

# 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

July 12, 2019

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 for an original principal amount not to exceed two hundred seventy million dollars (\$270,000,000) through a federal loan program established by the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA), which is administered by the United States Environmental Protection Agency (USEPA). The proceeds will be used to fund Phase III A of NBC’s federally mandated Combined Sewer Overflow Project. Included in the application package is a copy of the proposed notice to be published in the Providence Journal. Please let me know if the proposed notice is acceptable and please contact me with a hearing date so it can be published.

Thank you for your attention to these matters.

Sincerely,



Joseph A. Keough, Jr.

Enclosures

cc: RI Attorney General’s Office (Attn. Christy Hetherington, Esq.)



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

**IN RE: THE NARRAGANSETT BAY COMMISSION:**

**Docket No. D-19-**

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

Notice is hereby given that on July 12, 2019, 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 original principal amount not to exceed two hundred seventy million dollars (\$270,000,000).

NBC seeks to borrow an amount not to exceed an original principal amount of two hundred seventy million dollars (\$270,000,000) through the Environmental Protection Agency's Water Infrastructure Finance and Innovation Act (WIFIA). These proceeds will be used to fund NBC's CSO Phase III A Facilities.

A hearing on the proposal will be held at the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, Rhode Island on August 1, 2019 at \_\_\_\_\_ 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.

Kevin M. Lynch, Interim Administrator



**CERTIFICATE OF SERVICE**

I, Karen L. Giebink, hereby certify that I have, this 12<sup>th</sup> day of July, 2019 caused a copy of the within application filed under Section 39-3-15 for the Narragansett Bay Commission to be served on all parties designed on the official service list in this proceeding.



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Karen L. Giebink  
Chief Financial Officer



1 **NARRAGANSETT BAY COMMISSION**

2 **PRE-FILED DIRECT TESTIMONY**

3 **OF KAREN L. GIEBINK**

4

5 **INTRODUCTION**

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

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

9

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

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

12

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

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

19

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

21 A. Yes. I provided testimony in previous NBC requests for approval to enter into long-term debt. I  
22 have also provided testimony in dockets 1968, 2216, 3651, 3797, 3905, 4305, 4652, 4364, 4478,  
23 4885 and 4890 before the Rhode Island Public Utilities Commission (PUC).

24

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

26 A. To support NBC's request for Division approval to borrow an original principal amount not to  
27 exceed \$270,000,000 from the United States Environmental Protection Agency (USEPA) for the  
28 purpose of financing the design and construction of certain combined sewer overflow control  
29 facilities (CSO) and to issue revenue bonds evidencing the loan.

30

31 **Q. Has the Division previously approved loans to NBC from the USEPA?**

32 A. No.

1 **CSO PROJECT BACKGROUND**

2 **Q. Would you please provide some background regarding NBC's CSO program?**

3 A. Yes, NBC is under a Consent Agreement with the Rhode Island Department of  
4 Environmental Management (RIDEM) to implement a federally mandated CSO program  
5 in three phases. A more detailed description of the CSO program is provided in the  
6 testimony of Kathryn Kelly, the NBC's CSO Program Manager.

7  
8 **Q. Have there been concerns raised regarding the impact this federally mandated project will have  
9 on NBC's rates?**

10 A. Yes in NBC's recent PUC rate filings, including its most recent (Docket 4890), concerns have been  
11 raised regarding the CSO Project's impact on rates, and the NBC shares those concerns. However,  
12 as set forth above, the CSO Project is a federally mandated project, and the NBC is required to  
13 implement it under a Consent Agreement with the Rhode Island Department of Environmental  
14 Management. The NBC has been active in examining more cost-effective approaches to the CSO  
15 Project and affordability issues. Unfortunately, affordability standards related to the CSO Project  
16 are based on EPA criteria. That being said, the proposed Water Infrastructure Finance and  
17 Innovation Act (WIFIA) loan will help tremendously in moderating the NBC's rates as examined in  
18 more detail below in my testimony.

