provisions of, and subject to the priorities and limitations and restrictions provided in, KMFC Leases; and

[3] Each month the District shall pay from the Revenue Fund such amounts as are necessary to meet Operating Expenses for such month; and

[4] To the Renewal and Replacement Account, a sum equal to 1/12 of the amount, if any, provided in the Annual Budget to be deposited in the Renewal and Replacement Account during the then current Fiscal Year; provided that, if any such monthly allocation to the Renewal and Replacement Account shall be less than the required amount, the amount of the next succeeding monthly payment shall be increased by the amount of such deficiency.

C. The balance of monies remaining in the Revenue Fund after the above required payments have been made may be used by the District for any lawful purpose relating to the System; provided, however, that none of the remaining monies shall be used for any purpose other than those hereinabove specified unless all current payments and including all deficiencies in prior payments, if any, have been made in full and unless the District shall have complied fully with all the covenants and provisions of this Resolution.

D. So long as there shall be held in the Debt Service Account and the Reserve Account an amount sufficient to pay in full all Outstanding Bonds in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), no transfers shall be required to be made to the Bond Fund; and provided further, that any deficiency in the Reserve Account, after giving effect to any surety bond, insurance policy or letter of credit deposited in such Account pursuant to subsection D of Section 5.6 of this Resolution, other than a deficiency attributable to a withdrawal of amounts therefrom pursuant to subsection A of Section 5.6 hereof, shall be cured by depositing into the Reserve Account each month during the period commencing with the month following the month in which the determination of the deficiency was made an amount equal to one-twelfth (1/12th) of the deficiency, except that, if a new valuation of Investment Securities held in the Reserve Account is made pursuant to Section 6.4 hereof during the period that such deposits are required, then the obligation of the District to make deposits during the balance of such period on the basis of the preceding valuation shall be discharged and the deposits, if any, required to be made for the balance of such period shall be determined under this proviso on the basis of the new valuation,

SECTION 5.5 Bond Fund — Debt Service Account.

A. The Paying Agent, from amounts deposited therein, shall pay out of the Debt Service Account, [i] on or before each interest payment date for any of the Bonds, the amount required for the interest payable on such date, [ii] no later than each Principal Installment due date, the amount required for the Principal Installment payable on such due date and [iii] no later than any redemption date for the Bonds, the amount required for the payment of interest on the Bonds then to be redeemed. In the case of Variable Interest Rate Bonds, the District shall furnish the Paying Agent with a certificate setting forth the amount to be paid on such Bonds on each interest payment date, such certificate shall be furnished on or prior to the appropriate Record Date with respect to any interest payment date. Such amounts shall be applied by the Paying Agents on or after the due dates thereof. The Paying Agent shall also pay out of the Debt Service Account, from amounts deposited therein, the accrued interest included in the purchase price of Bonds purchased for retirement.

B. Amounts accumulated in the Debt Service Account with respect to any Sinking Fund Installment may be applied on or prior to the 40th day next preceding the due date of such Sinking Fund Installment, to the purchase of Bonds of the Series and maturity for which such Sinking Fund Installment was established or for the redemption at the applicable sinking fund Redemption Price of such Bonds, if then redeemable by their terms. All purchases of any Bonds pursuant to this subsection B shall be made at prices not exceeding the applicable Redemption Price of such Bonds plus accrued interest. The applicable Redemption Price (or principal amount of maturing Bonds) of any Bonds so purchased or redeemed shall be deemed to constitute part of the Debt Service Account until the date of payment of such Sinking Fund Installment, for the

purpose of calculating the amount of such Account. As soon as practicable after the 40th day preceding the due date of any such Sinking Fund Installment, the District shall proceed to call for redemption, by giving notice as provided in Section 4.5, on such due date Bonds of the Series and maturity for which such Sinking Fund Installment was established (except in the case of Bonds maturing on a Sinking Fund Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Sinking Fund Installment. The District shall pay out of the Debt Service Account to the appropriate Paying Agents, on or before such redemption date (or maturity date), the amount required for the redemption of the Bonds so called for redemption (or for the payment of such Bonds then maturing), and such amount shall be applied by such Paying Agents to such redemption (or payment).

C. Unless otherwise provided by the District, upon any purchase or redemption pursuant to this Section of Bonds of any Series and maturity for which Sinking Fund Installments shall have been established, there shall be credited, in increments of \$5,000 to the extent practicable, toward each succeeding Sinking Fund Installment thereafter to become due on Bonds of the same Series and maturity (other than the Sinking Fund Installment next coming due) an amount bearing the same ratio, to the Sinking Fund Installment, as the total principal amount of Bonds purchased or redeemed bears to the total principal amount of all the Sinking Fund Installments to be credited. The portion of any Sinking Fund Installment remaining after such amounts are credited toward the same shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments due on a future date.

D. The amount, if any, deposited in the Debt Service Account from the proceeds of each Series of Bonds shall be set aside in such Account and applied to the payment of interest on Bonds as provided in this Resolution or in accordance with certificates of the District delivered pursuant to paragraph [8] or [10] of subsection A of Section 2.2 or, if the District shall modify or amend any such certificate by a subsequent certificate signed by an Authorized Officer of the District, then in accordance with the most recent amended certificate.

E. In the event of the refunding of any Bonds, the District may withdraw from the Debt Service Account in the Bond Fund all, or any portion of, the amounts accumulated therein with respect to Debt Service on the Bonds being refunded and deposit such amounts with itself to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Bonds being refunded; provided that such withdrawal shall not be made unless (a) immediately thereafter Bonds being refunded shall be deemed to have been paid pursuant to subsection B of Section 12.1, and (b) the amount remaining in the Debt Service Account in the Bond Fund, after giving effect to the issuance of Refunding Bonds and the disposition of the proceeds thereof, shall not be less than the requirement of such Account pursuant to paragraph (i) of subsection B of Section 5.5. In the event of such refunding, the District may also withdraw from the Debt Service Account in the Bond Fund all, or any portion of, the amounts accumulated therein with respect to Debt Service on the Bonds being refunded and deposit such amounts in any fund or Account under this Resolution; provided, however, that such withdrawal shall not be made unless items (a) and (b) referred to hereinabove have been satisfied and provided, further, that, at the time of such withdrawal, there shall exist no deficiency in any Fund or Account held under this Resolution, as confirmed in writing to the Bond Registrar by the Secretary-Treasurer.

SECTION 5.6 Bond Fund -- Reserve Account.

A. If five days prior to any interest or Principal Installment due date with respect to any Series of Bonds payment for such interest or Principal Installment in full has not been made or provided for, the District shall forthwith withdraw from the Reserve Account an amount not exceeding the amount required to provide or such payment in full and deposit such amount in the Debt Service Account for application to such payment.

B. Whenever the amount in the Reserve Account shall exceed the Debt Service Reserve Requirement, after giving effect to any surety bond, insurance policy or letter of credit deposited in such Account pursuant to subsection D of this Section 5.6, such excess shall be deposited in the Debt Service Account.

C. Whenever the amount in the Reserve Account (exclusive of any surety bond, letter of credit or insurance policy therein), together with the amount in the Debt Service Account is sufficient to pay in full all Outstanding Bonds in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), the funds on deposit in the Reserve Account shall be transferred to the Debt Service Account. Prior to said transfer; all investments held in the Reserve Account shall be liquidated to the extent necessary in order to provide for the timely payment of principal and interest (or Redemption Price) on the Bonds.

D. In lieu of the required transfers or deposits to the Reserve Account, the District may cause to be deposited into the Reserve Account a surety bond or an insurance policy for the benefit of the holders of the Bonds or a letter of credit in an amount equal to the difference between the Debt Service Reserve Requirement and the sums then on deposit in the Reserve Account, if any, after the deposit of such surety bond, insurance policy or letter of credit. Such difference may be withdrawn by the District and be deposited in the Revenue Fund. The surety bond, insurance policy or letter of credit shall be payable (upon the giving of notice as required thereunder) on any due date on which monies will be required to be withdrawn from the Reserve Account and applied to the payment of a Principal Installment of or interest on any Bonds and such withdrawal cannot be met by amounts on deposit in the Reserve Account. If a disbursement is made pursuant to a surety bond, an insurance policy or a letter of credit provided pursuant to this subsection, the District shall be obligated either (i) to reinstate the maximum limits of such surety bond, insurance policy or letter of credit or (ii) to deposit into the Reserve Account, funds in the amount of the disbursement made under such surety bond, insurance policy or letter of credit, or a combination of such alternatives, as shall provide that the amount in the Reserve Account equals the Debt Service Reserve Requirement. Any other provision of this Section 5.6 to the contrary notwithstanding, for each particular Series of Bonds or portion thereof which is insured by an Insurer, the right of the District hereunder to cause a surety bond or an insurance policy to be deposited into the Reserve Account in lieu of the required transfers or deposits thereto shall be subject to the condition that the District obtain the prior written consent of the Insurer as to the structure and the issuer of such surety bond or insurance policy.

