



NARRAGANSETT BAY COMMISSION

ONE SERVICE ROAD, PROVIDENCE, RI 02905

**Approval to Enter Into Long-Term Debt and Issuance
of Revenue Bonds of \$45,000,000
State Revolving Fund (SRF) Loan**

December 12, 2018

Vincent Mesolella, Jr.
Chairman

Raymond J. Marshall
Executive Director

KEOUGH + SWEENEY, LTD.

ATTORNEYS AND COUNSELORS AT LAW
41 MENDON AVENUE
PAWTUCKET, RHODE ISLAND 02861
TELEPHONE (401) 724-3600
FACSIMILE (401) 724-9909
www.keoughsweeney.com

RAYNHAM OFFICE:
90 NEW STATE HIGHWAY
RAYNHAM, MA 02109
TEL. (508) 822-2813
FAX (508) 822-2832

JOSEPH A. KEOUGH JR.*
JEROME V. SWEENEY III*

SEAN P. KEOUGH*

JEROME V. SWEENEY II
OF COUNSEL

*ADMITTED TO PRACTICE IN
RHODE ISLAND & MASSACHUSETTS

BOSTON OFFICE:
171 MILK STREET
SUITE 30
BOSTON, MA 02109
TEL. (617) 574-0054
FAX (617) 451-1914

December 12, 2018

Ms. Luly Massaro, Clerk
Rhode Island Division of
Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

RE: Narragansett Bay Commission Application For Borrowing Authority

Dear Ms. Massaro:

On behalf of the Narragansett Bay Commission ("NBC"), enclosed you will find an original and four copies of an Application for Borrowing Authority. In its application, NBC seeks authority to obtain financing not to exceed forty-five million dollars (\$45,000,000.00) through the Rhode Island Infrastructure Bank. The proceeds will be used to fund NBC's capital improvement program. Included in the application package is a copy of the proposed notice to be published in the Providence Journal.

Thank you for your attention to these matters.

Sincerely,



Joseph A. Keough, Jr.

Enclosures

cc: RI Attorney General's Office

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

IN RE: THE NARRAGANSETT BAY COMMISSION:

Docket No. D-18-

**APPLICATION FOR BORROWING AUTHORITY
NOTICE OF FILING AND PUBLIC HEARING**

Notice is hereby given that on December 12, 2018, pursuant to Rhode Island General Laws §39-3-15, §39-3-17, §39-3-18 and Section 14 of the Rhode Island Division of Public Utilities and Carriers' Rules of Practice and Procedure, the Narragansett Bay Commission ("NBC") filed with the Division of Public Utilities and Carriers ("Division") an Application For Borrowing Authority to obtain financing, payable more than twelve (12) months from the date of issue, in an amount not to exceed forty-five million dollars (\$45,000,000).

NBC seeks to borrow an amount not to exceed forty-five million dollars (\$45,000,000) through the Rhode Island Infrastructure Bank. These proceeds will be used to fund NBC's capital improvement plan.

A hearing on the proposal will be held at the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, Rhode Island on January 9, 2019 at 9 a.m. The hearing may continue thereafter from day to day and time to time as required. At this hearing, the Division will consider the propriety of NBC's Application For Borrowing Authority. Please note that the Division is accessible to the handicapped, and that individuals requesting interpreter services for the hearing impaired must contact the Clerk seventy-two hours in advance of the hearing.

A copy of the application is on file for examination at the NBC, One Service Road, Providence, Rhode Island and at the offices of the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, Rhode Island. A copy of the filing was also provided to the Rhode Island Attorney General's Department, Consumer Division.

Reference is made to Chapters 39-1, 39-3 and 42-35 of the Rhode Island General Laws; specifically Sections 39-1-7, 39-1-8, 39-1-11, 39-1-12, 39-1-16, 39-1-18, 39-1-20, 42-35-8, and 42-35-10.

Macky McCleary, Administrator

1 **NARRAGANSETT BAY COMMISSION**

2 **PRE-FILED DIRECT TESTIMONY**

3 **OF KAREN L. GIEBINK**

4

5 **Q. Please state your name and address.**

6 A. Karen L. Giebink. My business address is the Narragansett Bay Commission, One Service Road,
7 Providence, Rhode Island 02905.

8

9 **Q. For whom are you employed and what is your position?**

10 A. I am employed by the Narragansett Bay Commission (NBC) as its Chief Financial Officer.

11

12 **Q. For how long have you been so employed?**

13 A. I have been employed as NBC's Chief Financial Officer since July 2018. Prior to that date, I served
14 as NBC's Director of Administration and Finance beginning in April 1997. I began my employment
15 with the NBC in 1989 and have held the positions of Policy Associate and Senior Environmental
16 Planner. The three years prior to my employment with the NBC I worked as an analyst for the
17 City of San Diego Water Utilities Department.

18

19 **Q. Have you previously testified before the Division of Public Utilities and Carriers (Division)?**

20 A. Yes. I provided testimony in previous NBC requests for approval to enter into long-term debt. I
21 have also provided testimony in dockets 1968, 2216, 3651, 3797, 3905, 4305, 4652, 4364, 4478,
22 4885 and 4890 before the Public Utilities Commission (PUC).

23

24 **Q. What is the purpose of your testimony?**

25 A. To support NBC's request for Division approval to enter into long-term debt and issue revenue
26 bonds for an amount not to exceed \$45,000,000 million that will be used to support borrowings
27 from the Rhode Island Infrastructure Bank (the "RIIB"). The loan proceeds will be used to fund
28 NBC's capital improvement program.

1 **Q. Has the Division approved other loans to NBC from RIIB?**

2 A. Yes. The Division has approved numerous applications from NBC to enter into long-term debt and
3 effectuate borrowings through the RIIB and its predecessor the Rhode Island Clean Water Finance
4 Agency. Subsequent to these approvals, NBC has borrowed a total of \$618,673,210 from the RIIB
5 and received \$11,396,592 in principal forgiveness related to those loans.
6

7 **Q. Are there any differences in the structure of this loan compared to prior loans?**

8 A. This loan is similar in structure to nearly all of the loans through the SRF program, and will be
9 structured with a traditional 20 year amortization. NBC anticipates that this loan will be at the
10 traditional subsidy of 1/3 of the market rate. NBC has recently been made aware that a portion
11 of this loan may be eligible for principal forgiveness and is waiting for additional information from
12 RIIB. Principal forgiveness is not referenced in the commitment letter or loan agreement from
13 RIIB at this time.
14

15 **Q. What projects does the NBC plan on funding with the proceeds of this loan?**

16 A. NBC plans to spend approximately \$37.8 million (84%) of the loan proceeds on the design of Phase
17 III A and Phase III B of the Combine Sewer Overflow (CSO) Project. Approximately \$5.3 million
18 (12%) will be spent on The Bucklin Point Wastewater Treatment Facility UV Disinfection
19 Improvements, Providence River Siphon, Moshassuck Valley Interceptor, and Louisquisset Pike
20 Interceptor Improvements. The remaining \$1.95 million (2%), is allocated to smaller
21 miscellaneous projects. All projects are included on the RI DEM's 2018 Project Priority List. In
22 addition, proceeds will be used to pay RIIB fees and bond issuance costs.
23

24 **Q. Does NBC have sufficient revenues for this bond issuance?**

25 A. Yes. NBC filed an application on October 3, 2018 (Docket 4885) with the Rhode Island Public
26 Utilities Commission (PUC) for new rates effective January 1, 2019 designed to generate total
27 revenue of \$102,522,251 of which \$62,642,390 is for debt service and debt service coverage. The
28 PUC held a hearing on December 4, 2018 and approved the request as filed. Based on the
29 approved revenue requirement, NBC has sufficient revenues to service this new debt (see Exhibit
30 KG-1).
31

1 **Q. Other than approval from the Division, has the NBC met all of the requirements needed to close**
2 **on this loan?**

3 A. Yes, with one exception. NBC submitted its loan application to the RIIB for this loan on April 2,
4 2018. NBC's Board of Commissioners passed the Authorizing Resolution for the borrowing of an
5 amount not to exceed \$45,000,000 at their May 9, 2018 Board meeting (See Exhibit KG-2). NBC
6 received a commitment letter from the RIIB dated November 20, 2018 indicating that that the
7 NBC's loan request was approved by the Board of Directors of the Rhode Island Infrastructure
8 Bank (see Exhibit KG-3). One outstanding requirement is the S&P Global Ratings credit review
9 tentatively scheduled for the first week in January.

10

11 **Q. Has NBC included the anticipated loan agreement as part of this application?**

12 A. Yes. NBC has included draft loan agreement (See Exhibit KG-4) which is representative of the loan
13 agreement that will be executed as part of this transaction; however, additional review will take
14 place prior to the closing of the loan.

15

16 **Q. Does the proposed transaction have any unusual features which may have significant impact**
17 **on the Division's ability to regulate the utility?**

18 A. No it does not.

19

20 **Q. Does NBC have any additional planned long-term debt issuances for this fiscal year?**

21 A. Yes. NBC has been invited to apply for a Water Infrastructure Finance and Innovation Act (WIFIA)
22 loan from the EPA in the amount of \$251 million for funding of NBC's CSO Phase III Facilities. NBC
23 plans to submit the application in early 2019 and would like to close on the loan in 2019 as well.
24 Keep in mind, there is no guarantee that NBC will receive WIFIA funding. NBC will seek Division
25 approval prior to entering into a loan agreement with EPA related to the WIFIA funds.

26

27 **Q Does this conclude your pre-filed testimony?**

28 A. Yes.

29

Narragansett Bay Commission
Debt Service Coverage

Exhibit KG-1

Fiscal Year	Available for Debt Service	Current Debt Service	Debt Service Coverage	Planned SRF 20	Total Debt Service	Debt Service Coverage
2019	\$ 62,642,390	\$ 47,584,757	1.32	\$ -	\$ 47,584,757	1.32
2020	62,642,390	47,026,223	1.33	904,939	47,931,162	1.31
2021	62,642,390	47,026,562	1.33	3,126,994	50,153,556	1.25
2022	62,642,390	46,932,148	1.33	3,115,863	50,048,011	1.25
2023	62,642,390	43,771,157	1.43	3,108,866	46,880,023	1.34
2024	62,642,390	42,293,528	1.48	3,100,281	45,393,809	1.38
2025	62,642,390	41,308,207	1.52	3,090,108	44,398,315	1.41
2026	62,642,390	41,304,435	1.52	3,078,348	44,382,783	1.41
2027	62,642,390	40,653,187	1.54	3,069,921	43,723,108	1.43
2028	62,642,390	40,373,096	1.55	3,059,747	43,432,843	1.44
2029	62,642,390	40,104,715	1.56	3,047,827	43,152,542	1.45
2030	62,642,390	39,177,360	1.60	3,039,082	42,216,442	1.48
2031	62,642,390	38,863,535	1.61	3,028,431	41,891,966	1.50
2032	62,642,390	33,807,497	1.85	3,015,874	36,823,371	1.70
2033	62,642,390	31,475,257	1.99	3,001,413	34,476,670	1.82
2034	62,642,390	32,980,574	1.90	2,989,967	35,970,541	1.74
2035	62,642,390	25,523,223	2.45	2,981,377	28,504,600	2.20
2036	62,642,390	17,830,104	3.51	2,965,645	20,795,749	3.01
2037	62,642,390	18,523,274	3.38	2,952,769	21,476,043	2.92
2038	62,642,390	13,331,224	4.70	2,937,670	16,268,894	3.85
2039	62,642,390	11,885,495	5.27	2,925,269	14,810,764	4.23
2040	62,642,390	11,881,201	5.27	2,910,487	14,791,688	4.23
2041	62,642,390	11,880,886	5.27		11,880,886	5.27
2042	62,642,390	11,883,043	5.27		11,883,043	5.27
2043	62,642,390	11,880,108	5.27		11,880,108	5.27
2044	62,642,390	11,878,525	5.27		11,878,525	5.27
2045	62,642,390	2,229,005	28.10		2,229,005	28.10
		<u>\$ 803,408,326</u>		<u>\$ 61,450,877</u>	<u>\$ 864,859,203</u>	