E. In the event of the refunding of any Bonds, the District may withdraw from the Reserve Account in the Bond Fund all, or any portion of, the amounts accumulated therein with respect to the Bonds being refunded and deposit such amounts with itself to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Bonds being refunded;

provided that such withdrawal shall not be made unless (a) immediately thereafter the Bonds being refunded shall be deemed to have been paid pursuant to subsection B of Section 12.1, and (b) the amount remaining in the Reserve Account in the Bond Fund, after giving effect to the issuance of the Refunding Bonds and the disposition of the proceeds thereof, shall not be less than the Debt Service Reserve requirement.

F. If any withdrawals are made from the Reserve Account pursuant to this Section 5.6, the resulting deficiency, if any, shall be remedied by the application of monthly payments into the Reserve Account as set forth in Section 5.4, or by transfers from the Renewal and Replacement Account or both, until the amount on deposit in the Reserve Account is equal to the Debt Service Reserve Requirement, whereupon such deposits shall be discontinued until such time, if any, that there is again a deficiency.

SECTION 5.7 Senior Subordinated Debt Fund.

A. Subject to the provisions of Subsection B below, the District shall apply amounts in the Senior Subordinated Debt Fund to the payment of the scheduled base and additional rental payments when due on the Senior Subordinated Debt and make deposits, if any, for reserves therefor in accordance with the provisions of, and subject to the priorities and limitations and restrictions provided in, the KMFC Leases.

B. Notwithstanding any of the other provisions of this Section 5.7, if at any time the amount on deposit in the Reserve Account shall be less than the Debt Service Reserve Requirement, the District shall forthwith transfer from the Senior Subordinated Debt Fund for deposit in the Reserve Account the amount necessary (or all moneys in said Senior Subordinated Debt Fund, if necessary), to make up such deficiency.

C. Amounts in the Senior Subordinated Debt Fund which the District at any time determines to be in excess of the requirements of such fund, may, at the discretion of the District, be transferred to the Debt Service Account or the Renewal and Replacement Account

SECTION 5.8 Renewal and Replacement Account.

A. Monies to the credit of the Renewal and Replacement Account may be applied to the cost of major replacements, repairs, renewals, maintenance, betterments, improvements, reconstruction or extensions of the System or any part thereof as may be determined by the Board.

B. If at any time the monies in the Debt Service Account, the Reserve Account and the Revenue Fund shall be insufficient to pay the interest and Principal Installments becoming due on the Bonds, then the District shall transfer from the Renewal and Replacement Account for deposit in the Debt Service Account the amount necessary (or all the monies in said Fund if less than the amount necessary) to make up such deficiency.

C. Any balance of monies and securities in the Renewal and Replacement Account not required to meet a deficiency as set forth in subsection B of this Section or for any of the purposes for which the Renewal and Replacement Account was established, may, on direction of the District, be transferred from the Renewal and Replacement Account to the Reserve Account, if and to the extent necessary to make the amount in such Account equal to the Debt Service

Reserve Requirement, and any balance may be deposited in the Debt Service Account or the Revenue Fund.

SCHEDULE VI

RATE COVENANT

All terms used in this Schedule VI shall have the meaning assigned to such terms as provided in the General Bond Resolution. All section references used in this Schedule VI shall be references to the appropriate section in the General Bond Resolution. All references to "this Resolution" in this Schedule VI shall be references to the General Bond Resolution.

SECTION 7.11 Rents, Rates, Fees and Charges.

A. The District shall fix, establish, maintain and collect rates, fees, rents and charges for services of the System, which together with other "Available Revenues" (as hereinafter defined) are expected to produce Available Revenues which will be at least sufficient for each Fiscal Year to pay the sum of:

[1] an amount equal to 110% of the principal of and interest coming due on Prior Lien Bonds for such Fiscal Year and 110% of the Aggregate Net Debt Service for such Fiscal Year; and

[2] the amount, if any, to be paid during such Fiscal Year into the Reserve Account in the Bond Fund (other than amounts required to be paid into such Account out of the proceeds of Bonds); and

[3] all Operating Expenses for such Fiscal Year as estimated in the Annual Budget; and

[4] to the extent not included in the foregoing, an amount equal to the debt service on the Senior Subordinated Debt, any other Subordinated Debt or other debt of the District for such Fiscal Year computed as of the beginning of such Fiscal Year; and

[5] amounts necessary to pay and discharge all charges or liens payable out of the Available Revenues when due and enforceable, plus the Prior Lien Bonds and all other amounts, if any, payable under the 1949 Bond Resolution and the 1971 Bond Resolution.

For purposes of this Section 7.11, "Available Revenues" means (i) revenues from all rates, rents and charges and other operating income derived or to be derived by the District from or for the operation, use or services of the System, (ii) any other amounts received from any other source by the District and pledged by the District as security for the payment of Bonds and (iii) interest received or to be received on any moneys or securities held pursuant to this Resolution and paid or required to be paid into the Revenue Fund or required to be retained in the Debt Service Account in the Bond Fund or transferred to the Debt Service Account in the Bond Fund. "Available Revenues" shall exclude, however, any interest income which is capitalized pursuant to generally accepted accounting principles and the enterprise basis of accounting for governmental enterprises, as promulgated by the Governmental Accounting Standards Board, and governmental grants, in-kind contributions of assets and any assessments levied by the District to the extent that such grants, in-kind contributions and assessments are not recognized as operating revenues, other revenues or extraordinary gains pursuant to generally accepted accounting principles for governmental enterprises, as promulgated by the Governmental Accounting Standards Board.

Nothing in this Section 7.11, or in its definition of “Available Revenues” for purposes of the covenant contained in this Section 7.11, shall be construed so as to [a] prohibit the District from taking into account interest earned on moneys or securities held under this Resolution, and other income available or expected to be available in the ordinary course for the payment of Debt Service pursuant to Article 5, in calculating Aggregate Net Debt Service on the Bonds for any calculation period for purposes of this Section 7.11 or otherwise, nor [b] prohibit the District from taking into account interest earned on moneys or securities held under any resolution or indenture or similar document adopted or entered into in connection with an issuance of Subordinated Debt, and other income available or expected to be available in the ordinary course for the payment of debt service on Subordinated Debt, in calculating debt service payable on Subordinated Debt for any calculation period for purposes of this Section 7.11 or otherwise.

B. Promptly upon [i] any material decrease in the Revenues anticipated to be produced by any rates, fees, rents or charges or any later review thereof, [ii] any material increase in expenses of operation of the System not contemplated at the time of adoption of the rates, fees, rents and charges then in effect or any later review thereof or [iii] any other material change in the circumstances which were contemplated at the time such rates, fees, rents and charges were most recently reviewed, but not less frequently than once every 12 months, the District shall review the rates, fees, rents and charges so established and shall promptly establish or revise such rates, fees, rents and charges as necessary to comply with the foregoing requirements, provided that such rates, fees, rents and charges shall in any event produce Revenues sufficient, together with other Revenues, if any, available therefor, to enable the District to comply with all its covenants under this Resolution, the 1949 Bond Resolution and the 1971 Bond Resolution.

C. In estimating Aggregate Debt Service or Aggregate Net Debt Service on any Variable Interest Rate Bonds for purposes of subsection A of this Section 7.11, the District shall be entitled to assume that such Variable Interest Rate Bonds will bear such interest rate or rates as calculated at the lesser of the maximum short-term rate prevailing in the preceding twelve (12) months or the Maximum Interest Rate, provided, however, that the interest rate or rates assumed shall not be less than the interest rate borne by such Variable Interest Rate Bonds at the time such estimate is made.

SCHEDULE VII

BOND FUND — RESERVE ACCOUNT

All terms used in this Schedule VII shall have the meaning assigned to such terms as provided in the General Bond Resolution. All section references used in this Schedule VII shall be references to the appropriate section in the General Bond Resolution. All references to “this Resolution” in this Schedule VII shall be references to the General Bond Resolution.

SECTION 5.6 Bond Fund -- Reserve Account.

A. If five days prior to any interest or Principal Installment due date with respect to any Series of Bonds payment for such interest or Principal Installment in full has not been made or provided for, the District shall forthwith withdraw from the Reserve Account an amount not exceeding the amount required to provide or such payment in full and deposit such amount in the Debt Service Account for application to such payment.

B. Whenever the amount in the Reserve Account shall exceed the Debt Service Reserve Requirement, after giving effect to any surety bond, insurance policy or letter of credit deposited in such Account pursuant to subsection D of this Section 5.6, such excess shall be deposited in the Debt Service Account.

C. Whenever the amount in the Reserve Account (exclusive of any surety bond, letter of credit or insurance policy therein), together with the amount in the Debt Service Account is sufficient to pay in full all Outstanding Bonds in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), the funds on deposit in the Reserve Account shall be transferred to the Debt Service Account. Prior to said transfer; all investments held in the Reserve Account shall be liquidated to the extent necessary in order to provide for the timely payment of principal and interest (or Redemption Price) on the Bonds.