The Narragansett Bay Commission
One Service Road
Providence, RI 02905

Vincent J. Mesolella
Chairman

(401) 461-8848
(401) 461-6540 FAX

Raymond J. Marshall, P.E.
Executive Director



RESOLUTION NO. 2018:13

RESOLUTION AUTHORIZING THE NARRAGANSETT BAY COMMISSION TO BORROW AN AMOUNT NOT TO EXCEED \$45,000,000 FROM THE RHODE ISLAND INFRASTRUCTURE BANK FOR THE PURPOSE OF FINANCING THE PLANNING, ACQUISITION, DESIGN, EVALUATION, INSPECTION, CONSTRUCTION, REPLACEMENT, IMPROVEMENT, INSTALLATION, CLEANING, REHABILITATION, FURNISHING AND EQUIPPING OF THE PHASE III COMBINED SEWER OVERFLOW (“CSO”) FACILITIES, THE FIELD’S POINT WASTEWATER TREATMENT FACILITY (“FPWWTF”) BLOWER IMPROVEMENTS PHASE II, THE NEW FPWWTF MAINTENANCE FACILITIES, THE BUCKLIN POINT WASTEWATER TREATMENT FACILITY UV DISINFECTION IMPROVEMENTS, THE NEW INTERCEPTOR MAINTENANCE FACILITIES, THE RIPDES WASTEWATER SYSTEM REGULATORY COMPLIANCE, THE MUNICIPAL LATERAL SEWER ACQUISITION, THE PROVIDENCE RIVER SIPHON IMPROVEMENTS, MOSHASSUCK VALLEY INTERCEPTOR REPLACEMENT, LOUISQUISSET PIKE INTERCEPTOR IMPROVEMENTS, THE COMMISSION INTERCEPTORS, THE INTERCEPTOR EASEMENT RESTORATION, THE NBC SYSTEM-WIDE FACILITIES PLAN, AND OTHER PROJECTS OF THE COMMISSION

WHEREAS, the Narragansett Bay Commission (the “Commission”) desires to borrow an amount not to exceed Forty-Five Million Dollars (\$45,000,000) from the Rhode Island Infrastructure Bank (the “Bank”) in accordance with Title VI of the Federal Clean Water Act and Title 46-12.2 of the Rhode Island General Laws, for the purpose of financing the planning, acquisition, design, evaluation, inspection, construction, replacement, improvement, installation, cleaning, rehabilitation, furnishing and equipping of the Phase III Combined Sewer Overflow (“CSO”) Facilities, the Field’s Point Wastewater Treatment Facility (“FPWWTF”) Blower

Improvements Phase II, the New FPWWTF Maintenance Facilities, the Bucklin Point Wastewater Treatment Facility UV Disinfection Improvements, the New Interceptor Maintenance Facilities, the RIPDES Wastewater System Regulatory Compliance, the Municipal Lateral Sewer Acquisition, the Providence River Siphon Improvements, Moshassuck Valley Interceptor Replacement, Louisquisset Pike Interceptor Improvements, the Commission Interceptors, the Interceptor Easement Restoration, the NBC System-Wide Facilities Plan, and other projects of the Commission as defined in R.I. General Laws § 46-25-3(10), collectively, hereinafter referred to as the “Projects”;

WHEREAS, the Commission desires to issue an amount not to exceed Forty-Five Million Dollars (\$45,000,000) interest bearing revenue bonds for the purpose of evidencing the borrowing described above; and

WHEREAS, the Commission may desire to issue temporary revenue notes in anticipation of the issuance of its revenue bonds.

NOW, THEREFORE, THE COMMISSION RESOLVES AS FOLLOWS:

1. The Chairman and the Executive Director are authorized to borrow, on behalf of the Commission, an amount not exceeding Forty-Five Million Dollars (\$45,000,000) from the Bank in accordance with Title VI of the Federal Clean Water Act and Title 46-12.2 of the Rhode Island General Laws, in order to finance the Projects. The Chairman and the Executive Director are also authorized, empowered and directed, on behalf of the Commission, to: (i) execute, acknowledge and deliver a loan agreement to the Bank representing such borrowing (the “Loan Agreement”), the next numerically sequential supplemental indenture (referred to herein for purposes of this Resolution as the “Supplemental Indenture” regardless of its actual sequential number, to be subsequently determined) amending and supplementing the

trust indenture dated as of April 15, 2004 by and between the Commission and J.P. Morgan Trust Company, National Association, as initial trustee thereunder (the current successor trustee now being U.S. Bank National Association), as amended and supplemented (the "Trust Indenture"), relating to the issuance of the Bonds or Notes (each defined below) and any and all other documents, certificates or instruments necessary to effectuate such borrowing and issuance; (ii) to fix the terms, conditions and details of the Loan Agreement and the Supplemental Indenture; (iii) to comply with any requirements, restrictions or covenants not contrary to applicable local, state or federal law, pursuant to the Loan Agreement, the Trust Indenture and the Supplemental Indenture, or as requested by one or more insurance companies or financial institutions providing credit enhancement and/or liquidity facility support, if any, for the Bonds and Notes as hereinafter defined or any bonds or notes of the Bank in connection with the Projects; (iv) to amend, modify or supplement the Loan Agreement, Trust Indenture or Supplemental Indenture and any and all other documents, certificates or instruments at any time and from time to time, in such manner and for such purpose as such officers shall deem necessary, desirable or advisable; (v) to execute, acknowledge and deliver any and all exhibits or other instruments as may be required by the Loan Agreement, Trust Indenture or Supplemental Indenture or required for the issuance of the Bonds or Notes as hereinafter defined; and (vi) to do and perform all such other acts and things deemed by such officers to be necessary, desirable or advisable with respect to any matters contemplated by this resolution in order to effectuate said borrowing and the intent hereof.

2. Pursuant to Titles 46-12.2 and 46-25 of the Rhode Island General Laws and this Resolution, the Commission hereby authorizes the Chairman and the Executive Director, on behalf of the Commission, to issue an amount not to exceed Forty-Five Million Dollars

(\$45,000,000) interest bearing revenue bonds for the purpose of evidencing the Loan in order to finance the Projects (the "Bonds").

3. The said officers from time to time may issue and refund not exceeding Forty-Five Million Dollars (\$45,000,000) interest bearing or discounted bond anticipation notes (the "Notes") in anticipation of the issuance of said Bonds.

4. The Bonds and Notes shall be issued by the Commission under its corporate name and seal or a facsimile of such seal. The Bonds and Notes shall be signed by the manual or facsimile signatures of the Chairman and the Executive Director. The manner of sale, denominations, maturities, interest rate or rates or method of determining the interest rate or rates, medium of payment and other terms, conditions, and details of the Bonds and Notes authorized herein shall be fixed by the Chairman and the Executive Director as set forth in the Supplemental Indenture. The Bonds and Notes shall be privately placed with the Bank. The Chairman and Executive Director are hereby authorized to execute and deliver such other documents and take such other actions, as may be necessary, desirable or advisable to effectuate the issuance of the Bonds and Notes, including, without limitation, such documents as may be necessary or convenient in connection with obtaining credit enhancement and/or liquidity facility support for the Bonds and Notes or any bonds or notes of the Bank in connection with the Projects.

5. The Commission hereby pledges its full faith and credit or such security as required under the Loan Agreement for the payment of the principal amount of the Bonds and Notes and the interest thereon. The Bonds and Notes shall have such security provisions as to parity or subordination and shall be in such series and designated as set forth in the Trust Indenture and the Supplemental Indenture. The Bonds and Notes shall not be deemed to

constitute a debt or pledge of the faith and credit of the State of Rhode Island and Providence Plantations (the "State") or any municipality. Neither the State nor any municipality shall be obligated to pay the Bonds and Notes or the interest thereon, and neither the faith and credit nor the taxing power of the State or any municipality is pledged to such payment. The Commission may issue revenue bonds on a parity with these Bonds.

6. If required, the Chairman and the Executive Director are authorized to execute and deliver one or more Disclosure Agreements in connection with the Bonds and Notes in such form as shall be deemed advisable by the Chairman and the Executive Director. The Commission hereby covenants and agrees that it will comply with and carry out all of the provisions of each Disclosure Agreement, as it may be amended from time to time. Notwithstanding any other provision of this Resolution or the Bonds or Notes, failure of the Commission to comply with the Disclosure Agreement shall not be considered an event of default; however, any bondholder or noteholder may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Commission to comply with its obligations under this Resolution and under the Disclosure Agreement.

7. This Resolution is an affirmative action of the Commission toward the issuance of the Bonds and Notes in accordance with the purposes of the laws of the State. This Resolution constitutes the Commission's declaration of official intent pursuant to the Treasury Regulation Section 1.150-2 to reimburse the Commission's Operation and Maintenance Fund, Operating Capital Accounts in the Project Fund or other funds and accounts for certain capital expenditures for the Projects paid on or after the date which is sixty (60) days prior to the date this Resolution is adopted, but prior to the issuance of the Bonds or Notes. Such amounts to be

reimbursed shall not exceed \$45,000,000 and shall be reimbursed not later than eighteen (18) months after the later of (a) the date on which the expenditure is paid, or (b) the date the applicable project is placed in service or abandoned but in no event later than three (3) years after the date the expenditure is paid.

8. If the Bonds or Notes are issued on a tax-exempt basis, the Commission agrees to take all lawful action necessary to ensure that the interest on the Bonds and Notes will remain exempt from federal income taxation to the extent provided in Section 103 of the Internal Revenue Code of 1986, as amended, and it agrees not to take any action which will cause interest on the Bonds and Notes to lose the benefit of the exclusion from gross income.

9. Any action to be taken by the Chairman or Executive Director pursuant to this Resolution may be taken by the Vice Chairman and Director of Administration and Finance, respectively.

10. This Resolution shall take effect upon passage.

ADOPTED ON: 5/9/18

SIGNED: Raymond J. Marshall
Raymond J. Marshall, P.E.
Executive Director & Secretary

November 20, 2018

Ms. Karen L. Giebink
Director of Administration & Finance
Narragansett Bay Commission
One Service Road
Providence, RI 02905

RE: Narragansett Bay Commission
\$45,000,000 CWSRF State Revolving Fund Loan

Dear Ms. Giebink,

The Board of Directors of the Rhode Island Infrastructure Bank ("RIIB"), pursuant to policies and procedures adopted in accordance with Title VI of the Federal Clean Water Act, as amended, and Title 46-12.2 of the Rhode Island General Laws, is pleased to inform you that the application from the Narragansett Bay Commission (the "Borrower") dated as of September 27, 2018 for financing through the RIIB has been accepted at the RIIB's November 19, 2018 Board Meeting. In consideration of the receipt of the Certificates of Approvals referred to below, RIIB shall provide financial aid in the form of a loan on the terms stated below, in an amount up to \$45,000,000 for a term not to exceed 20 years after project completion.

This approval is subject to NBC meeting the following terms:

- 1) that all projects to be funded appear on Department of Environmental Management's (DEM') Project Priority List and have Certificates of Approval issued;
- 2) that the loan comply with all federal, state and Agency laws, rules and regulations;
- 3) that the loan and debt service requirements be approved by any applicable regulatory Agency;
- 4) that a revenue pledge satisfactory to the Agency be accepted;
- 5) that DPUC approve the borrowing;
- 6) that a satisfactory loan agreement be signed by all parties to the transaction;
- 7) that loan will be made subject to availability of funds as related to the Agency's capacity; and
- 8) that loan will be made subject to ranking on DEM's Project Priority List.

TERMS AND CONDITIONS**(1) Certificate of Approval**

Prior to disbursement of funds by the RIIB, the RIIB must be in receipt of Certificate(s) of Approval by the Rhode Island Department of Environmental Management (DEM) of the Borrower's proposed project(s), pursuant to Title 46-12.2 of the Rhode Island General Laws, and rules and regulations promulgated thereunder.

(2) Loan Agreement

There will be a loan agreement (the "Agreement") with the Borrower outlining the specific terms and conditions of the RIIB's loan program, as more generally set forth below and in the agreement, including the loan (the "Loan") to the Borrower. The Borrower's repayment obligation to the RIIB under the agreement will be evidenced by a Bond(s) of the Borrower outlining the Loan's specific terms and conditions (the "Bonds"). The Bonds shall be in fully marketable form, accompanied by documentation, in form and substance satisfactory to the RIIB, and an opinion, in form and substance satisfactory to the RIIB, of nationally recognized bond counsel satisfactory to the RIIB as to its valid authorization, execution, delivery and enforceability, as well as its federal and state tax consequences, including an opinion that the bonds are not private activity bonds within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"). The general provisions of the agreement, which will be more fully set forth prior to the time of the pricing of the loan by the RIIB, will include (without limitation) the following provisions:

(a) Borrowing Rate

The stated interest rate on the Borrower Bond, which is the Borrower's market rate (the "Market Rate"), is the prevailing market tax-exempt interest rate for issuers of comparable creditworthiness to the Borrower, as determined by the RIIB on the advice of the Financial Advisor after consultation with the Borrower. The subsidized interest rate for the Loan is 66 2/3% of the Market Rate (the "Subsidized Interest Rate"). The Borrower will be obligated by the Borrower Bond to pay the Market Rate, but will be billed only for the Subsidized Interest Rate. If the Borrower or other borrowers of the RIIB should default in timely payment of debt service on the Loan or on the loans made to such other borrowers of the RIIB, the RIIB may require the Borrower to pay up to the Market Rate on the Borrower Bond.

Interest is to be calculated on the basis of a 360-day year and twelve thirty-day months, and may be capitalized during construction. Interest payments are semi-annually on March 1 and September 1.

(b) Amortization

Amortization will begin at a mutually agreed upon date, but in no case later than September 1 after completion of the construction of the projects. Principal payments will be made annually on September 1 and the schedule of payments will be structured to meet the debt service and financial assistance needs of the Borrower.

(c) **Final Maturity**

Loans shall mature no later than thirty years from the date of the Loan closing.

(d) **Prepayments**

A Loan may be prepaid by the Borrower at any time with the consent of the RIIB but in giving such consent the RIIB may require a prepayment penalty based on the cost of reinvesting the prepayment, the cost of prepaying outstanding bonds of the RIIB or any other negative financial impact reasonably determined by the RIIB.

(e) **Security**

Security - Loans will have a pledge of (a) general revenues and/or wastewater system revenues; and (b) may be secured by any other assets and upon such other terms and conditions as the RIIB deems appropriate to protect the interests of the other participants in the loan programs of the RIIB; bondholders; other creditors of the RIIB; or the finances of the RIIB.

(3) **Construction Progress Payments**

Progress payments for each construction project will be made through the Construction Proceeds Fund ("CPF"). Loan proceeds will be transferred to the CPF for the benefit of the Borrower based upon approved Requisition Forms submitted to the RIIB. Upon receipt of the Requisition Form, the RIIB will verify: a) that a Certificate of Approval has been issued by RIDEM; b) that the vendor is identified in the contract; and c) that there is sufficient availability in the CPF to make the payment. Payments will be made directly to the vendor and/or the Borrower for reimbursements by the RIIB, and a "paid" stamped copy of the Requisition Form will be sent to the Borrower and RIDEM. RIDEM will perform periodic project inspections to a) monitor construction progress; b) verify eligibility of construction rates under the program; and c) ensure that construction is in conformity with Plans and Specifications. RIDEM will provide a copy of the inspection report to the RIIB. Any adverse conditions will be reported to the RIIB who will suspend further payments until the adverse conditions have been rectified. RIDEM will perform a final project inspection before the final payment is made by the RIIB.

(4) **Reporting Requirements**

The Borrower will be required to provide information to the RIIB during the life of the Loan. These are:

- (a) A copy of its annual audited financial statements in accordance with Generally Accepted Government Accounting Standards.
- (b) An annual analysis of operating revenues and expenses, including without limitation, a description of the status of the dedicated wastewater system revenues and/or general revenues and operating expenses in excess of budget and a schedule of current and projected user rates.
- (c) A copy of the annual budget of the Borrower, within fifteen days of its adoption.

- (d) An annual schedule of current and projected short term and long term debt service.
- (e) An annual schedule of Capital Replacement Reserves.
- (f) Copies of reports submitted to DEM, the federal Environmental Protection Agency ("EPA") and any other regulatory agency relating to any project financed by the RIIB or the operation thereof.
- (g) An Accounting of all bond proceeds separately because, under the Tax Reform Act of 1986, all water and sewer districts may possibly have to rebate arbitrage profits regardless of whether they borrow through the RIIB or otherwise. The \$5,000,000 "small issuer" exemption will not apply to water and sewer districts. Changes to the Code in 1989 do provide that if construction projects will be completed with bond proceeds spent on a specific timetable within two years, the Borrower may not be subject to the rebate provisions contained in the Internal Revenue Code and temporary regulations promulgated thereunder. The Borrower should review this issue with bond counsel.
- (h) Other information or reports that the RIIB deems appropriate.

(5) **Compliance with State and Federal Law**

The Borrower must comply with all applicable state laws and regulations. Recipients of loans must also comply with all requirements of Title VI of the Federal Clean Water Act, including new programmatic requirements established under the water resources reform and development act of 2014 (WRRDA), and regulations issued thereunder in addition to any other applicable federal laws and regulations (see attached- Davis-Bacon (DB) prevailing wage requirements and new WRRDA requirements).

In addition, the Borrower must agree to take all action, or refrain from taking any action, that would cause interest on any obligations of the RIIB to be included, for federal income tax purposes, in the gross income of the holders of such obligations.

(6) **Clean Water Act (CWA) Amendments**

As part of the Water Resources Reform and Development Act of 2014, Congress amended the Clean Water Act. The following are key provisions that currently affect or will affect CWSRF borrowers:

Davis Bacon Act made permanent. The CWA amendments have made the Davis Bacon Act prevailing wage requirements a permanent part of the CWSRF program. This requirement has been part of the program since 2009.

American Iron and Steel (AIS) requirements made permanent. AIS was added to the CWSRF program in 2014, but was not applicable to most CWSRF borrowers. The CWA amendments have made this permanent and have made the requirement applicable to all of the FY2016 projects on the FY2016 PPL and all CWSRF financed project going forward.

Fiscal Sustainability Planning (Asset Management) – Starting with projects on the FY2016 PPL, a fiscal sustainability plan will need to be developed that inventories and evaluates assets and

implements water and energy conservation. See attached Guidance for further details on Fiscal Sustainability Plans.

(7) **Fees**

An origination fee of the greater of \$1,000 or one percent (1%) of the principal amount of the Loan will be payable to the RIIB by the Borrower at the time of the Loan's closing. All other costs incidental to the Borrower's role in the transaction, i.e. legal fees, financial advisory fees, bond insurance premiums and the like, will be paid by the Borrower. The RIIB will charge an annual service fee of one-half of one percent (0.5%) of the Loan's outstanding principal, payable semi-annually at each interest payment date. A late payment fee will be charged for every 15 days that a payment is late of five percent (5%) of the amount of the late payment.

(8) **Modifications**

Where deemed appropriate by the RIIB, waiver or variation of any provisions herein may be made or additional requirements may be added.

(9) **Merger**

Once the Agreement, the Bonds and all other closing documents, in form and substance satisfactory to the RIIB, associated with the making of the Loan (collectively, the "Closing Documents") are executed, the terms of this letter shall be merged with those of the Closing Documents. The terms of the Closing Documents will govern the extension of the Loan to the Borrower. To the extent that any provisions contained in this letter are inconsistent with the definitive provisions contained in the Closing Documents, the terms of the Closing Documents shall control.

(10) **Beneficiaries**

This letter shall constitute a binding commitment between the RIIB and the Borrower but no third party shall have any rights arising hereunder and the Borrower shall indemnify and hold the RIIB harmless from any and all claims arising from or in connection with this letter, the Loan or the project financed thereby. In any case, the RIIB's liability under this letter shall be limited to the amount held in the Borrower's CPF from time to time.

Two originals of this letter are enclosed. Please sign both and return one original to this RIIB at 235 Promenade Street, Suite 119, Providence, RI 02908 and keep one original for your records.

I would like to take this opportunity to thank you for your participation with the RIIB. Please be assured that every effort will be made to get the lowest total cost for your long-term capital needs. If you have any questions, please do not hesitate to call this office.

Very truly yours,

Rhode Island Infrastructure Bank

By


Jeffrey R. Diehl
Executive Director and CEO

Accepted this _____ day of _____, 2018

By _____
Name/Title
Narragansett Bay Commission

Name and Address of Bond Counsel
to the Borrower

cc: Ray Marshall, NBC
Richard Bernier, NBC
Karen Grande, EWP
William Fazioli, PFM
Christopher Vitale, Esq., RIIB Legal Counsel
Jay Manning, RI DEM

ATTACHMENT 1

ATTACHMENT 1

I. Requirements under the Water Resources Reform and Development Act of 2014 (WRRDA) For Sub recipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Water Resources Reform and Development Act of 2014 (WRRDA) - with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact **Valerie Marshall, marshall.valerie@dpa.gov, (617) 918-1674**, of EPA, - for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the Water Resources Reform and Development Act of 2014 (WRRDA), DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

- (a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract. (i) While the solicitation remains open, the sub recipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient. (ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c) (3) (iv). The sub recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

- (b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing

a solicitation, the sub recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

- (c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

- (a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2015 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages

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

performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

- (ii) (A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

- (2) The classification is utilized in the area by the construction industry; and

- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address

of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

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

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an

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

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually

performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility.

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

- (a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The sub recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.
- (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

- (a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

II. Requirements Under the Water Resource Reform and Development Act of 2014 (WRDA) - For Sub recipients That Are Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under – FY 2014 Water Resource Reform and Development Act with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact **Valerie Marshall**, marshall.valerie@dpa.gov, (617) 918-1674, of EPA'S Grants Management Office for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/> **Under these terms and conditions, the sub recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.**

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2015 Water Resource Reform and Development Act -, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

- (a) Sub recipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Sub recipient obtains its proposed wage determination, it must submit the wage determination to Jay Manning, jam.manning@dem.ri.gov, (401) 222-3961, extension 7254, for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State Recipient Award Official.)
- (b) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
- (i) While the solicitation remains open, the sub recipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.
 - (ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (c) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
- (d) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

- (a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2015 Water Resource Reform and Development Act -, the following clauses:

(1) Minimum wages.

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

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

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

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without

rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of

fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(10) Certification of eligibility.

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.ht>

ATTACHMENT 2

Section 603(d)(1)(E):

As amended, the FWPCA now includes section 603(d)(1)(E), which states:

(E) For a treatment works proposed for repair, replacement, or expansion, and eligible for assistance under subsection (c)(1), the recipient of a loan shall—

- (i) Develop and implement a fiscal sustainability plan that includes—
 - (I) an inventory of critical assets that are a part of the treatment works;
 - (II) an evaluation of the condition and performance of inventoried assets or asset groupings;
 - (III) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
 - (IV) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or
- (ii) Certify that the recipient has developed and implemented a plan that meets the requirements under clause (i);

The FWPCA section 603(d)(1)(E) requires a recipient of a loan for a project that involves the repair, replacement, or expansion⁵ of a publicly owned treatment works to develop and implement a fiscal sustainability plan (FSP) or certify that it has developed and implemented such a plan. This provision applies to all loans for which the borrower submitted an application⁶ on or after October 1, 2014.

FSPs should be treated as “living documents” that are regularly reviewed, revised, expanded, and implemented as an integral part of the operation and management of the system. From this perspective, there may be no final deadline for the completion of an FSP; however, it is necessary to set a date for submission of an FSP certification in order to ensure compliance with this provision. An FSP certification is a certification by the borrower that the FSP has been developed and is being implemented. For systems that self-certify under the FWPCA section 603(d)(1)(E)(ii), certification is due at the time of loan closing. For systems developing an FSP under the FWPCA section 603(d)(1)(E)(i), the requirement to develop and implement an FSP must be a condition of the loan agreement, which must also specify when the FSP certification is due. CWSRF programs may establish a program-wide deadline or a unique deadline for each project relative to the borrower’s size, ability, and experience with fiscal sustainability planning. It is recommended that CWSRFs require borrowers to submit the FSP certification before the final disbursement is approved.