D. In lieu of the required transfers or deposits to the Reserve Account, the District may cause to be deposited into the Reserve Account a surety bond or an insurance policy for the benefit of the holders of the Bonds or a letter of credit in an amount equal to the difference between the Debt Service Reserve Requirement and the sums then on deposit in the Reserve Account, if any, after the deposit of such surety bond, insurance policy or letter or credit. Such difference may be withdrawn by the District and be deposited in the Revenue Fund. The surety bond, insurance policy or letter of credit shall be payable (upon the giving of notice as required thereunder) on any due date on which monies will be required to be withdrawn from the Reserve Account and applied to the payment of a Principal Installment of or interest on any Bonds and such withdrawal cannot be met by amounts on deposit in the Reserve Account. If a disbursement is made pursuant to a surety bond, an insurance policy or a letter of credit provided pursuant to this subsection, the District shall be obligated either (i) to reinstate the maximum limits of such surety bond, insurance policy or letter of credit or (ii) to deposit into the Reserve Account, funds in the amount of the disbursement made under such surety bond, insurance policy or letter of credit, or a combination of such alternatives, as shall provide that the amount in the Reserve Account equals the Debt Service Reserve Requirement. Any other provision of this Section 5.6 to the contrary

notwithstanding, for each particular Series of Bonds or portion thereof which is insured by an Insurer, the right of the District hereunder to cause a surety bond or an insurance policy to be deposited into the Reserve Account in lieu of the required transfers or deposits thereto shall be subject to the condition that the District obtain the prior written consent of the Insurer as to the structure and the issuer of such surety bond or insurance policy.

E. In the event of the refunding of any Bonds, the District may withdraw from the Reserve Account in the Bond Fund all, or any portion of, the amounts accumulated therein with respect to the Bonds being refunded and deposit such amounts with itself to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Bonds being refunded; provided that such withdrawal shall not be made unless (a) immediately thereafter the Bonds being refunded shall be deemed to have been paid pursuant to subsection B of Section 12.1, and (b) the amount remaining in the Reserve Account in the Bond Fund, after giving effect to the issuance of the Refunding Bonds and the disposition of the proceeds thereof, shall not be less than the Debt Service Reserve requirement.

F. If any withdrawals are made from the Reserve Account pursuant to this Section 5.6, the resulting deficiency, if any, shall be remedied by the application of monthly payments into the Reserve Account as set forth in Section 5.4, or by transfers from the Renewal and Replacement Account or both, until the amount on deposit in the Reserve Account is equal to the Debt Service Reserve Requirement, whereupon such deposits shall be discontinued until such time, if any, that there is again a deficiency.

SCHEDULE VIII

ADDITIONAL BONDS TEST

All terms used in this Schedule VIII shall have the meaning assigned to such terms as provided in the General Bond Resolution. All section references used in this Schedule VIII shall be references to the appropriate section in the General Bond Resolution. All references to “this Resolution” in this Schedule VIII shall be references to the General Bond Resolution.

SECTION 2.2 General Provisions for Issuance of Bonds.

A. All the Bonds of each Series shall be executed by the District for issuance under this Resolution and delivered to the Bond Registrar and thereupon shall be authenticated by the Bond Registrar and by it delivered to the District or upon its order, but only upon the satisfaction of the following conditions:

[1] With respect to the Series 1993 Bonds, a copy of this Resolution, certified by the Secretary Treasurer or other Authorized Officer of the District;

[2] An Opinion of Counsel to the effect that [i] the District has the right and power under the Act to adopt this Resolution, and this Resolution has been duly and lawfully adopted by the District, is in full force and effect and is valid and binding upon the District in accordance with its terms; [ii] this Resolution creates the valid pledge which it purports to create of the Pledged Property subject to the provisions of this Resolution permitting the application thereof for the purposes and on the orders and conditions set forth in this Resolution; and [iii] the Bonds of such Series are valid and binding obligations of the District as provided in this Resolution and entitled to the benefits of this Resolution and of the Act as amended to the date of such Opinion of Counsel, and such Bonds have been duly and validly authorized and issued in accordance with law and in accordance with this Resolution; and provided further, that such Opinion of Counsel may take exception as to the effect of or for restrictions or limitations imposed by or resulting from bankruptcy, insolvency, debt adjustment, moratorium reorganization or other similar laws, judicial decisions and principles of equity relating to the enforcement of creditors’ rights generally or contractual obligation and judicial discretion and the valid exercise of the sovereign police powers of the Commonwealth and of the constitution-al power of the United States of America;

[3] A written order as to the delivery of such Bonds, signed by an Authorized Officer of the District;

[4] In the case of each Series of Bonds other than the Series 1993 Bonds a copy of the Supplemental Resolution authorizing such Series of Bonds certified by the Secretary-Treasurer or other Authorized Officer of the District, which shall, among other provisions specify: (a) the authorized principal amount, designation and Series of such Bonds; (b) the purposes for which such Series of Bonds is being issued, which shall be (i) the purposes specified in Section 2.3 or Section 2.4, or (ii) the refunding of Bonds as provided in Section 2.5; (c) the date, and the maturity date or dates, of the Bonds of such Series; (d) if such Bonds are interest-bearing Bonds, the interest rate or rates or the method of calculation of the interest rate or rates of the Bonds of such Series and the interest payment dates therefor, (d) the denomination of, and the manner of dating,

numbering and lettering the Bonds of such Series; (e) the paying agent or paying agents and the place or places or methods of payment of the principal and Redemption Price, if any, of, and interest on, the Bonds of such Series; (f) the redemption provisions including the Sinking Fund Installments and Redemption Price or Prices, if any, for Bonds of such Series; (h) if so determined by the District, provisions for the sale of the Bonds of such Series; (i) the amount (or the method of determining the amount), if any, to be deposited from the proceeds of such Series of Bonds in the Debt Service Account in the Bond Fund and provisions of the application thereof to the payment of all or a portion of the interest on such Series of Bonds or any other series of Bonds (j) the amount (or the method of determining the amount), if any, to be deposited from the proceeds of such Series of Bonds in the Reserve Account- in the Bond Fund; (k) the amount (or the method of determining the amount) to be deposited from the proceeds of such Series of Bonds in the Construction and Acquisition Fund; (l) the form of the Bonds of such Series, and the form of the Bond Registrar's certificate of authentication, which forms shall be, respectively, substantially in the forms set forth in Section 14.1, with such variations, omissions and insertions as are required or permitted or not prohibited by this Resolution; and (m) with regard to Option Bonds, provisions regarding tender and payment thereof;

[5] Except in the case of Refunding Bonds, a certificate of an Authorized Officer of the District stating that no Event of Default has occurred and is continuing under this Resolution;

[6] In the case of each Series of Bonds other than a Series of Refunding Bonds and the Series 1993 Bonds, a certificate of an Authorized Officer of the District setting forth (A) for any period of 12 consecutive calendar months within the 24 calendar months preceding the date of the authentication and delivery, the Net Revenues for such period, and (B) the Aggregate Net Debt Service during the same period for which Net Revenues are computed, with respect to all Series of Bonds which were then Outstanding (excluding from Aggregate Net Debt Service any Principal Installment or portion thereof which was paid from sources other than Net Revenues), and showing that the amount set forth in (A) is equal to or greater than 110% of the amount set forth in (B);

[7] In the case of each Series of Bonds other than a Series of Refunding Bonds and the Series 1993 Bonds, a certificate of an Authorized Officer of the District setting forth (A) for the last full Fiscal Year of 12 months (ending June 30) immediately preceding the date of the authentication and delivery, the Net Revenues for such period, or, at the option of the District, for the last 12 consecutive full calendar months immediately preceding the date of the authentication and delivery, the Net Revenues for such period, and (B) the estimated maximum Aggregate Net Debt Service in the current or any future Fiscal Year with respect to [i] all Series of Bonds which are then Outstanding and [ii] the Additional Bonds then proposed to be authenticated and delivered (and for this purpose all Series of Bonds Outstanding plus such proposed Additional Bonds shall be treated as a single Series; that is, the maximum Aggregate Net Debt Service shall be computed collectively with respect to all such Bonds, and not computed cumulatively or separately for each particular Series), and showing that the amount set forth in (A) is equal to or greater than 110% of the amount set forth in (B). For purposes of computing the amount set forth in (A), Net Revenues may be increased in order to satisfy the requirement of this paragraph [7], in order to reflect the following amounts: [i] any increases in the rates, fees, rents and other charges for services of the System made subsequent to the commencement of such period and prior to the date of such certificate, [ii] any estimated increases in Net Revenues caused by any Project or Projects having been placed into use and operation subsequent to the commencement of such period and prior to

the date of such certificate, as if such Project or Projects had actually been placed into use and operation for the entire period chosen in (A) above, and [iii] 75% of any estimated increases in Net Revenues which would have been derived from the operation of any Project or Projects with respect to which the Cost of Construction and Acquisition is to be paid from proceeds of the Additional Bonds proposed to be authenticated and delivered, as if such Project or Projects had actually been placed into use and operation for the entire period chosen in (A) above. For purposes of computing the amount set forth in (B), the Variable Interest Rate to be borne by any Series of additional Variable Interest Rate Bonds to be issued, shall be assumed to be calculated at the 30-year Revenue Bond Index published by The Bond Buyer no more than two weeks prior to the scheduled date of sale for such Variable Rate Interest Bonds.