The statute requires that FSPs include, at a minimum:

- ◆ an inventory of critical assets that are part of the treatment works;
- ◆ an evaluation of the condition and performance of inventoried assets or asset groupings;
- ◆ a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

- ◆ a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

Each CWSRF program must develop specific criteria for the contents of the FSP that meet these minimum requirements (see Appendix I for energy and water conservation resources). CWSRFs may consider allowing recipients to take a phased approach such that the initial FSP covers only the funded project and closely associated components⁷. This approach should be applied in such a way that a comprehensive and cohesive plan that covers the entire treatment works eventually results as the utility continues to repair, replace, and expand the system. States may also consider creating tiered requirements that scale the level of complexity of the FSP to the size of the municipality or utility (e.g., population served, millions of gallons treated, etc.).

At a minimum, CWSRFs must require loan recipients to certify that an FSP has been developed and is being implemented and, if deemed necessary, review the FSP. Such a review could occur during an on-site project evaluation; CWSRFs are not required to collect FSPs, but could document this review process with a memorandum to the file, a letter to the loan recipient, or an evaluation form (e.g., a checklist). An FSP review could include the following elements: ensure the loan recipient developed an FSP, that the FSP has an appropriate level of depth and complexity and that the recipient is implementing the FSP. Regarding the water and energy efficiency provision, CWSRFs should ensure the statutorily required certification is included in the FSP. It is recommended that the CWSRFs also evaluate whether the recipient has incorporated, to the maximum extent practicable, water and energy efficient approaches into the funded project.

Development of an FSP is an eligible cost. It is recommended that CWSRFs review and accept any FSP developed as a condition of the loan or paid for by the CWSRF, including cases of self certification where the loan recipient is reimbursed for the cost of developing the equivalent plan. As a best practice, EPA encourages CWSRFs to review all FSPs during the final inspections.

⁵ FSPs are not required for new treatment works (unless they are physically replacing an existing treatment works or expanding the treatment capacity of an existing system) or for projects involving an upgrade that does not involve repair/replacement or expand the treatment capacity (e.g., adding advanced treatment). ⁶ States will determine what constitutes an application and must be consistent. ⁷ The treatment works should be broken down into logical sections using best professional judgment. For a sewer rehabilitation or replacement project, for example, it may be appropriate to segment a large collection system into areas or zones and create an FSP for the affected area only. On the other hand, for a small system it may be more appropriate to create a plan that covers the entire collection system.

RHODE ISLAND INFRASTRUCTURE BANK
CLEAN WATER STATE REVOLVING FUND
LOAN AGREEMENT

This AGREEMENT is entered into as of the ____nd day of February, 2019 between the Rhode Island Infrastructure Bank (the "Bank") and the Narragansett Bay Commission (the "Borrower") in accordance with Title VI of the Federal Clean Water Act, Title 46-25 of the Rhode Island General Laws (the "Borrower Act"), and Title 46-12.2 of the Rhode Island General Laws (the "Act") in order to finance, to the extent of the aggregate amount of the loans made hereunder, a Water Pollution Abatement Project (the "Project") now being undertaken by the Borrower. The Project is described in Exhibit A.

ARTICLE I
THE LOAN

1.1. The Bank agrees to and does hereby loan to the Borrower, and the Borrower agrees to and does hereby borrow from the Bank, in accordance with the terms of this Agreement, the principal sum of Forty-five Million Dollars (\$45,000,000) (the "Loan"), the proceeds of which shall be used to finance the project or projects identified on Exhibit A attached hereto. The Borrower shall repay the Loan, with interest thereon, in annual installments as provided in this Agreement and in the form of the Revenue Bond, described below. The proceeds of the Loan shall be disbursed hereunder by the Bank to the Borrower, or on its order, on a periodic basis, as requested by the Borrower, but not more frequently than bi-weekly, subject to the approval of the amount of each disbursement by the Bank and based on the DEM's periodic inspection and approval of construction completed to date.

1.2. The Loan shall be represented by a bond of the Borrower (the "Revenue Bond") issued under and in accordance with the applicable provisions of the Rhode Island General Laws, the Borrower Act and the Act and each disbursement shall be noted thereon or otherwise recorded in the records of the Bank. The Revenue Bond shall be issued in accordance with the Trust Indenture between the Narragansett Bay Commission and U.S. Bank National Association (as successor trustee to Wells Fargo Bank, N.A., as successor trustee to The Bank of New York Trust Company, N.A., as successor trustee to J.P. Morgan Trust Company, National Association), as Trustee (the "Borrower Trustee"), dated as of April 15, 2004, a First Supplemental Indenture thereto, dated April 15, 2004, a Second Supplemental Indenture thereto dated December 30, 2004, a Third Supplemental Indenture thereto dated August 4, 2005, a Fourth Supplemental Indenture dated December 15, 2005, a Fifth Supplemental Indenture dated as of December 21, 2006, a Sixth Supplemental Indenture dated as of February 8, 2007, a Seventh Supplemental Indenture dated as of October 15, 2007, an Eighth Supplemental Indenture dated as of December 12, 2007, a Ninth Supplemental Indenture dated as of July 1, 2008, a Tenth Supplemental Indenture dated as of November 1, 2008, an Eleventh Supplemental Indenture dated as of October 6, 2009, a Twelfth Supplemental Indenture dated as of February 12, 2010, a Thirteenth Supplemental Indenture dated as of June 24, 2010, a Fourteenth Supplemental Indenture dated as of March 29, 2011, a Fifteenth Supplemental Indenture dated as of June 28, 2012, a Sixteenth Supplemental Indenture dated as of November 28, 2012, a Seventeenth Supplemental Indenture dated March 21, 2012, an Eighteenth Supplemental Indenture dated as of June 6, 2013, a Nineteenth Supplemental Indenture dated December 12, 2013, a Twentieth Supplemental Indenture dated March 6, 2014, a Twenty-First Supplemental

Indenture dated October 28, 2014, a Twenty-Second Supplemental Indenture dated May 5, 2015, a Twenty-Third Supplemental Indenture dated July 30, 2015, a Twenty-fourth Supplemental Indenture dated June 2, 2016, and a Twenty-fifth Supplemental Indenture dated February __, 2019 (collectively, the “Narragansett Bay Commission Trust Indenture”) which is incorporated herein and attached as Exhibit B hereto. The Revenue Bond shall be substantially in the form of Exhibit C hereto.

1.3. To fund all or a portion of the Loan, and other loans made to the Borrower or other borrowers, the Bank shall issue its Water Pollution Control Revolving Fund Revenue Bonds, Series 2019A (Green Bonds) (Pooled Loan Issue) (the "Bank Bonds") in one or more series, from time to time, under and pursuant to an Indenture of Trust (the "Indenture of Trust"), dated as of February 15, 1992, between the Bank and U.S. Bank National Association, (successor to State Street Bank and Trust Company successor to Rhode Island Hospital Trust National Bank), as Trustee (the “Trustee”) as supplemented by a First Supplemental Indenture dated as of February 15, 1993, a Second Supplemental Indenture dated as of June 1, 1994, a Third Supplemental Indenture dated as of December 20, 1995, a Fourth Supplemental Indenture dated as of March 1, 1997, a Fifth Supplemental Indenture dated as of January 1, 1999, a Sixth Supplemental Indenture dated as of January 1, 1999, a Seventh Supplemental Indenture dated as of August 1, 1999, an Eighth Supplemental Indenture dated as of October 1, 2000, a Ninth Supplemental Indenture dated as of April 1, 2002, a Tenth Supplemental Indenture dated as of October 1, 2002, an Eleventh Supplemental Indenture dated as of May 1, 2003, a Twelfth Supplemental Indenture dated as of November 1, 2003, a Thirteenth Supplemental Indenture dated as of December 1, 2004, a Fourteenth Supplemental Indenture dated as of December 1,

2004, a Fifteenth Supplemental Indenture dated as of December 15, 2005, a Sixteenth Supplemental Indenture dated as of December 1, 2006, a Seventeenth Supplemental Indenture dated as of December 1, 2007, an Eighteenth Supplemental Indenture dated as of October 1, 2009, a Nineteenth Supplemental Indenture dated as of May 1, 2010, a Twentieth Supplemental Indenture dated as of June 1, 2010, a Twenty-first Supplemental Indenture dated as of March 1, 2011, a Twenty-second Supplemental Indenture dated as of June 1, 2012, a Twenty-third Supplemental Indenture dated as of November 1, 2012, a Twenty-fourth Supplemental Indenture dated as of June 1, 2013, a Twenty-fifth Supplemental Indenture dated as of March 1, 2014, a Twenty-sixth Supplemental Indenture dated as of July 1, 2015, a Twenty-seventh Supplemental Indenture of Trust dated as of October 1, 2015, a Twenty-eighth Supplemental Indenture of Trust dated as of October 1, 2015, a Twenty-ninth Supplemental Indenture of Trust dated as of June 1, 2016, a Thirtieth Supplemental Indenture of Trust dated as of June 1, 2016, a Thirty-first Supplemental Indenture of Trust dated as of April 1, 2017, a Thirty-second Supplemental Indenture of Trust dated as of June 1, 2017, a Thirty-third Supplemental Indenture of Trust dated as of April 1, 2018, and a Thirty-fourth Supplemental Indenture of Trust dated as of February __, 2019 (the Indenture of Trust as supplemented is hereinafter referred to as the “Indenture”) and the issuance of the Bank Bonds shall constitute a condition precedent to the obligations of the Bank under this Agreement. The Revenue Bond and this Agreement will be pledged and assigned to the Trustee as security for the Bank Bonds. If for any reason the Bank Bonds are not issued on or before February __, 2019, the Borrower may by written notice delivered to the Bank cancel its obligation to borrow funds, accept the Loan or issue the Revenue Bond hereunder, except to the extent that it may have already done so.

1.4. A portion of the proceeds of the Bank Bonds and other funds of the Bank equal to the principal amount of the Loan, less, in each case, a loan closing fee (the "Loan Closing Fee") equal to (i) the Borrower's cost of issuance with respect to the issuance of the Revenue Bond plus (ii) one percent of the Loan, will be deposited in an account or accounts for the benefit of the Borrower in the Construction Proceeds Fund held by the Trustee under the Indenture (which Fund and accounts may be referred to in certain other documents collectively as the "Construction Proceeds Investment Fund"). Such deposit or deposits, together with the Loan Closing Fee, shall constitute the Loan. The Bank, in its sole discretion, shall determine which funds available to the Bank shall be allocated to the Loan.

ARTICLE II THE REVENUE BOND

2.1. Payment of principal and interest shall be made by the Borrower as stated in Exhibit G attached hereto. The Subsidized Interest Rate is calculated based on a 33 1/3% interest subsidy from the Borrower's Market Rate. The Borrower will be obligated by the Revenue Bond to pay the Market Rate stated thereon but will be billed only for the Subsidized Interest Rate, except in special circumstances as set forth below in Article III. The Borrower shall also pay to the Bank a loan servicing fee (the "Loan Servicing Fee") in the amount of one-half of one percent of the aggregate amounts disbursed prior to such date less aggregate prior principal payments by the Borrower (the "Outstanding Disbursements") as stated in Exhibit G. The Bank's Loan Servicing Fee may be adjusted from time to time subject to the Bank Indenture, but no such adjustment shall have any effect on either the Subsidized Interest Rate or the Market Rate on the Revenue Bond.

2.2. Interest will be charged only on the amount of the Loan proceeds which has been disbursed or deemed disbursed to the Borrower and is to be calculated on the basis of a 360-day year of twelve thirty-day months. That portion of the Loan which is applicable to the Loan Closing Fee shall be deemed to be disbursed to the Borrower as of the delivery of the Bank Bonds; the balance of the Loan will be deemed disbursed to the Borrower when the Trustee shall have transferred money for the Borrower's account out of the Construction Proceeds Fund to the Bank in response to a Borrower's requisition made in accordance with Article VI hereof. The Bank shall furnish to the Borrower a monthly statement of Loan activity showing all amounts which have been disbursed or deemed disbursed pursuant to the terms of this Agreement. Notwithstanding the foregoing, in the event that the Borrower fails, for any reason whatsoever, to draw funds from the Construction Proceeds Fund to pay costs of its Project in accordance with the construction draw schedule provided by the Borrower to the Bank at the time of the making of the Loan, the Borrower shall pay to the Bank, as billed, all amounts reasonably incurred by the Bank on account of such failure to draw such funds in accordance with its established construction draw schedule, provided, however, in no event shall the amount billed exceed the amount the Borrower would have paid in interest at the Subsidized Interest Rate as defined in Section 2.1 herein on the Loan had the Borrower drawn the funds in accordance with its established construction draw schedule; and further provided that the Borrower will not be billed in the event that the Borrower draws funds more quickly than set forth in the construction draw schedule.

2.3. Annual payments by the Borrower of the principal of the Loan will be made in accordance with the terms of the Revenue Bond. Principal payments will begin within one year

after the estimated date of completion of construction of the Project as identified in the Project description in Exhibit A or in the case of a project completed prior to the issuance of the Revenue Bond, within one year after the Revenue Bond is issued. Principal payments will be made annually on September 1 and the schedule of payments will be as shown in the form of the Revenue Bond. The initial scheduled completion date for the Project is stated in Exhibit A. In no event shall such annual payments commence later than five (5) years from the time that a disbursement to the Borrower is first made.

2.4. Interest shall be paid by the Borrower semi-annually each March 1 and September 1 commencing not later than nine months after the date of the Revenue Bond. To the extent that the Revenue Bond is in the form of bond anticipation notes, interest shall be paid at the maturity of each bond anticipation note and may be paid from Loan proceeds as represented by the principal amount of the Revenue Bond (which may be in the form of one or more additional bond anticipation notes) issued to refund or renew such bond anticipation notes.

2.5. The annual installments of principal and interest on the Loan shall be arranged so that the last payment of principal and interest is no later than twenty (20) years from the scheduled completion date of the Project as estimated at the time the Loan is made. If any portion of the Project which is separately identified on Exhibit A is not commenced or if, having been commenced, is abandoned or completed without the full amount of the Loan applicable thereto having been disbursed, as of the scheduled completion date set forth in Exhibit A hereto, the balance of the undisbursed proceeds applicable to such portion shall be deemed disbursed as of such date and the Borrower shall be responsible for the payment of interest thereon. Notwithstanding that such balance is deemed disbursed, it shall be retained by the Trustee and

held under the Indenture in a separate account for the benefit of the Borrower and the balance and all earnings thereon shall be applied in accordance with the terms of the Indenture. The Borrower shall be responsible for any shortfall in the earnings on the investment of such funds as compared to the interest due on the respective Bank Bonds and the Borrower shall receive credit against principal or interest requirements on the Revenue Bond for payments of principal or interest on the Bank Bonds from the principal of or interest earnings on, respectively, such invested funds. If, in accordance with the terms of the Indenture, such undisbursed balance is available to make loans to other borrowers, such balance shall not be deemed to be disbursed, but the obligation of the Bank to make disbursements in that amount and the obligation of the Borrower to repay the Loan in that amount shall lapse and be without effect. In the case of such a lapse, the Bank shall re-compute the initial and adjusted annual debt service installments of each Loan to reflect the amount of proceeds actually disbursed to the Borrower, if less than the full principal amount of the Loan, and to make the appropriate notations on the Revenue Bond or otherwise in the records of the Bank, provided that failure to make such a notation or any error made in such a notation with respect to any Loan shall not limit the Borrower's payment obligations under this Agreement and the Revenue Bond. Such re-computation shall be as a pro-rata reduction of the debt service on the Revenue Bond. The Bank shall use its best efforts, consistent with the requirements of the Act, to identify other borrowers and to use the aforesaid undisbursed balance for the purpose of making other loans to such other borrowers.

2.6. A Loan may be prepaid by the Borrower at any time with the consent of the Bank but in giving such consent the Bank may require a prepayment penalty based on the cost of reinvesting the prepayment, the cost of prepaying outstanding bonds of the Bank or any other

negative financial impact reasonably determined by the Bank.

2.7. The Revenue Bond, when delivered to the Bank shall be in fully marketable form accompanied by documentation in form and substance satisfactory to the Bank including an opinion of nationally recognized bond counsel acceptable to the Bank as to the valid authorization, execution, delivery and enforceability of the Revenue Bond and this Agreement. Said opinion shall include an opinion that interest on the Revenue Bond is not included in gross income for federal income taxation purposes and interest on the Revenue Bond is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. The Bank and the Borrower agree to comply with Rule 15c-2-12 of the Securities and Exchange Commission and any other applicable securities laws, if applicable.

ARTICLE III

LOCAL INTEREST SUBSIDY TRUST

3.1. The Bank has caused there to be created under the Indenture a fund known as the Local Interest Subsidy Trust Fund (the "LIST"), which is pledged as security for the Bank Bonds and which the Bank will use to pay the difference between the interest rate on Bank Bonds and the Subsidized Interest Rate for the Borrower and other borrowers. Pursuant to the Indenture, certain amounts in the LIST are allocated to the Borrower and other borrowers, although such allocation does not make such amount a part of the Loan or of the loans to other borrowers. If the Borrower or other borrowers should default in the timely payment of debt service on the Loan or on the loans made to such other borrowers, the LIST may be wholly or partially depleted

and, in addition, the LIST may not generate sufficient income to pay the difference between the stated interest rate and the Subsidized Interest Rate. In the event of a default in payment by the Borrower or any other borrowers, the Bank may restore the LIST and cover its debt service obligations on the Bank Bonds by requiring the defaulting Borrower and/or other borrowers to pay up to the full stated interest rate on the Revenue Bonds or bonds or notes representing the Loan or loans on which default has occurred until all accounts in the LIST are restored. The Indenture requires that certain LIST accounts not allocated to any borrower be exhausted first and that the LIST account allocated to the defaulting borrowers be exhausted second and that the accounts of the other borrowers then be charged on a pro-rata basis. If the payment default by any other borrowers continues beyond the point that the LIST account of the defaulting borrowers is exhausted (or will be exhausted as of the next payment of debt service on the Bank Bonds), the Borrower and other borrowers, each of whom is not in default, may be required to pay up to the full stated interest rate on the Revenue Bond or, in the case of other borrowers, on the notes representing loans to them. Such charge shall never affect the amount of Loan proceeds which may be disbursed pursuant to Article VII, nor shall it affect the amount of principal which must be repaid on the Revenue Bond. The only effect shall be a requirement that the Borrower pay interest in excess of the Subsidized Interest Rate, but not in excess of the full interest rate stated on the Revenue Bond. Such requirement shall be prospective only and shall apply to payments of interest due after the Bank has given written notice to the Borrower of the circumstances which have caused such requirement to occur.

3.2. At such time as the default in payment referred to in paragraph 3.1. is cured or, through payment of the full stated interest rate the LIST is restored, the Bank shall again bill the

Borrower only at the Subsidized Interest Rate. The Bank shall not be required to reimburse or credit the Borrower for any increase paid pursuant to this Article.

The obligation of the Borrower to pay the full stated interest rate upon the occurrence of the events stated in this Article does not constitute, and shall not be deemed to constitute for any purpose, a guarantee by the Borrower of the debt of any other person, or indemnification of the Bank or a penalty of any kind or nature. Such obligation constitutes solely a matching of funds available to the Bank for interest rate subsidies to the interest rate requirement on the Bank Bonds.

ARTICLE IV

PLEDGE AND DEFAULT

4.1. In accordance with the Narragansett Bay Commission Trust Indenture, incorporated herein as Exhibit B, the Revenue Bonds shall be general obligations of the Borrower and the full faith and credit of the Borrower are pledged for the payment of the Principal Amount and Redemption Price and interest in the Revenue Bonds, subject to the provisions of the Narragansett Bay Commission Trust Indenture.

4.2 At any time, any Bank funds payable to the Borrower may be set off against and applied in payment of any obligations that are due hereunder. In the event of a default in the prompt and full payment when due of any installment of principal of or interest on a Revenue Bond issued under this Agreement, any Bank funds payable to the Borrower for the Project may be held and treated as collateral security for the payment of the obligations hereunder. Any such funds applied or held shall be treated as additional principal advances under the Loan. In the event of set off, the Bank shall notify the Borrower of said set off and said funds will be applied

to the annual payment due.

4.3 No delay or omission on the part of the Bank in exercising any right under the Revenue Bond or hereunder shall operate as a waiver of such right or of any other right under the Revenue Bond or hereunder. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

4.4 The Borrower will pay all reasonable costs of collection, legal expenses, and attorney's fees incurred or paid by the Bank in collecting or enforcing the Revenue Bond, this Agreement or any Loan made hereunder on default, except to the extent that a court of competent jurisdiction has determined that such costs, expenses and fees were not reasonably incurred.

4.5 If any payment due from the Borrower to the Bank shall not be paid in full when and as due, and provided that the Bank shall have given the Borrower written notice of or a bill for such payment not earlier than 45 days and not later than 30 days before the same is due, additional interest charges shall be made as a late payment fee which will be charged to the Borrower and due to the Bank. The late payment fee shall be five percent of the amount of the payment or portion thereof, which is late and will be charged every fifteen days, until the payment in question is received, or such lesser amount as shall be the maximum additional interest permitted by state law. The late payment fee shall not constitute a penalty or liquidated damages but shall constitute interest due on the Revenue Bond and is intended to compensate the Bank for the costs and expenses incurred by it on account of each late payment, including but not limited to interest costs and accounting expenses.

4.6 This Agreement shall constitute a loan agreement within the meaning of Section

46-25-59(b) of the Borrower Act. All money received pursuant to the issuance of the Revenue Bond and as revenues, receipts and income shall be trust funds within the meaning of Section 46-25-61 of the Borrower Act.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

5.1. The Borrower, in consideration for the making of the Loan by the Bank, represents and warrants as follows:

- (i) it is a public corporation and is a "local government unit" of the state of Rhode Island as defined in the Act;
- (ii) it is authorized to enter into this Agreement, to obtain the Loan and to issue the Revenue Bond and to undertake the Project;
- (iii) at the time of or prior to the first disbursement hereunder, the Revenue Bond has been approved by the division of public utilities, as required by Section 46-25-58(m) of the Borrower Act;
- (iv) the public utilities commission has approved sewer user fees, charges, rates or assessments which will be sufficient to meet the rate covenant contained in the Borrower Trust Indenture, as projected by the Borrower for the next five fiscal years;
- (v) the Loan, the Revenue Bond, Agreement, and the Narragansett Bay Commission Trust Indenture have each been duly authorized by the Borrower and, when delivered at or prior to the time the Loan is made, will constitute valid and binding obligations, enforceable in accordance with their terms;

(vi) there is no fact that the Borrower has not disclosed to the Bank that materially adversely affects the properties, activities, financial condition or economic outlook of the Borrower or its ability to undertake the Project or repay the Loan;

(vii) there is no litigation or other proceedings, pending or threatened, against or affecting the Borrower, in any court or before any government agency that, if decided adversely to the Borrower, would materially adversely affect the properties, activities, financial condition or economic outlook of the Borrower or its ability to undertake the Project or repay the Loan;

(viii) the Borrower, having made reasonable investigation, represents that it has not taken any action (or failed to take any action) that would: (1) cause the interest payable on the Revenue Bond to be includable in gross income for Federal income tax purposes under the Internal Revenue Code of 1986 (the "Code"); or (2) cause the Revenue Bond to be a "private activity bond," as defined in Section 141 of the Code.

(ix) the Borrower agrees that neither it nor any related party (as defined in Treas. Reg. § 1.150-1(b)) to the Borrower will purchase any Bank Bonds.

5.2. The Borrower shall confirm, as of the date of each construction disbursement made hereunder, the representations and warranties contained in Section 5.1 and in addition at the time of each construction disbursement shall represent and warrant as follows:

(i) it is in compliance in all material respects with all laws, ordinances, rules and regulations affecting or relating to the Project;

(ii) it has used all previously disbursed Loan proceeds and will use all Loan

proceeds to be disbursed to pay a portion of the costs of the Project or to reimburse itself for costs of the Project which it has paid and which have not been the subject of any prior disbursement;

(iii) it is not in material default hereunder, or under the Revenue Bond;

(iv) the extent, if any, to which the representations and warranties made in Section 5.1 are no longer true and correct in all material respects; and

(v) the extent, if any, to which all representations and covenants made in any certificate furnished in connection with the delivery of the Revenue Bond, including certificates relating to disclosure of material information in connection with the sale of Bank Bonds and to the tax-exempt nature of interest on the Revenue Bond, are no longer true and correct.