[8] In the case of each Series of Bonds any portion of the proceeds of which is to be deposited in the Debt Service Account in the Bond Fund, a certificate of an Authorized Officer of the District setting forth the then estimated application of such proceeds so deposited for the payment of interest on any particular Series of Bonds, whether or not such Series of Bonds is then Outstanding, or then being issued, or to be issued; and

[9] For Variable Interest Rate Bonds, the method of computing the Variable Interest Rate shall be specified in the Supplemental Resolution authorizing such Series of Bonds and shall be based on [I] a percentage or percentages or other function of an objectively determinable interest rate or rates (e.g. a prime lending rate) or a function of such objectively determinable interest rate or rates which may be in effect from time to time or at a particular time or times; provided that, such variable interest rate shall be subject to a Maximum Interest Rate and may be subject to a Minimum Interest Rate and that there may be an initial rate specified, in each case as provided in such Supplemental Resolution or [ii] a stated interest rate that may be changed from time to time as provided in the Supplemental Resolution authorizing such Series, provided that, such interest rate shall be subject to a Maximum Interest Rate. Such Supplemental Resolution shall also specify either [i] the particular period or periods of time or manner of determining such period or periods of time for which each value of such variable interest rate shall remain in effect or [ii] the time or times upon which any change in such variable interest rate shall become effective.

[10] Such further documents, monies, securities and evidences of deposit of funds as are required by the provisions of Sections 2.3, 2.4 or 2.5 or any Supplemental Resolution adopted pursuant to Article 10. Delivery of an opinion of Bond Counsel to the Bond Registrar shall constitute acknowledgement and certification by the District to the Bond Registrar that this Section 2.2(A)(10) has been satisfied.

B. All the Bonds of each Series of like maturity shall be identical in all respects, except as to denominations, numbers and letters. After the original issuance of Bonds of any Series, no Bonds of such Series shall be issued except in lieu of or in substitution for other Bonds of such Series pursuant to Article 3 or Section 4.6 or Section 11.6.

SECTION 2.4 Additional Bonds.

One or more Series of Additional Bonds may be authenticated and delivered upon original issuance at any time or from time to time for the purpose of paying all or a portion of the Cost of Construction and Acquisition of a Project. The proceeds, including accrued interest, of the

Additional Bonds of each Series shall be applied simultaneously with the delivery of such Bonds as provided in the Supplemental Resolution authorizing such Series.

SECTION 2.5 Refunding Bonds.

A. One or more Series of Refunding Bonds may be issued at any time to refund [i] Outstanding Bonds of one or more Series or [ii] one or more maturities within a Series of any Bonds. Refunding Bonds shall be issued in a principal amount sufficient, together with other monies available therefor, to accomplish such refunding and to make the deposits in the Funds and Accounts under this Resolution required by the provisions of the Supplemental Resolution authorizing such Bonds.

B. Refunding Bonds of each Series shall be authenticated and delivered by the Bond Registrar only upon satisfaction of the following conditions (in addition to the documents required by Section 2.2) of:

[1] Instructions to the Bond Registrar, satisfactory to it, to give due notice of redemption, if applicable, of all the Bonds to be refunded on a redemption date or dates specified in such instructions, subject to the provisions of Section 12.1 hereof;

[2] If the Bonds to be refunded are not by their terms subject to redemption or will not be redeemed within the next succeeding 60 days, instructions to the escrow agent described in Section 12.1, satisfactory to it, to mail the notice provided for in Section 12.1 to the Holders of the Bonds being refunded;

[3] Either (i) cash (including cash withdrawn and deposited pursuant to subsection E of Section 5.5 and subsection E of Section 5.6) in an amount sufficient to effect payment at the applicable Redemption Price of the Bonds to be refunded, together with accrued interest on such Bonds to the redemption date, which monies shall be held by the escrow agent described in Section 12.1 or any one or more of the Paying Agents in a separate account irrevocably in trust for and assigned to the respective Holders of the Bonds to be refunded or (ii) Investment Securities in such principal amounts, of such maturities, bearing such interest, and otherwise having such terms and qualifications and any monies, as shall be necessary to comply with the provisions of subsection B of Section 12.1, which Investment Securities and monies shall be held in trust and used only as provided in said subsection B; and

[4] Such further documents and monies as are required by the provisions of Article 10 or any Supplemental Resolution adopted pursuant to Article 10.

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

SECTION 2.6 Certificate of an Authorized Officer of the District.

A. In estimating Net Revenues for each of the Fiscal Years covered by any certificate required to be delivered by it pursuant to Section 2.2 hereof, the Authorized Officer may base its estimate upon such factors as it shall consider reasonable or upon sources of information believed by it to be reliable including, without limitation, Revenues estimated to be derived from the System which an Authorized Officer of the District estimates will result in the District's being able to comply with the requirements of Section 7.11 hereof.

B. In estimating the Aggregate Debt Service for each of the Fiscal Years or other periods covered by any certificate required to be delivered by it, an Authorized Officer of the District shall include the Aggregate Net Debt Service on all Bonds estimated to be Outstanding during each such Fiscal Year or other period. With respect to (a) any Bonds which are not Outstanding on the date such certificate is delivered by which are projected to be issued during the period covered by such certificate, and (b) any Variable Interest Rate Bonds Outstanding on the date such certificate is delivered, an Authorized Officer of the District shall estimate the Debt Service on such Bonds upon reliance upon a written estimate of such Debt Service by the District's financial advisor which estimate shall include assumptions with respect to the interest rate or rates to be borne by such Bonds and the amounts and due dates of the Principal Installments for such Bonds; provided, however, that the interest rate or rates assumed to be borne by any Variable Interest Rate Bonds shall not be less than the interest rate borne by such Variable Interest Rate Bonds at the time that an Authorized Officer of the District delivers such certificate.

SECTION 5.10 Subordinated Debt. The District may, at any time, or from time to time, issue debt or enter into a contract, lease, installment sale agreement or other instrument or lend credit to or guarantee debts, claims or other obligations of any person for any of its corporate purposes payable out of, and which may be secured by a pledge of, such amounts as may from time to time be available for the purpose of payment thereof; provided, however, that such pledge shall be, and shall be expressed to be, subordinate and junior in all respects to the pledge and lien created by this Resolution as security for the Bonds.

SCHEDULE 12(f)

LITIGATION

By letter dated October 25, 2013, the United States Department of the Treasury (the “Treasury”) notified the Louisville and Jefferson County Metropolitan Sewer District (“MSD”) that the MSD apparently violated regulations governing the use of State and Local Government (“SLGS”) securities by impermissibly using the Treasury’s SLGS program to create a cost-free option and invited MSD to respond. MSD responded by letter dated February 13, 2014. On June 6, 2014, the Treasury issued a final agency decision stating, in effect, that MSD had violated the regulations. The Treasury suspended MSD from participating in the SLGS program for five years, but left open the possibility of a waiver with respect to the purchase of certain SLGS securities. MSD disagreed with the final agency decision, but elected not to contest the decision in court.

By letter dated September 3, 2015, the United States Department of Justice (“DOJ”) notified MSD of an investigation into whether MSD’s violations of the SLGS regulations may give rise to civil monetary liability and that it was considering initiating civil litigation against MSD. DOJ invited MSD to present its position and to explore the possibility of resolving the matter without litigation. On October 2, 2019, DOJ and MSD reached a resolution and without the DOJ filing suit. As part of the resolution, the DOJ agreed to release MSD from any civil monetary claim it may have under various common law theories (breach of contract, payment by mistake, unjust enrichment and fraud) for MSD’s participation in the Treasury’s SLGS program, conditioned upon payment by MSD of approximately \$1.3 million to the DOJ. The resolution was not an admission of liability by MSD or a concession by the DOJ that the claims it released were not well founded. As to civil monetary claims it may have under the False Claims Act, 31 U.S.C. §§ 3729-3733, by letter dated September 27, 2019, the DOJ informed that, based on the facts known to the DOJ, the DOJ “has no present intention to pursue any further investigation and/or to file suit under the False Claims Act, 31 U.S.C. §§ 3729-3733,” against MSD in connection with its participation in the SLGS program. The DOJ also informed that the letter was being provided for informational purposes and is not a part of the resolution of the DOJ’s claims.

[Insert description of Whittenberg Construction Company v. Louisville & Jefferson County Metropolitan Sewer District, Jefferson Circuit Court, Div. 5, Case No. 13-CI-00742]

Except for the foregoing, and the *Amended Consent Decree* in the matter of the Commonwealth of Kentucky, Plaintiff, and the United States of America, Plaintiff-Intervener v. Louisville and Jefferson County Metropolitan Sewer District, U.S. District Court, Western District of Kentucky, Louisville Division, Civil Action No. 3:08-cv-00608-CRS, filed April 15, 2009, there is no litigation or other legal proceeding pending or, to the knowledge of MSD, threatened against or affecting MSD or its Board which, in any case, (x) directly or indirectly relates to the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents, (y) involve claims in excess of \$5,000,000 (other than claims covered by insurance and where the insurance company has agreed to assume the defense of such claim) or (z) if successful, could reasonably be expected to result in a Material Adverse Effect.

Schedule 12(f)-2

SCHEDULE 12(n)

PRINCIPAL PROJECT CONTRACTS

A. Existing Principal Project Contracts

Contract	Date	Parties	Description
None			

B. Additional Principal Project Contracts

Contract	Expected Effective Date (if known)	Parties	Description
Progressive Design and Construction Agreement for Biosolids Processing Solution	On or before 1/4/2021	MSD (Owner) Selected Progressive Design Builder (Design Builder)	The agreement will be signed with one entity for all stages. Initially, Stage 1 (up to 60% design and GMP) will be initiated. Stage 2 (final design, construction, startup and commissioning) scope and costs will be added by addendum. MSD may add a Stage 3 by addendum (contract operations), but this is not included in WIFIA funding.
Professional Services for Owner's Agent / Representative	On or before 1/4/2021	MSD (Owner) Hazen and Sawyer (Consultant)	<i>This may be contracted in one or two phases (either entire project or Stage 1 and Stage 2) depending on MSD's preference</i>

SCHEDULE 12(p)

ENVIRONMENTAL MATTERS

1. The United States Environmental Protection Agency's Enforcement and Compliance History Online ("ECHO") Detailed Facility Report pertaining to the Morris Forman Water Quality Treatment Center, as of May 2020.
2. The Kentucky Energy and Environment Cabinet's *Agreed Order* with MSD in Case No. DOW 150220, dated May 3, 2018, regarding the Morris Forman Water Quality Treatment Center.
3. The *Amended Consent Decree* in the matter of the Commonwealth of Kentucky, Plaintiff, and the United States of America, Plaintiff-Intervener v. Louisville and Jefferson County Metropolitan Sewer District, U.S. District Court, Western District of Kentucky, Louisville Division, Civil Action No. 3:08-cv-00608-CRS, filed April 15, 2009; and Integrated Overflow Abatement Plan ("IOAP"), dated May 2014.
4. The U.S. Army Corps of Engineers Periodic Inspection Report No. 04, dated May 2019, pertaining to the Louisville Metro Levee/Flood Protection System.

EXHIBIT A

FORM OF WIFIA BOND

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT

**MORRIS FORMAN WATER QUALITY TREATMENT CENTER BIOSOLIDS
PROCESSING SOLUTION PROJECT**

**(WIFIA – N18101KY)
WIFIA BOND**

Effective Date: _____ **Due:** _____

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, a public body corporate and political subdivision of the Commonwealth of Kentucky (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 aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the WIFIA Lender (such amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the WIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the WIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the WIFIA Loan Agreement in accordance with **Exhibit F (WIFIA Debt Service)** to the WIFIA Loan Agreement, as revised from time to time in accordance with the WIFIA Loan Agreement, until paid in full (which **Exhibit F**, as modified from time to time in accordance with the terms of the WIFIA Loan Agreement, is incorporated in and is a part of this WIFIA Bond). The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** to the WIFIA Loan Agreement from time to time in accordance with the terms of the WIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on **Exhibit F** to the WIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other WIFIA Loan Document.

The interest rate on this WIFIA Bond shall be [_____] percent ([_____]%) per annum. Interest will accrue and be computed on the Outstanding Principal Sum (as well as on any past due interest) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the Outstanding Principal Sum at the Default Rate (as defined in the WIFIA Loan Agreement to be the sum of (a) the WIFIA Interest Rate set forth above plus (b) 200 basis points) in accordance with Section 6 (*Interest Rate*) to the WIFIA Loan Agreement.

Payments hereon are to be made in accordance with Section 8(d) (*Payment of Principal and Interest – Manner of Payment*) and Section 31 (*Notices*) of the WIFIA Loan Agreement as the same become due. Principal of and interest on this WIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Final Maturity Date is amended in connection with an update to the Updated Financial Model approved by the WIFIA Lender pursuant to Section 16(a) (*Reporting Requirements – Updated Financial Model*) of the WIFIA Loan Agreement, the due date of this WIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the WIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this WIFIA Bond without the prior written agreement of the WIFIA Lender. Any such amendment shall be reflected in a revised **Exhibit F**.

This WIFIA Bond has been executed under and pursuant to that certain WIFIA Loan Agreement, dated as of the date hereof, between the WIFIA Lender and the Borrower (the “**WIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the WIFIA Loan Agreement to repay the loan made by the WIFIA Lender and any other payments of any kind required to be paid by the Borrower under the WIFIA Loan Agreement or the other WIFIA Loan Documents referred to therein. Reference is made to the WIFIA Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

This WIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Lender all or part of the principal amount of the WIFIA Bond in accordance with the WIFIA Loan Agreement.

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

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to the General Bond Resolution referred to in the WIFIA Loan Agreement.

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

It is hereby certified and recited that all conditions, acts, and things required by law and the General Bond Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, exist, have happened, and have been performed and that the series of bonds of which this is one, together with all other indebtedness of the District, complies in all respects with the applicable laws of the Commonwealth of Kentucky, including, particularly, the Act.

This Bond shall not be entitled to any benefit under the General Bond Resolution or be valid or become obligatory for any purpose until this Bond shall have been authenticated by the execution by the Bond Registrar of the Bond Registrar's Certificate of Authentication hereon.

The principal of, premium, if any, and interest on the Bonds are payable solely from the Pledged Property pursuant to the General Bond Resolution. The Bonds have been issued under the provisions of the Act, and shall not constitute an obligation or indebtedness of the Louisville/Jefferson County Metro Government, the Commonwealth of Kentucky, or any other city or county or other political subdivision or taxing authority thereof.

IN WITNESS WHEREOF, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT has caused this WIFIA Bond to be executed in its name and on its behalf by the manual or reproduced facsimile signature of its Chair, and its original or a reproduced facsimile of its seal to be impressed, imprinted, engraved, or otherwise reproduced hereon, and attested by the manual or reproduced facsimile signature of its Secretary-Treasurer, all as of the Effective Date hereof.

**LOUISVILLE AND JEFFERSON
COUNTY METROPOLITAN SEWER
DISTRICT,**
by its authorized representative

By: _____
Chair

ATTEST:

Secretary-Treasurer

CERTIFICATE OF AUTHENTICATION

This WIFIA Bond is one of the issue of WIFIA Bonds delivered pursuant to the within-mentioned General Bond Resolution adopted by the District authorizing the issuance of its Sewer and Drainage System Revenue Bonds, Series 2020B.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Bond
Registrar

By: _____
Authorized Officer

(FORM OF ASSIGNMENT)

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

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

the within note and all rights thereunder.

Dated: _____

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

EXHIBIT B

ANTICIPATED WIFIA LOAN DISBURSEMENT SCHEDULE

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

EXHIBIT C

FORM OF NON-DEBARMENT CERTIFICATE

The undersigned, on behalf of LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (the “**Borrower**”), hereby certifies that the Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995):

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

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

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

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

Dated: _____

LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT,
by its authorized representative

By: _____
Name:
Title:

EXHIBIT D-1

REQUISITION PROCEDURES

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

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

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

Each time the Borrower delivers Eligible Project Costs Documentation to the WIFIA Lender, and the Servicer (if any), the Borrower shall also deliver to such entities a certificate, substantially in the form of **Exhibit D-2** (*Certification of Eligible Project Costs Documentation*) and duly executed by the Borrower's Authorized Representative.

The WIFIA Lender agrees to promptly send to the Borrower in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement, an acknowledgement of receipt of each Requisition

in the form attached as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to this **Exhibit D-1** setting forth the date of receipt by the WIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Lender. All disbursement requests must be received by the WIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the Borrower of such approval and of the amount so approved.

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

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

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

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

APPENDIX ONE
FORM OF REQUISITION

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

[Loan Servicer]
[Address]
[Address]
[Attention:]

Re: Morris Forman Water Quality Treatment Center Biosolids Processing Solution Project (WIFIA Ref N18101KY)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [_____], 2020 (the “**WIFIA Loan Agreement**”), by and between LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the Borrower hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

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

1.	Project name	Morris Forman Water Quality Treatment Center Biosolids Processing Solution Project
2.	Borrower name	Louisville and Jefferson County Metropolitan Sewer District

3.	WIFIA reference number	N18101KY
4.	Requisition number	[]
5.	Requested disbursement amount	[\$]
6.	Requested disbursement date (the “Disbursement Date”)	[]
7.	Total amounts previously disbursed under the WIFIA Loan Agreement	[\$]
8.	Wire instructions	[]

9. With respect to the initial Requisition for the WIFIA Loan, on the date of disbursement, the Borrower will provide the following:
- (a) the WIFIA Bond,
 - (b) a CUSIP number for the WIFIA Bond, and
 - (c) the legal opinions from counsel to the Borrower (including those opinions set forth on **Exhibit G-3** and **Exhibit G-4** to the WIFIA Loan Agreement).
10. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Loan proceeds. No portion of the amounts requisitioned will be applied to pay for Eligible Project Costs that have been previously paid, or are expected to be paid, with proceeds of debt of the Borrower that is not the WIFIA Loan (“**Other Debt**”).[,], except as set forth below:

Source of Other Debt	Amount of Other Debt
[]	[\$]
Total Amount of Other Debt	[\$]

The portion of the amount requisitioned equal to the total amount of the Other Debt set forth above will be promptly applied by the Borrower to either (i) discharge a like principal amount of such Other Debt or (ii) reimburse the applicable fund or account from which the proceeds of such Other Debt were spent.]⁸

11. The aggregate amount of all disbursements of the WIFIA Loan (including the amount requested under this Requisition but excluding any interest that is capitalized in accordance with the WIFIA Loan Agreement) does not exceed (a) the amount of the WIFIA Loan, (b) the amount of Eligible Project Costs paid or incurred by the Borrower, and (c) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule.
12. The Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.
13. 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.
14. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval has been issued and is in full force and effect (and is not subject to any notice of violation, breach or revocation).
15. Each of the insurance policies obtained by the Borrower in satisfaction of Section 11(a)(xvi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
16. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), (i) no Default or Event of Default and (ii) no event of default under any other Related Document and no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since December 22, 2019.