ARTICLE VI

DISBURSEMENT

6.1. After the Loan is made pursuant to Section 1.4 of this Agreement, construction progress payments and reimbursements will be made to the Borrower or on its order from the Construction Proceeds Fund held under the Indenture. Payments and reimbursements will be made only on account of those portions of the Project, as identified in Exhibit A, for which the Borrower has received and filed with the Bank a Certificate of Approval from DEM.

6.2. No more frequently than bi-weekly, Borrower may submit to the Bank a requisition, in the form set forth in Exhibit J, for payment from the Construction Proceeds Fund held under the Indenture. Such requisition shall be accompanied by vendor, contractor or supplier invoices, or such

other documentation as the Bank shall require, showing that each payee, the purpose and the aggregate amount of payments is within the project definition, all applicable DEM qualifications and approvals and the total amount of the Loan. In the case of a requisition for the reimbursement of project costs paid in the first instance by the Borrower, the requisition shall additionally state that such costs have not been the subject of any prior requisition and are within all applicable guidelines for reimbursement financing.

6.3. Except as provided below, when the Bank has reviewed any requisition and found it to be complete and proper, or has, in its sole discretion, waived any non-compliance, the Bank shall cause the Trustee under the Indenture to transfer the amount of such requisition to the Bank for the Borrower's account therewith. The Bank review of any requisition shall be completed within five (5) business days of its receipt. Upon receipt of such transfer and in any case within five (5) business days thereof, the Bank shall issue its wire, check, or checks to or on the order of the Borrower, in each case, for payment as specified in the requisition. The Bank shall establish procedures and shall use its best efforts to assure that the Trustee establishes procedures which will cause each duly submitted requisition to be paid within thirty days of its receipt by the Bank. If at the time of any requisition any of the following shall be true:

- (i) there shall then be a continuing Event of Default hereunder;
- (ii) the Bank shall have been notified by DEM that disbursement of the Loan should be suspended as a result of conditions found during a DEM review or inspection of the Project, or any components thereof; or
- (iii) if the representations and warranties contained in Section 5.1 and Section 5.2

shall not be true and correct in all material respects as of the date of the requisition; then the Bank shall have sole discretion as to whether to cause the Trustee to make such transfer and to issue any such check, as aforesaid. If the Bank has not previously been furnished with a copy of the DEM Certificate of Approval for the portion of the Project to which the requisition relates and for such portion's inclusion in the Bank's loan program, no requisition shall be approved.

6.4. Notwithstanding Section 1.3 hereof, prior to the time that the proceeds of Bank Bonds are available to the Bank to make disbursements to the Borrower, the Bank may, subject to its discretion and the availability of funds, make disbursements to the Borrower as provided in this Article VI, whereupon all of this Agreement shall be in full force and effect with respect to such disbursement as if Bank Bonds had been issued. Section 1.3 shall continue to apply with respect to the undisbursed balance of the Loan and the exercise of discretion by the Bank to make any disbursement prior to the issuance of Bank Bonds shall not operate to require it to make any subsequent disbursement.

ARTICLE VII

EVENTS OF DEFAULT

7.1. In the event that: (i) the Borrower shall fail to make any payment of the principal of, the premium, if any, and interest on all or a portion of the Loan when and as the same shall become due and payable, in accordance with the terms hereof; or (ii) an Event of Default shall occur under the terms of the Narragansett Bay Commission Trust Indenture, such failure or such occurrence shall constitute an Event of Default, without notice or demand of any kind whatsoever.

7.2. Failure of the Borrower to observe or comply with any other obligation or covenant

under this Agreement shall constitute an Event of Default if the same shall continue for a period of thirty days after written notice thereof given to the Borrower by or on behalf of the Bank.

7.3. Upon the occurrence and continuation of an Event of Default, the Bank may take any and all action, at law or in equity, as it may deem appropriate to enforce this Agreement and the Revenue Bond. In addition and not in limitation of all other rights which it may from time to time have, including, but not limited to, the rights set forth in Section 4.5 of this Agreement, the Bank may, if an Event of Default under Section 7.1 or Section 7.2 of this Agreement has occurred, to the extent permitted by law, declare all or any portion of the Loan, immediately due and payable, suspend all further construction progress payments and exercise its rights under Article III hereof.

ARTICLE VIII

COMPLIANCE AND REPORTS

8.1. The Borrower agrees to comply with all State and Federal requirements with respect to carrying out the Project, including, without limitation, those requirements contained in:

- (i) Title VI of the Federal Clean Water Act, including amendments to Title VI in the Water Resources Reform and Development Act (WRRDA) (Public Law 113-121);
- (ii) 33 U.S.C. 1372, which requires, inter alia, providing in all contracts with contractors and subcontractors funded directly by or assisted in whole or in part with the funding provided under a federal capitalization grant shall pay laborers and mechanics wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary

of the United States Department of Labor (“DOL”) in accordance with subchapter IV of Chapter 31 of Title 40, United States Code, and as further stated in Exhibit I attached hereto;

- (iii) To the extent applicable, requirements regarding the use of American iron and steel under the Water Resources Reform Development Act;
- (iv) Title 40, CFR Part 34, New Restrictions on Lobbying, including the submission of certification and disclosure forms accordingly;
- (v) To the extent applicable, in accordance with 2 CFR 200.501(a), the Borrower agrees to obtain a single audit from an independent auditor, if the Borrower expends \$750,000 or more in total Federal funds in their fiscal year. The Borrower must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the Borrower’s fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package must be submitted using the Federal Audit Clearinghouse’s Internet Data Entry System. See Exhibit E for the amount of Federal funds allocated to the Loan;
- (vi) The Water Resources Reform and Development Act (WRRDA) of 2014; including the execution of the certifications attached hereto as Exhibit K related to a Fiscal Sustainability Plan and Exhibit L related to Cost and Effectiveness Analysis;;
- (vii) other Federal legislation or administrative rules applying to activities

supported with Federal funds, including those listed in Exhibit D;

- (viii) If the Borrower's network or information system is connected to EPA networks to transfer data to EPA using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange, the Borrower agrees that when collecting and managing environmental data, it will protect the data by following all applicable State cybersecurity requirements.
- (ix) the Act; and
- (x) those sections of the Governor's Executive Order #85.4 relating to Minority Business Enterprises and Women's Business Enterprises and with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program contained in 40 CFR, Part 33; and
- (xi) to the extent applicable, the reporting requirements set forth in the Federal Funding Accountability and Transparency Act.

The Borrower shall, for as long as is required by applicable law, submit to the Bank, on a timely basis, such reports and other information as the Bank may reasonably require to show that the Borrower is in compliance with all such requirements.

8.2. The Borrower will provide the following information to the Bank during the life of the Loan:

- (i) a copy of its annual audited financial statements in accordance with Generally Accepted Government Accounting Standards, annually within 180 days of end of

fiscal year;

(ii) unless included as a part of the annual budget or audited financial statement and furnished pursuant to item (iii), an analysis of operating revenues and expenses, including without limitation, a description of the status of all revenues securing the Revenue Bond and of any operating expenses in excess of budget, annually within 180 days of the end of fiscal year;

(iii) a copy of the annual budget of the Borrower, within fifteen days of its adoption;

(iv) unless included as a part of the annual budget or audited financial statements and furnished pursuant to item (iii), a schedule of current and projected short-term and long-term debt service, annually with the aforesaid budget;

(v) unless included as a part of the annual budget or audited financial statements and furnished pursuant to item (iii), a schedule of capital replacement reserves, annually with the aforesaid budget;

(vi) copies of reports submitted to DEM, the federal Environmental Protection Agency ("EPA") and any other regulatory agency relating to any project financed by the Bank or the operation thereof, simultaneously with such submission;

(vii) during the construction period, an accounting of the monthly disbursements relating to the project, monthly within fifteen days;

(viii) on September 1 of each year, a certification to demonstrate compliance with Section 5.1(ix) hereof, in the form set forth as Exhibit H or such other form as reasonably

determined by the Bank; and

(ix) such other information or reports as and when the Bank may reasonably require.

8.3 (i) At the time the Loan is made, and at the times provided for in Section 8.2(viii) hereof, the Borrower will be required to make representations and certifications regarding its actions which may affect the exclusion from gross income of interest on the Revenue Bond for Federal income tax purposes. In addition, the Borrower may be required to rebate certain investment profits to the federal government. The Borrower shall review these issues with its bond counsel.

(ii) The interest on the Borrower Bond is intended to be excludable from gross income under Section 103 of the Code. The Borrower will not take any action (or fail to take any action) that would: (1) cause the interest payable on the Borrower Bond to be includable in gross income for Federal income tax purposes under the Code; or (2) cause the Borrower Bond to be a "private activity bond," as defined in Section 141 of the Code.

8.4 To the extent required by law, during such time as the Borrower shall constitute an obligated person within the meaning of S.E.C. Rule 15c2-12 (the "Rule") as in effect from time to time, the Borrower agrees to furnish to the Bank (1) such financial information and operating data with respect to the Borrower at such times and in such forms as the Bank shall reasonably request in order to comply with the provisions of the Rule, (2) when and if available, the Borrower agrees promptly to provide the Bank with its audited financial statements for each fiscal year and (3) the Borrower agrees to provide or cause to be provided to the Bank, within ten (10) business days after the occurrence thereof, notice of the occurrence of any of the following events with respect to the Revenue Bonds:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions or the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TE3) or other material notices or determinations with respect to the tax status of the Borrower Bonds or other material events affecting the tax-exempt status of the Borrower Bonds;
- (g) modifications to rights of holders of the Borrower Bonds, if material;
- (h) Borrower Bond calls, if material;
- (i) Borrower Bond defeasances;
- (j) release, substitution, or sale of property securing repayment of the Borrower Bonds, if material;
- (k) rating changes;
- (l) tender offers;

- (m) bankruptcy, insolvency, receivership or similar event of the Borrower*;
- (n) the consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions other than pursuant to its terms, if material; and
- (o) appointment of a successor or additional trustee or the change of name of a trustee, if material.

The Borrower agrees that from time to time it will also provide notice to the Bank of the occurrence of other events, in addition to those listed above, if such other event is material with respect to the Borrower Bonds.

ARTICLE IX

MISCELLANEOUS

9.1. The Borrower shall, subject to local zoning ordinances, erect or cause there to be erected at the Project site, or at each principal component thereof if more than one physical site is

involved, and shall maintain during the construction of the Project, a sign approved by the Bank, as more completely described in Exhibit F having minimum dimensions of four feet by eight feet, identifying the State Revolving Loan Fund as a principal source of funding for the Project.

9.2 This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Bank.

9.3 This Agreement shall be construed in accordance with the laws of the State of Rhode Island, and is binding upon and inures to the benefit of the parties and their respective successors.

* As noted in the Rule, this event is considered to occur when any of the following occur: (i) the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U. S. Bankruptcy Code or in any proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority or (ii) the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower.

9.4 To the extent that a court of competent jurisdiction would enforce such agreement as not contrary to law or public policy, the Borrower shall indemnify the Bank against and hold the Bank harmless from any and all claims arising from or in connection with this Agreement, the Loan and the project financed thereby, except for such claims as may arise from the gross negligence or willful misconduct of the Bank or its officers and except for claims arising from the issuance and marketing of the Bank Bonds unless, and only to the extent, any such claim is based on information furnished by the Borrower for use in connection therewith.

9.5 Except that this Agreement, the Loan and any Revenue Bonds may be assigned by the Bank for the benefit and security of the holders of bonds of the Bank, the parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such

benefit.

9.6 This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto. This Agreement shall constitute the loan agreement referred to in the Borrower's resolution adopted on May 9, 2018.