⁸ This paragraph should be included when the Eligible Project Costs for which the proceeds of the requisition are to be applied were previously funded with bond anticipation notes, commercial paper proceeds, or other short-term interim financing by the Borrower on a temporary basis with the intent of redeeming the bond anticipation notes or other obligations with proceeds of the WIFIA Loan as permanent financing, or reimbursing the applicable funds of the other obligations such that they become available for payment of other Project costs.

17. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender.
18. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
19. The General Bond Resolution, the WIFIA Supplemental Resolution and each Principal Project Contract that has been delivered by the Borrower to the WIFIA Lender pursuant to Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) is complete, fully executed and in full force and effect.
20. The current estimated percentage of physical completion of the Project is []%. The Borrower is in compliance with Section 16(d) (*Reporting Requirements – Construction Reporting*) and no change has occurred since the date of the most recently delivered quarterly construction progress report that could reasonably be expected to cause a Material Adverse Effect.⁹
21. All documentation evidencing the Eligible Project Costs to be reimbursed to the Borrower [or to be used to pay Eligible Project Costs previously paid from proceeds of Other Debt] by the above-requested disbursement has been delivered by the Borrower to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement, including the details set forth [in the attachment hereto, which is in form satisfactory to the WIFIA Lender][below:

WIFIA USE ONLY

⁹ The most recent quarterly progress report should set out a summary of the progress of construction of the Project, as well as a general description of the work done for which the funds being requisitioned are being applied and a summary of any material changes/risks. If not, PM should request additional information (including a risk register, if applicable), pursuant to Section 11(b)(vii) (*Conditions Precedent – Conditions Precedent to Disbursement*),

Vendor or Contractor Name ¹⁰	Invoice Number ¹¹	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ¹²	Activity Type ¹³	Description of Activity ¹⁴	Approved Amount	Notes

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

Date: _____

LOUISVILLE AND JEFFERSON COUNTY
 METROPOLITAN SEWER DISTRICT,
 By its authorized representative

By: _____
 Name: _____
 Title: _____

¹⁰ If seeking reimbursement for internal costs, enter “Internally financed activities.”

¹¹ Vendor’s number indicated on the invoice sent to the Borrower.

¹² 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.

¹³ Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the “Description of Activity” column.

¹⁴ Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

APPENDIX TWO TO EXHIBIT D-1

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

Requisition Number [_____] is [approved in the amount of \$[_____] [approved in part in the amount of \$[_____] [not approved, for the reasons set forth in Annex A attached hereto,]¹⁵ by the WIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [_____] , 2020, by and between Louisville and Jefferson County Metropolitan Sewer District (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”).

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

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

By: _____
WIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

¹⁵If there is any partial or full denial of approval, the WIFIA Lender should provide a separate attachment setting forth the reasons for such partial or full denial of approval.

EXHIBIT D-2

CERTIFICATION OF ELIGIBLE PROJECT COSTS DOCUMENTATION

[Date]

United States Environmental Protection Agency¹⁶
1200 Pennsylvania Avenue NW
WJC-W 6201A
Washington, D.C. 20460
Attention: WIFIA Director

Re: Morris Forman Water Quality Treatment Center Biosolids Processing Solution Project
(WIFIA Ref N18101KY)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [____], 2020 (the “**WIFIA Loan Agreement**”), by and between LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), we hereby present this certificate in connection with the Borrower’s delivery of Eligible Project Costs Documentation to the WIFIA Lender. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

The undersigned does hereby represent and certify the following:

1. This certificate is being delivered to the WIFIA Lender in connection with the Eligible Project Costs Documentation and is applicable to the period between [____] and [____].
2. [The amount of Eligible Project Costs for which reimbursement will be sought from the WIFIA Loan pursuant to this certificate is \$[____].]
3. The sources of funding for such Eligible Project Costs are [listed below / set forth in Exhibit [] to this certificate].
4. [The funds for which reimbursement will be sought were expended solely in connection with the payment or reimbursement of Eligible Project Costs.]

¹⁶ If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.

Date: _____

**LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT¹⁷**

By: _____

Name: _____

Title: _____

¹⁷ To be executed by the Borrower's Authorized Representative.

EXHIBIT E

FORM OF NON-LOBBYING CERTIFICATE

The undersigned, on behalf of LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the WIFIA Loan.

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

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

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, dated as of [_____], 2020 (the "WIFIA Loan Agreement"), by and between the United States Environmental Protection Agency, acting by and through the Administrator (the "WIFIA Lender"), and the Borrower, as the same may be amended from time to time.

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

Dated: _____

**LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT,**
by its authorized representative

By: _____
Name: _____
Title: _____

EXHIBIT F
WIFIA DEBT SERVICE

EXHIBIT G-1

OPINIONS REQUIRED FROM COUNSEL TO BORROWER ON EFFECTIVE DATE

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

(a) The Borrower is a public body corporate and political subdivision of the Commonwealth, duly and validly created and organized and validly existing in good standing under the laws of the Commonwealth and is authorized under Chapter 76 of the Kentucky Revised Statutes, as amended (the “Borrower Act”), to provide adequate sewer and drainage facilities within the limits of the District Area as defined in the Act, to set, collect, and apply rates and charges for the use of such facilities in accordance with the requirements of the General Bond Resolution and the WIFIA Supplemental Resolution and to conduct its operations in the manner contemplated by the General Bond Resolution and the WIFIA Supplemental Resolution.

(b) The Borrower has full power and authority to adopt the General Bond Resolution and the WIFIA Supplemental Resolution and to enter into the WIFIA Loan Agreement and the Principal Project Contracts and to perform its obligations thereunder.

(c) The General Bond Resolution and the WIFIA Supplemental Resolution have been duly authorized and adopted by the Board of the Borrower, are in full force and effect, and constitute the legal, valid, and binding special and limited obligations of the Borrower enforceable against the Borrower in accordance with their respective terms. The General Bond Resolution creates the valid pledge which it purports to create of the Pledged Property, subject to the provisions of the General Bond Resolution permitting the application thereof for the purposes and on the conditions set forth in the General Bond Resolution.

(d) The WIFIA Loan Agreement and the Principal Project Contracts have been duly authorized, executed, and delivered by the Borrower, are in full force and effect, and constitute the legal, valid, and binding special and limited obligations of the Borrower enforceable against the Borrower in accordance with their respective terms.

(e) All actions taken by the Borrower in connection with the adoption of the General Bond Resolution and the WIFIA Supplemental Resolution, and the execution and delivery of the WIFIA Loan Agreement and the Principal Project Contracts have been in full compliance with the provisions of the Kentucky Open Meeting law, KRS Sections 61.805 to 61.850, as amended, and all such actions have neither been repealed, revoked, rescinded, or amended.

(f) 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 Commonwealth is required on the part of the Borrower for the execution and delivery by the Borrower of, and the performance by the Borrower of its obligations under, the WIFIA Loan Agreement or any of the Principal Project Contracts other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower.

(g) No approval or action is required by the Louisville/Jefferson County Metro Government or its Metro Council, the County of Jefferson or its Fiscal Court, the Kentucky Public Service Commission, any Federal or State environmental authority or agency, or any other

governmental authority or agency in connection with the rates charged by the Borrower for its services as described in the General Bond Resolution, the WIFIA Supplemental Resolution, and the WIFIA Loan Agreement, which has not already been obtained or taken.

(h) The execution and delivery of, the consummation of the transactions contemplated by, and the fulfillment and compliance with the terms of, the General Bond Resolution, the WIFIA Supplemental Resolution, the WIFIA Loan Agreement and the Principal Project Contracts, under the circumstances contemplated thereby, do not and will not conflict with or constitute on the part of the Borrower a breach or violation of or default under any indenture, mortgage, deed of trust, or other instrument or agreement to which the Borrower is a party or by which it is bound or any existing law, regulation, administrative, or court order or decree to which the Borrower is subject.

(i) Except as set forth in the WIFIA Loan Agreement, there is no litigation or other legal proceeding of any nature pending or, to the best of my knowledge after due inquiry of the responsible officers of the Borrower, threatened, at law or in equity, or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality (i) to restrain or enjoin the execution and delivery of the WIFIA Loan Agreement or the Principal Project Contracts or the implementation of the financing program described in the WIFIA Loan Agreement, or in any way contesting or affecting the validity of the General Bond Resolution, the WIFIA Supplemental Resolution, the WIFIA Loan Agreement or the Principal Project Contracts or the covenants contained therein, or the financing of the Project or any proceedings of the Borrower taken with respect to the execution and delivery of the WIFIA Loan Agreement and the Principal Project Contracts, the pledge or application of any moneys or security provided for the payment of the WIFIA Loan Agreement, or the due existence or powers of the Borrower insofar as they relate to the authorization, execution and delivery of the WIFIA Loan Agreement and the Principal Project Contracts, the pledge or application of such moneys or security, or the implementation of such financing program, (ii) which challenges the authority of the Borrower to operate its sewer and drainage system or to collect revenues therefrom or which contests the creation, organization, or existence of the Borrower or the title of any of its Board members or executive staff to their respective offices, (iii) against or affecting the Borrower or its Board wherein an unfavorable decision, ruling, or finding would have a materially adverse effect on the operations, properties, or financial condition of the Borrower, or (iv) otherwise to restrain or enjoin the consummation of the transactions contemplated by the General Bond Resolution, the WIFIA Supplemental Resolution, the WIFIA Loan Agreement and the Principal Project Contracts, or which, if decided adversely to the Borrower, would otherwise restrain or enjoin the incurrence of the WIFIA Loan, the adoption of the General Bond Resolution and the WIFIA Supplemental Resolution, the execution and delivery of the WIFIA Loan Agreement or the Principal Project Contracts, materially adversely affect the financial condition of the Borrower as set forth in the WIFIA Loan Agreement, or materially adversely affect the WIFIA Loan, the security for the WIFIA Loan, or the ability of the Borrower to perform its obligations under the General Bond Resolution, the WIFIA Supplemental Resolution, the WIFIA Loan Agreement and the Principal Project Contracts.

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

EXHIBIT G-2

OPINIONS REQUIRED FROM BOND COUNSEL ON EFFECTIVE DATE

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

(a) The Borrower is a public body corporate and politic and a political subdivision of the Commonwealth, validly existing under the provisions of the Constitution and laws of the Commonwealth, including Chapter 76 of the Kentucky Revised Statutes, as amended (the “Borrower Act”), with the right and power under the Borrower Act to adopt the General Bond Resolution and the WIFIA Supplemental Resolution and to enter into the WIFIA Loan Agreement.

(b) The General Bond Resolution and the WIFIA Supplemental Resolution have been duly and lawfully adopted by the Board of the Borrower, are in full force and effect, and constitute valid and binding special and limited obligations of the Borrower enforceable in accordance with their respective terms. The General Bond Resolution creates the valid pledge which it purports to create of the Pledged Property, subject to the provisions of the General Bond Resolution permitting the application thereof for the purposes and on the conditions set forth in the General Bond Resolution.

(c) The WIFIA Loan Agreement has been duly authorized, executed and delivered by the Borrower, is in full force and effect, and constitutes a legal, valid, and binding special and limited obligation of the Borrower enforceable against the Borrower in accordance with its terms, payable from and secured by a pledge of the gross revenues derived from the collection of rates, rentals, and charges for the services rendered by the System.

(d) The WIFIA Loan Agreement is a special and limited revenue obligation of the Borrower and does not constitute a debt, liability, or general obligation of the Borrower, the Commonwealth, or any political subdivision or taxing authority thereof, including the Louisville/Jefferson County Metro Government and the County of Jefferson, Kentucky, within the meaning of the Constitution and laws of the Commonwealth. The Borrower has no taxing power.

(e) The interest on the WIFIA Loan is not subject to taxation by the Commonwealth of Kentucky, and the WIFIA Loan is not subject to ad valorem taxation by the Commonwealth of Kentucky or by any political subdivision thereof.

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

The foregoing opinions with respect to the enforceability of the General Bond Resolution, the WIFIA Supplemental Resolution, and the WIFIA Loan Agreement (the “Borrower Documents”) are qualified to the extent that (a) the enforceability of any provisions of the Borrower Documents, or of any rights granted pursuant to any of the Borrower Documents, may be subject to and affected by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or similar laws affecting the enforcement of rights of creditors generally, (b) the enforceability of the Borrower Documents is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and

(c) certain rights, remedies, and waivers contained in the Borrower Documents may be limited or rendered ineffective by applicable laws or judicial decisions governing such provisions.

EXHIBIT G-3

OPINIONS REQUIRED FROM COUNSEL TO BORROWER AT FIRST DISBURSEMENT

An opinion of the counsel of the Borrower, dated as of the initial disbursement under the WIFIA Loan Agreement, to the effect that:

(a) The Borrower is a public body corporate and political subdivision of the Commonwealth, duly and validly created and organized and validly existing in good standing under the laws of the Commonwealth.

(b) The Borrower has full power and authority to issue the WIFIA Bond and to perform its obligations thereunder.

(c) The issuance and sale of the WIFIA Bond has been duly authorized by the Borrower. The WIFIA Bond has been duly executed and delivered by the Borrower and is the valid and binding special and limited obligation of the Borrower entitled to the benefit and security of the General Bond Resolution and the WIFIA Supplemental Resolution and enforceable in accordance with their respective terms.

(d) All actions taken by the Borrower in connection with the issuance and sale of the WIFIA Bond have been in full compliance with the provisions of the Kentucky Open Meeting law, KRS Sections 61.805 to 61.850, as amended, and all such actions have neither been repealed, revoked, rescinded, or amended.

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

(f) The issuance of, the consummation of the transactions contemplated by, and the fulfillment and compliance with the terms of, the WIFIA Bond, under the circumstances contemplated thereby, do not and will not conflict with or constitute on the part of the Borrower a breach or violation of or default under any indenture, mortgage, deed of trust, or other instrument or agreement to which the Borrower is a party or by which it is bound or any existing law, regulation, administrative, or court order or decree to which the Borrower is subject.

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

EXHIBIT G-4

OPINIONS REQUIRED FROM BOND COUNSEL AT FIRST DISBURSEMENT

An opinion of bond counsel, dated as of the initial disbursement under the WIFIA Loan Agreement, to the effect that:

(a) The Borrower is a public body corporate and politic and a political subdivision of the Commonwealth, validly existing under the provisions of the Constitution and laws of the Commonwealth, including Chapter 76 of the Kentucky Revised Statutes, as amended (the "Borrower Act"), with the right and power under the Borrower Act to issue the WIFIA Bond.

(b) The WIFIA Bond has been duly authorized, executed and issued by the Borrower in accordance with the Constitution and Statutes of the Commonwealth, including the Borrower Act, and in accordance with the General Bond Resolution and WIFIA Supplemental Resolution, and constitutes a valid and binding special and limited obligation of the Borrower enforceable in accordance with its terms and entitled to the benefit and security of a Bond under the General Bond Resolution and the WIFIA Supplemental Resolution, payable as to principal, interest, and premium, if any, from and secured by a pledge of the gross revenues derived from the collection of rates, rentals, and charges for the services rendered by the System.

(c) The General Bond Resolution creates the valid pledge which it purports to create of the Pledged Property to secure the WIFIA Bond, subject to the provisions of the General Bond Resolution permitting the application thereof for the purposes and on the conditions set forth in the General Bond Resolution.

(d) The WIFIA Bond is a special and limited revenue obligation of the Borrower and does not constitute a debt, liability, or general obligation of the Borrower, the Commonwealth, or any political subdivision or taxing authority thereof, including the Louisville/Jefferson County Metro Government and the County of Jefferson, Kentucky, within the meaning of the Constitution and laws of the Commonwealth. The Borrower has no taxing power.

(e) The interest on the WIFIA Bond is not subject to taxation by the Commonwealth of Kentucky, and the WIFIA Bond is not subject to ad valorem taxation by the Commonwealth of Kentucky or by any political subdivision thereof.

The foregoing opinions with respect to the enforceability of the WIFIA Bond are qualified to the extent that (a) the enforceability of any provisions of the WIFIA Bond, or of any rights granted pursuant to the WIFIA Bond, may be subject to and affected by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or similar laws affecting the enforcement of rights of creditors generally, (b) the enforceability of the WIFIA Bond is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and (c) certain rights, remedies, and waivers contained in the WIFIA Bond may be limited or rendered ineffective by applicable laws or judicial decisions governing such provisions.

EXHIBIT H

FORM OF CERTIFICATE OF PAYING AGENT

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT

WIFIA Bond, Morris Forman Water Quality Treatment Center Biosolids Processing Solution Project (WIFIA – N18101KY)

The undersigned, The Bank of New York Mellon Trust Company, N.A. (the “*Paying Agent*”), by its duly appointed, qualified and acting [_____], certifies with respect to that certain Revenue Bond Resolution adopted by the Louisville and Jefferson County Metropolitan Sewer District (the “*Borrower*”) on December 7, 1992, as amended March 4, 1993, June 30, 1993, December 14, 1994, January 25, 1996 and February 24, 2003, and as further supplemented and amended from time to time (the “*General Bond Resolution*”), as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the General Bond Resolution):

1. That the Paying Agent is a national association duly organized and validly existing under the laws of the United States of America and is in good standing under the laws of the Commonwealth of Kentucky.

2. That the Paying Agent is also the Bond Registrar under the General Bond Resolution and that all approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Paying Agent of its duties and obligations as Paying Agent and as Bond Registrar under the General Bond Resolution (including the issuance of the above referenced bond (the “*WIFIA Bond*”) when issued on the date of the initial disbursement under that certain WIFIA Loan Agreement, dated as of [_____], 2020 (the “*WIFIA Loan Agreement*”), between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator) have been obtained by the Paying Agent and are in full force and effect.