RHODE ISLAND
INFRASTRUCTURE BANK

By: _____
Jeffrey R. Diehl
Executive Director

NARRAGANSETT BAY COMMISSION

By: _____
Vincent Mesolella
Chairman

By: _____
Raymond Marshall, P.E.
Executive Director

EXHIBIT A

DESCRIPTION OF THE PROJECT

I. NARRATIVE STATEMENT DESCRIBING THE PROJECT(S):

Financing the planning, acquisition, design, evaluation, inspection, construction, replacement, improvement, installation, cleaning, rehabilitation, furnishing and equipping of the Phase III Combined Sewer Overflow ("CSO") Facilities, the Field's Point Wastewater Treatment Facility ("FPWWTF") Blower Improvements Phase II, the New FPWWTF Maintenance Facilities, the Bucklin Point Wastewater Treatment Facility UV Disinfection Improvements, the New Interceptor Maintenance Facilities, the RIPDES Wastewater System Regulatory Compliance, the Municipal Lateral Sewer Acquisition, the Providence River Siphon Improvements, Moshassuck Valley Interceptor Replacement, Louisquisset Pike Interceptor Improvements, the Commission Interceptors, the Interceptor Easement Restoration, the NBC System-Wide Facilities Plan, and other projects of the Commission as defined in R.I. General Laws § 46-25-3(10).

II. COSTS TO BE PAID FROM LOAN FOR EACH SEPARATELY IDENTIFIED PORTION OF THE PROJECT:

1.	Construction Costs:	\$
2.	Costs of Issuance:	\$
3.	Capitalized Interest:	\$
4.	Loan Origination Fee:	\$

III. ESTIMATED COMPLETION DATE FOR THE PROJECT:

March 1, 2019

EXHIBIT B

NARRAGANSETT BAY COMMISSION TRUST INDENTURE

EXHIBIT C
REVENUE BOND FORM

EXHIBIT D

FEDERAL LAWS AND ADMINISTRATIVE REQUIREMENTS

I. Statutes

Age Discrimination Act, Public Law 94-135
Archeological and Historical Preservation Act of 1974, Public Law 93-291
Civil Rights Act of 1964, Public Law 88-352, as amended
Clean Air Act, 42 U.S.C. Sections 306 and 7506(c)
Clean Water Act, 33 U.S.C. 1250, et seq.
Costal Barrier Resources Act, 16 U.S.C. 3501, et seq.
Coastal Zone Management Act of 1972, Public Law 92-583, as amended
Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754, as amended
Endangered Species Act, 16 U.S.C. 1531, et seq.
Farmland Protection Policy Act, 7 U.S.C. 4201, et seq.
Federal Water Pollution Control Act, Public Law 92-500, as amended
Fish and Wildlife Coordination Act, Public Law 85-624, as amended
National Historic Preservation Act of 1986, Public Law 89-665, as amended
Rehabilitation Act of 1973, Public Law 93-112, as amended
Safe Drinking Water Act, Public Law 92-523, as amended
Uniform Relocation and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended
Wild and Scenic Rivers Act, Public Law 90-542, as amended

II. Executive Orders

E.O. #11246 (Equal Employment Opportunity)
E.O. #11250 (Rehabilitation)
E.O. #11593 (Protection and Enhancement of the Cultural Environment)
E.O. #11625 (Women's and Minority Business Enterprise)
E.O. #11738 (Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans)
E.O. #11914 (Rehabilitation)
E.O. #11988 (Floodplain Management)
E.O. #11990 (Protection of Wetlands)
E.O. #12138 (Women's and Minority Business Enterprise)
E.O. #12549 (Debarment and Suspension)

EXHIBIT E
SOURCE OF LOAN

1. Amount of Direct Loan: \$0
2. Amount of Bonded Loan: \$0
3. Amount of Federal Funds: \$0

SECURITY

The following shall constitute security for the prompt performance of the Borrower's obligation under the Agreement, the Revenue Bonds and an account of the Loans:

Revenue Pledge

EXHIBIT F
SPECIFICATION FOR SIGNS

EXHIBIT G
BORROWER DEBT SERVICE AND FEE SCHEDULE

EXHIBIT H

FORM OF POST-ISSUANCE COMPLIANCE CERTIFICATE

The undersigned is an authorized official of _____ (the "Borrower") under a loan agreement dated as of _____ (the "Loan Agreement") between the Borrower and the Rhode Island Clean Water Finance Bank (the "Bank") executed in connection with the issuance by the Bank of its Water Pollution Control Revolving Fund Revenue Bonds, Series _____ (Pooled Loan Issue) (the "Bonds"). The loan under the Loan Agreement is represented by a bond of the Borrower (the "Revenue/Borrower Bond"). The Loan Agreement was funded all or in part with proceeds of the Bonds.

In connection with the execution with the Loan Agreement, the Borrower made certain representations and covenants designed to ensure that the interest on the Revenue Bond and, in turn, the Bonds remain excludable from gross income for Federal income tax purposes. These representations and covenants relate to the requirements under Section 103 of the Internal Revenue Code of 1986 (the "Code"), including the limitations in Section 141 of the Code relating to "private activity bonds" and the limitations in Section 148 of the Code relating to "arbitrage bonds" (collectively, the "Federal Tax Requirements"). The Borrower understands that the Federal Tax Requirements must be complied with during the entire term of the Loan Agreement and the Revenue/Borrower Bond.

In order for the Bank to determine whether it is in compliance with the provisions of the Code that apply for interest on the Bonds to remain excludable from gross income for Federal tax purposes, the Bank is requesting that the Borrower confirm that it is in compliance with the Federal Tax Requirements with respect to the Loan Agreement and the Revenue/Borrower Bond

Accordingly, the Borrower hereby represents that it is in compliance with the Federal Tax Requirements with respect to the Loan Agreement and the Revenue/Borrower Bond.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed and delivered in the name of the Borrower as of the date listed below.

Dated:

[BORROWER]

By: _____
 Name:
 Title:

EXHIBIT I
WAGE RATE REQUIREMENTS

EXHIBIT J
FORM OF REQUISITION

EXHIBIT K

FISCAL SUSTAINABILITY PLAN CERTIFICATION

Pursuant to the WRRDA, effective October 1, 2014, all loan recipients proposing to repair, replace, or expand their treatment works are required to develop and implement a Fiscal Sustainability Plan (FSP).

As stated in section 603(d)(1)(E) of the Federal Water Pollution Control Act, as amended:

“(E) for a treatment works proposed for repair, replacement, or expansion, and eligible for assistance under subsection (c)(1), the recipient of a loan shall –

(i) develop and implement a fiscal sustainability plan that includes –

(I) an inventory of critical assets that are part of the treatment works;

(II) an evaluation of the conditions and performance of inventoried assets or asset groupings;

(III) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

(IV) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or

(ii) certify that the recipient has developed and implemented a plan that meets requirements under clause (i);”

Recipients of a CWSRF loan are required to certify that they have met these statutory requirements for critical assets within the FSP plan area and developed an FSP that includes, at a minimum, the specific criteria set forth in this Exhibit. If, prior to closing, the Borrower has not developed an FSP meeting the minimum requirements, the Borrower shall certify that it will develop and implement the FSP. The Department of Environmental Management, with input from the Borrower, has determined that the planning area for the FSP is each of Borrower’s wastewater treatment facilities and the wastewater collection system (the “Planning Area”). The FSP shall be made available to the Department staff for inspection at the Borrower’s office upon request.

CERTIFICATION ON NEXT PAGE

FSP CERTIFICATION

IF FSP HAS BEEN COMPLETED:

I (name), _____, (title/position) _____, of (organization) _____ hereby certify that the Borrower has developed and implemented the FSP for the Planning Area in accordance with all statutory requirements. The FSP for the Planning Area has been submitted to the Department of Environmental Management with a copy to the Bank.

Authorized Official

Date

OR

IF FSP HAS NOT BEEN COMPLETED:

I (name), _____, (title/position) _____, of (organization) _____ hereby certify that the Borrower shall develop and implement the FSP for the Planning Area in accordance with all statutory requirements. The FSP for the Planning Area shall be developed, implemented, and submitted to the Department of Environmental Management with a copy to the Bank by the earlier of one year from the date of this Agreement or the final draw on the Loan

Authorized Official

Date

EXHIBIT L

RHODE ISLAND CLEAN WATER STATE REVOLVING FUND
COST AND EFFECTIVENESS CERTIFICATION

As a condition for receiving financial assistance through the Rhode Island Clean Water State Revolving Fund, the Borrower hereby certifies that, in compliance with Section 602(b)(13) of the Water Resources Reform and Development Act of 2014 (WRRDA), it:

- A) Has studied and evaluated the cost and effectiveness of the process, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and
- B) Has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account;
 - a. The cost of constructing the project or activity;
 - b. The cost of operating and maintaining the project or activity over the life of the project or activity; and
 - c. The cost of replacing the project or activity.

Project Name/Contract Number:

Reports/Documents Supporting This Certification:

Name and Title of Authorized Official: _____

Signature of Authorized Official: _____ Date: _____

Name of Professional Engineer: _____

Professional Engineer License Number: _____

Signature of Professional Engineer: _____ Date: _____

1 **NARRAGANSETT BAY COMMISSION**

2 **PRE-FILED DIRECT TESTIMONY**

3 **OF WILLIAM J. FAZIOLI**

4

5 **Q. Please state your name and title.**

6 A. My name is William J. Fazioli, Director with PFM Financial Advisors LLC (PFM).

7

8 **Q. Could you please describe your educational and employment background?**

9 A. I hold a Master of Public Administration degree from the Rockefeller College at the University of
10 New York - Albany and two Bachelor of Arts degrees from Rhode Island College. With over 30
11 years of public finance experience, I have served as financial advisor to governmental issuers in
12 Rhode Island and throughout New England. A sample of communities that I have served during
13 my career as a financial advisor include the cities of Newport and Cranston, the Hartford
14 Metropolitan District Commission, the City of Manchester, New Hampshire, the City of Burlington,
15 Vermont and the cities of Bridgeport and New Haven, Connecticut. In addition, I have extensive
16 experience assisting borrowers through the Rhode Island Infrastructure Bank State Revolving
17 Fund Program. I have also served in the public sector as City Manager of East Providence,
18 Treasurer for the Town of Charlestown, and Finance Director for the Town of North Providence.
19 Also I'm the Chairman of the East Providence Waterfront Redevelopment Commission, serving
20 since 2009.

21

22 **Q. Can you describe the organization of PFM and the types of services that it provides?**

23 A. Over the past 40 years, PFM has provided independent financial advisory services to public
24 entities. PFM has grown into a national firm with over 600 employees in 38 offices across the
25 United States. For the 19th consecutive year, PFM has maintained its position as the number one
26 financial advisor in the industry, providing financial advisory services in more than 996
27 transactions for a total par amount in excess of \$63.5 billion in 2018. In terms of wastewater
28 issuers, PFM has been the top ranked financial advisor in this sector for several years as well while
29 representing other large wastewater operators including the Massachusetts Water Resources
30 Authority and the DC Water and Sewer District.