3. That pursuant to the General Bond Resolution, the WIFIA Bond when issued on the date of the initial disbursement under the WIFIA Loan Agreement will be authenticated on behalf of the Paying Agent by one or more persons duly appointed, qualified and acting incumbent of his or her respective office, and duly authorized to execute such documents and to authenticate the WIFIA Bond. Annex One attached hereto and made part hereof, sets forth one or more persons on the date hereof that are duly appointed, qualified and acting incumbent of his or her respective office, and duly authorized to execute such documents and to authenticate the WIFIA Bond, and the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.

4. That the undersigned is authorized to act as Paying Agent and accept the trusts conveyed to it under the General Bond Resolution (“*Trusts*”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of

association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.

5. That attached to this Certificate as Annex [One][Two]¹⁸ is a full, true and correct copy of excerpts from [resolutions of the board of directors][the bylaws] of the Paying Agent and other applicable documents that evidence the Paying Agent's trust powers and the authority of the officers referred to above to act on behalf of the Paying Agent; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Paying Agent pursuant to Section 2.2 of the General Bond Resolution.

7. That receipt is also acknowledged of the WIFIA Loan Agreement.

8. That the Paying Agent also accepts its appointment and agrees to perform the duties and responsibilities of Bond Registrar and Paying Agent for and in respect of the WIFIA Bond as set forth in the General Bond Resolution and the WIFIA Loan Agreement, including from time to time redeeming all or a portion of the WIFIA Bond as provided in Article 4 of the General Bond Resolution. In accepting such duties and responsibilities, the Paying Agent shall be entitled to all of the privileges, immunities, rights and protections set forth in Article 9 of the General Bond Resolution.

9. That all funds and accounts for the payment of the WIFIA Bond pursuant to the General Bond Resolution (including, but not limited to, the Debt Service Account in the Bond Fund) have been established as provided in the General Bond Resolution.

Dated: [_____], 2020

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.

By: _____
Authorized Officer

¹⁸ If the Paying Agent's authorizing document is the same document that sets out the incumbency signatures (e.g. US Bank NA), refer to and attach one annex. If separate documents, refer here to and attach as a second annex.

ANNEX ONE TO EXHIBIT H

[See attached]

EXHIBIT I

FORM OF CLOSING CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [_____], 2020 (the “WIFIA Loan Agreement”), by and among the Louisville and Jefferson County Metropolitan Sewer District (the “Borrower”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement.

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

- (a) pursuant to Section 11(a)(viii), 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 Related Documents to which the Borrower is or will be a party, and who have been appointed as a Borrower’s Authorized Representative in accordance with Section 21 (*Borrower’s Authorized Representative*) of the WIFIA Loan Agreement;
- (b) pursuant to Section 11(a)(ii), attached hereto as Annex B are copies of the General Bond Resolution, the WIFIA Supplemental Resolution and any other Supplemental Resolution or other proceedings or issuance document authorizing System Debt in respect of the Project that has been entered into on or prior to the Effective Date, together with any amendments, waivers or modifications thereto, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled;
- (c) pursuant to Section 11(a)(iii), attached hereto as Annex C are copies of each Existing Principal Project Contract, together with any amendments, waivers or modifications thereto, and each such document is complete, fully executed, and in full force and effect;
- (d) pursuant to Section 11(a)(iv), attached hereto as Annex D is a copy of the Borrower’s Organizational Documents, as in effect on the Effective Date, which Organizational Documents are in full force and effect. Other than the WIFIA Supplemental Resolution, there are no additional instruments or documents necessary for the Borrower to execute and deliver, or to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents;
- (e) pursuant to Section 11(a)(viii)(1), the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial

Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

- (f) pursuant to Section 11(a)(viii)(2), the Borrower has obtained all Governmental Approvals necessary (i) as of the Effective Date in connection with the Project and (ii) to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (g) pursuant to Section 11(a)(viii)(3), (i) the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs;
- (h) pursuant to Section 11(a)(viii)(4), the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project, and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such compliance;
- (i) pursuant to Section 11(a)(viii)(5), the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;
- (j) pursuant to Section 11(a)(viii)(6), (i) the Borrower's Federal Employer Identification Number is 61-6000429, (ii) the Borrower's Data Universal Numbering System number is [_____], and (iii) the Borrower 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 [_____];
- (k) pursuant to Section 11(a)(viii)(7), the CUSIP number for the WIFIA Loan is [_____];
- (l) pursuant to Section 11(a)(viii)(8), the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;

- (m) pursuant to Section 11(a)(viii)(9), no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since December 22, 2019;
- (n) pursuant to Section 11(a)(x), none of the rating letters delivered to the WIFIA Lender pursuant to such Section 11(a)(x) has been reduced, withdrawn or suspended as of the Effective Date;
- (o) pursuant to Section 11(a)(xi), [the Borrower has delivered to the WIFIA Lender][attached hereto as Annex [] is] the Base Case Financial Model, which (i) demonstrates that projected Net Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender, (iv) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over its useful life and (v) otherwise meets the requirements of such Section 11(a)(xi); [and]
- (p) pursuant to Section 11(a)(xii), attached hereto as Annex [] [are certificates of insurance][is a certificate of the Borrower's risk management department pertaining to the Borrower's self-insurance program], and such insurance certificate is true and correct and demonstrates compliance with the requirements of Section 14(f) (*Affirmative Covenants – Insurance*) of the WIFIA Loan Agreement[; and][.]
- (q) [*any other attachments and provisions, as may apply to the specific WIFIA Loan Agreement*].

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

**LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT,**
by its authorized representative

By: _____

Name:

Title:

ANNEX A TO EXHIBIT I

INCUMBENCY CERTIFICATE

The undersigned certifies that he is the Secretary-Treasurer of the Louisville and Jefferson County Metropolitan Sewer District, a public body corporate and political subdivision of the Commonwealth of Kentucky (the “Borrower”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents as the Borrower’s Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Marita Willis	Chair	_____
James A. Parrott	Executive Director, Secretary-Treasurer	_____
Brad Good	Chief Financial Officer	_____
Paula Middelton Purifoy	General Counsel and Legal Director	_____

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

**LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT,**
by its authorized representative

By: _____
Secretary-Treasurer

EXHIBIT J

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

United States Environmental Protection Agency
c/o WIFIA Director
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Project: Morris Forman Water Quality Treatment Center Biosolids Processing Solution Project (WIFIA – N18101KY)

Dear Director:

This Notice is provided pursuant to Section 16(a)(i)(A) (*Affirmative Covenants – Notice – Substantial Completion*) of that certain WIFIA Loan Agreement (the “WIFIA Loan Agreement”), dated as of [_____], 2020, by and between the Louisville and Jefferson County Metropolitan Sewer District (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through its Administrator (the “**WIFIA Lender**”).

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

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

- (a) on [*insert date Substantial Completion requirements were satisfied*], the Project satisfied each of the requirements for Substantial Completion set forth in the [*Insert reference to the concession agreement, design-build or similar agreement for the Project*];
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved.

**LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT,**
by its authorized representative

By: _____
Name: _____
Title: _____

EXHIBIT K

FORM OF QUARTERLY REPORT

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

Re: Morris Forman Water Quality Treatment Center Biosolids Processing Solution Project (WIFIA – N18101KY)

This Quarterly Report for the period of [____] is provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) of the WIFIA Loan Agreement, dated as of [____], 2020 (the “**WIFIA Loan Agreement**”), by and between the Louisville and Jefferson County Metropolitan Sewer District (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”). Unless otherwise defined herein, all capitalized terms in this Quarterly Report have the meanings assigned to those terms in the WIFIA Loan Agreement.

(i) Amount Expended

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

(ii) Construction Progress, Governmental Approvals, Updated Schedule

Assessment of overall construction progress:

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

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

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

(iii) Substantial Completion Date

Current projection for the Substantial Completion Date: _____

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

(iv) Material Problems (if any)

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

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

(vi) Other matters related to the Project

Date: _____

**LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT,**

by its authorized representative

By: _____

Name: _____

Title: _____

EXHIBIT L

FORM OF PUBLIC BENEFITS REPORT

Pursuant to [Section 11(a)(xiv))] [and] [Section 16(e)] of the WIFIA Loan Agreement, the Louisville and Jefferson County Metropolitan Sewer District (the “**Borrower**”) is providing this Public Benefits Report in connection with the Morris Forman Water Quality Treatment Center Biosolids Processing Solution Project (WIFIA – N18101KY):

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

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

(ii) The number of jobs projected to be created by the Project during each period described below:

The Borrower projects [] jobs to be created by the Project during the period between [[(1)] the Effective Date and the Substantial Completion Date]¹⁹ [and] [[(2)] the Substantial Completion Date and the fifth anniversary of the Substantial Completion Date]²⁰.

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

[].

(iv) The amount by which the Project will increase Class [A][B] biosolids (measured in tons annually):

[].

Date: _____

**LOUISVILLE AND JEFFERSON
COUNTY METROPOLITAN SEWER
DISTRICT,**
by its authorized representative

By: _____

Name: _____

Title: _____

¹⁹ Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the Substantial Completion Date.

²⁰ Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the fifth anniversary of the Substantial Completion Date.