1 **Q. What is your relationship with the Narragansett Bay Commission (NBC)?**

2 A. PFM was appointed in 2012 to serve as Financial Advisor to the NBC by its Board of
3 Commissioners. I, as well as two of my colleagues at PFM, have experience working with the NBC
4 and we are familiar with NBC's borrowing history and capital needs.
5

6 **Q. Have you testified previously before the Rhode Island Public Utilities Commission (RIPUC)?**

7 A. Yes. I have provided testimony in NBC's Docket 4364 and I also provided testimony in support of
8 the NBC's applications for Division approval to enter into long-term debt filed on February 7, 2013,
9 October 11, 2013, August 8, 2014, May 22, 2015 and March 3, 2016. I have also provided
10 testimony in support of NBC's applications for Division approval to Enter Long-Term Debt and
11 Issue Revenue Bonds to Effectuate the Refunding of two of NBC's Wastewater System Revenue
12 Bond Issues.
13

14 **Q. What is the purpose of your testimony?**

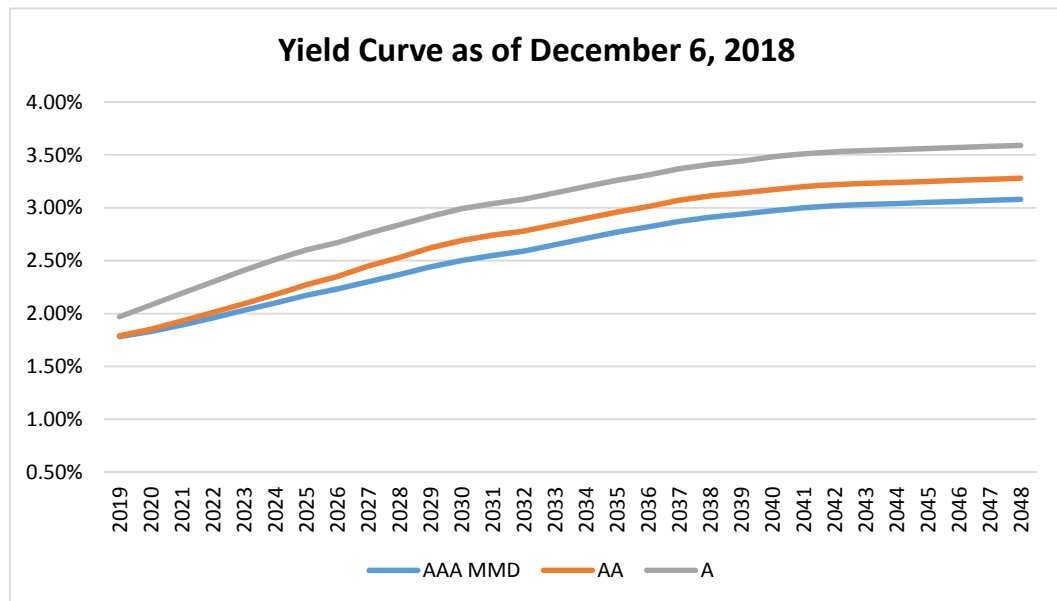
15 A. I was asked to provide testimony in support of NBC's application for Division approval to issue
16 long-term debt as part of the planned \$45 million borrowing through the Rhode Island
17 Infrastructure Bank (the "RIIB").
18

19 **Q. Would you please address the structure and interest rate assumptions of the RIIB borrowing?**

20 A. The revenue bonds are amortized over 20 years with the final maturity on or about 2039 and will
21 be structured as level debt with the traditional RIIB subsidy of 1/3 of the market rate. On an
22 aggregate basis, it is anticipated that the borrowing will not exceed a market rate of 4.00%, which
23 would result in a projected effective subsidized yield, including RIIB service fees of approximately
24 3.18% (see Exhibit WJF-1).
25
26
27
28
29
30
31
32

1 **Q. Can you provide an update on current market rates, the yield curve, NBC's credit rating and how**
2 **these factors influence NBC's options?**

3 A. Current market interest rates are relatively low enabling governmental issuers to borrow at
4 favorable rates. The chart below compares the current Municipal Market Data Index for
5 investment grade credits. Credit spreads remain narrow for high credit quality issuers. The yield
6 curve for an "AA" credit rating ranges from only approximately 1 to 20 basis points higher than
7 an "AAA" credit rating as of December 6, 2018. The value of an "AA-" credit rating is tangible and
8 will result in cost savings for ratepayers compared to a lower quality credit. In addition, despite
9 recent increases in short-term interest rates, the yield curve remains extremely flat in the long-
10 term with the spread between 10 and 20 year interest rates at about 4 basis points for an "AA"
11 credit.
12



13
14
15 **Q. What are the applicable schedules and deadlines for this financing?**

16 A. The bonds to be issued by RIIB are scheduled to be priced the second week of February 2019. RIIB
17 plans to mail its Preliminary Official Statement to prospective investors approximately one week
18 prior to pricing and prefers that borrower approvals are in place prior to the mailing of the
19 Preliminary Official Statement. Therefore, NBC respectfully requests a decision by the Division
20 prior to January 28, 2019, if possible.
21

- 1 **Q. Are you aware of any other planned long-term debt issuances by NBC this fiscal year?**
- 2 A. Yes. As mentioned in the testimony of Karen L. Giebink, the NBC has been invited to apply for a
- 3 loan under the EPA’s WIFIA program.
- 4
- 5 **Q. Does this conclude your pre-filed testimony?**
- 6 A. Yes.

Net Debt Service

Narragansett Bay Commission

Rhode Island Infrastructure Bank

Clean Water SRF Program - Series 2019A

Rates as of 12/07/2018 Plus 50 BP - Preliminary Subject to Change

Period Ending	Principal	Coupon	Interest	Total Debt Service	RIIB Fee	Net Debt Service
6/30/2020			736,033.63	736,033.63	168,905.02	904,938.65
6/30/2021	1,730,000	2.0343%	1,176,319.20	2,906,319.20	220,675.00	3,126,994.20
6/30/2022	1,770,000	2.0745%	1,133,937.77	2,903,937.77	211,925.00	3,115,862.77
6/30/2023	1,820,000	2.1281%	1,085,915.64	2,905,915.64	202,950.00	3,108,865.64
6/30/2024	1,870,000	2.1817%	1,036,555.84	2,906,555.84	193,725.00	3,100,280.84
6/30/2025	1,920,000	2.2353%	985,858.37	2,905,858.37	184,250.00	3,090,108.37
6/30/2026	1,970,000	2.2956%	933,823.24	2,903,823.24	174,525.00	3,078,348.24
6/30/2027	2,025,000	2.3559%	880,383.56	2,905,383.56	164,537.50	3,069,921.06
6/30/2028	2,080,000	2.4095%	825,472.45	2,905,472.45	154,275.00	3,059,747.45
6/30/2029	2,135,000	2.4765%	769,089.92	2,904,089.92	143,737.50	3,047,827.42
6/30/2030	2,195,000	2.5301%	711,169.07	2,906,169.07	132,912.50	3,039,081.57
6/30/2031	2,255,000	2.5904%	651,643.02	2,906,643.02	121,787.50	3,028,430.52
6/30/2032	2,315,000	2.6373%	590,511.78	2,905,511.78	110,362.50	3,015,874.28
6/30/2033	2,375,000	2.6708%	527,775.34	2,902,775.34	98,637.50	3,001,412.84
6/30/2034	2,440,000	2.6976%	463,366.81	2,903,366.81	86,600.00	2,989,966.81
6/30/2035	2,510,000	2.7378%	397,152.44	2,907,152.44	74,225.00	2,981,377.44
6/30/2036	2,575,000	2.7780%	329,132.23	2,904,132.23	61,512.50	2,965,644.73
6/30/2037	2,645,000	2.8182%	259,306.17	2,904,306.17	48,462.50	2,952,768.67
6/30/2038	2,715,000	2.8517%	187,607.38	2,902,607.38	35,062.50	2,937,669.88
6/30/2039	2,790,000	2.8919%	113,968.97	2,903,968.97	21,300.00	2,925,268.97
6/30/2040	2,865,000	2.9187%	38,324.07	2,903,324.07	7,162.50	2,910,486.57
	45,000,000		13,833,346.90	58,833,346.90	2,617,530.02	61,450,876.92

Note: Estimated All-in-TIC: 3.178354%

NARRAGANSETT BAY COMMISSION
STATEMENT OF NET POSITION
NOVEMBER 30, 2018

ASSETS**CURRENT ASSETS**

Cash and cash equivalents	\$ 21,367,373.84
Accounts receivable sewer use (net of allowance)	12,327,443.74
Accounts receivable sewer use unbilled	4,924,564.02
Accounts receivable series 2016A (PL19)	8,478,477.10
Receivables, other	101,340.01
Prepaid expense	128,262.98
Total Current Assets	<u>47,327,461.69</u>

NON-CURRENT ASSETS

Restricted Assets

Cash and cash equivalents, restricted for environmental enforcement fund	79,595.80
Cash and cash equivalents, restricted for debt service	12,232,674.51
Cash and cash equivalents , restricted for operating reserve for revenue stability fund	4,500,000.00
Cash and cash equivalents, restricted stabilization	2,612,328.22
Cash and cash equivalents, restricted for debt service reserve fund	3,497,000.00
Cash and cash equivalents, restricted for the acquisition and construction of capital assets	20,382,991.10
Total Restricted Assets	<u>43,304,589.63</u>

Capital Assets

Land	2,754,407.48
Plant and equipment	100,731,208.43
Capital projects completed	780,648,298.16
Construction in progress	357,787,856.58
	<u>1,241,921,770.65</u>
Less accumulated depreciation	(228,699,786.07)
Total Net Capital Assets	<u>1,013,221,984.58</u>

Other assets

Net pension asset - Non-Union Defined Benefit Plan	184,381.00
Total Non-current Assets	<u>1,056,710,955.21</u>

TOTAL ASSETS

1,104,038,416.90

DEFERRED OUTFLOWS OF RESOURCES

Loss on refunding of debt	1,890,792.72
Pension related outflows	5,984,557.00
OPEB related outflows	601,910.00
TOTAL DEFERRED OUTFLOWS OF RESOURCES	<u>8,477,259.72</u>

NARRAGANSETT BAY COMMISSION
STATEMENT OF NET POSITION
NOVEMBER 30, 2018

LIABILITIES**CURRENT LIABILITIES**

Accounts and contracts payable	\$ 2,027,692.78
Accrued interest payable	4,429,152.25
Accrued expenses	510,480.01
Unearned revenue billed in advance	89,583.13
Total Current Liabilities	<u>7,056,908.17</u>

NON-CURRENT LIABILITIES

Net pension liability - ERSRI Pension Plan	19,376,984.00
Long-term net OPEB liability	4,265,419.00
Long-term other accrued expenses	2,893,470.28
Long-term loans payable, net	302,974,434.30
Long-term debt	262,604,183.60
Total Non-current Liabilities	<u>592,114,491.18</u>

TOTAL LIABILITIES

599,171,399.35

DEFERRED INFLOWS OF RESOURCES

Gain on refunding debt	161,207.56
Pension related inflows	2,641,088.00
OPEB related inflows	274,666.00

TOTAL DEFERRED INFLOWS OF RESOURCES

3,076,961.56

NET POSITION

Net Investment in capital assets	491,202,030.27
Restricted - environmental enforcement	79,595.80
Restricted - debt service reserve	3,497,000.00
Restricted - operating reserve for revenue stability	4,500,000.00
Unrestricted	10,988,689.64
TOTAL NET POSITION	<u><u>\$ 510,267,315.71</u></u>

NARRAGANSETT BAY COMMISSION
STATEMENT OF REVENUE, EXPENSE, AND CHANGES IN NET POSITION
FOR THE PERIOD ENDING NOVEMBER 30, 2018

OPERATING REVENUE

User fees, residential	\$ 23,865,653.67
User fees, commercial and industrial	17,940,758.36
Sewer connection fees	67,549.00
Pretreatment fees	443,599.96
Environmental enforcement fees	800.00
Septage income	146,237.20
Renewable energy credits	9,027.69
Miscellaneous	121,751.00
Late charge penalties	394,264.96
Total Operating Revenues	<u>42,989,641.84</u>

OPERATING EXPENSES

Personnel	10,318,123.48
Operations and maintenance	493,533.74
Maintenance contracts and service agreements	738,542.82
Biosolid disposal expense	1,931,791.94
Insurance expense	962,569.92
Electricity expense	1,088,830.41
Other utilities	248,518.42
Chemicals expense	435,434.10
Supplies	474,847.17
Professional services	278,950.64
Depreciation	6,864,546.36
Miscellaneous	312,374.27
Total Operating Expenses	<u>24,148,063.27</u>

OPERATING INCOME 18,841,578.57

NON-OPERATING REVENUES (EXPENSES)

Interest income	494,629.99
Interest expense	(7,251,560.75)
Miscellaneous non-operating revenue	84,475.01
Bond and note fees	(19,530.00)
Total Non-operating Revenue (Expenses)	<u>(6,691,985.75)</u>

NET INCOME (LOSS) BEFORE CAPITAL CONTRIBUTIONS 12,149,592.82

Capital Contribution

CHANGE IN NET POSITION 12,149,592.82

TOTAL NET POSITION, BEGINNING 498,117,722.89

TOTAL NET POSITION, ENDING \$ 510,267,315.71