19  
20 **WIFIA LOAN**

21 **Q. Would you please provide some background information regarding this loan program?**

22 A. The Water Infrastructure Finance and Innovation Act of 2014 established a federal credit program  
23 administered by the USEPA. The WIFIA program offers long-term, low cost credit assistance to  
24 qualified credit worthy borrowers for eligible water and wastewater infrastructure projects. NBC  
25 submitted a Letter of Interest in July 2018 for the CSO Phase III A Facilities and based upon that  
26 submittal, USEPA invited NBC to apply for a loan through the WIFIA program. In March 2019, NBC  
27 submitted the application, including information about NBC, project details, operations and  
28 maintenance plans, and a financing plan. Over the past few months, staff has provided additional  
29 project, financial modeling and other information to USEPA in support of the application. The  
30 maximum amount of a WIFIA loan is 49% of a project's cost and total federal assistance may not  
31 exceed 80% of a project's eligible costs. The updated inflation-adjusted cost of the CSO Phase III  
32 A project is \$548.4 million and the WIFIA original principal loan amount is \$268.7 million.

1 **Q. What are the advantages of the WIFIA program?**

2 A. There are many advantages to borrowing through the WIFIA program including loan amortization  
 3 flexibility and the capitalization of interest. In addition, the WIFIA financing has lower issuance  
 4 costs, low annual service fees and a low interest rate. All of these factors contribute to a  
 5 significant reduction in CSO Phase III program impact on ratepayers.

6

7 **Q. Would you describe why the WIFIA program is advantageous to NBC and its ratepayers?**

8 A. The WIFIA program allows a borrower to defer repayment of the WIFIA loan for up to five years  
 9 after substantial completion of the project. The program also allows for capitalized interest and  
 10 loan amortization over a period of up to 30 years. As a result, the WIFIA debt can be “wrapped”  
 11 around NBC’s existing debt, mitigating the annual impact on debt service and debt service  
 12 coverage and therefore NBC’s rates. The proposed draw and amortization schedule are set forth  
 13 in the following schedule:

Preliminary WIFIA Draw and Amortization*					
Fiscal Year	Beginning Balance	Draws	Interest	Payment	Ending Balance
2021	\$ -	\$ 41,834,785	\$ 460,183	\$ -	\$ 42,294,968
2022	42,294,968	95,229,105	2,171,477	-	139,695,549
2023	139,695,549	131,657,778	5,160,539	-	276,513,866
2024	276,513,866	-	7,348,146	-	283,862,012
2025	283,862,012	-	7,543,417	-	291,405,429
2026	291,405,429	-	7,743,878	-	299,149,307
2027	299,149,307	-	7,949,665	-	307,098,972
2028	307,098,972	-	8,160,922	-	315,259,894
2029	315,259,894	-	8,377,792	-	323,637,686
2030	323,637,686	-	8,600,426	-	332,238,112
2031	332,238,112	-	8,828,975	-	341,067,087
2032	341,067,087	-	9,004,171	9,004,171	341,067,087
2033	341,067,087	-	9,004,171	9,004,171	341,067,087
2034	341,067,087	-	9,004,171	9,004,171	341,067,087
2035	341,067,087	-	9,004,171	9,004,171	341,067,087
2036	341,067,087	-	9,004,171	9,004,171	341,067,087
2037	341,067,087	-	9,004,171	9,004,171	341,067,087
2038	341,067,087	-	9,004,171	9,004,171	341,067,087
2039	341,067,087	-	8,988,184	10,199,311	339,855,961
2040	339,855,961	-	8,447,028	48,232,578	300,070,411
2041	300,070,411	-	7,334,677	51,818,125	255,586,963
2042	255,586,963	-	6,144,634	51,815,968	209,915,630
2043	209,915,630	-	4,922,743	51,818,902	163,019,471
2044	163,019,471	-	3,668,103	51,820,485	114,867,088
2045	114,867,088	-	2,245,751	61,847,269	55,265,570
2046	55,265,570	-	862,903	46,022,594	10,105,879
2047	10,105,879	-	133,398	10,239,277	-

\* Preliminary and subject to change

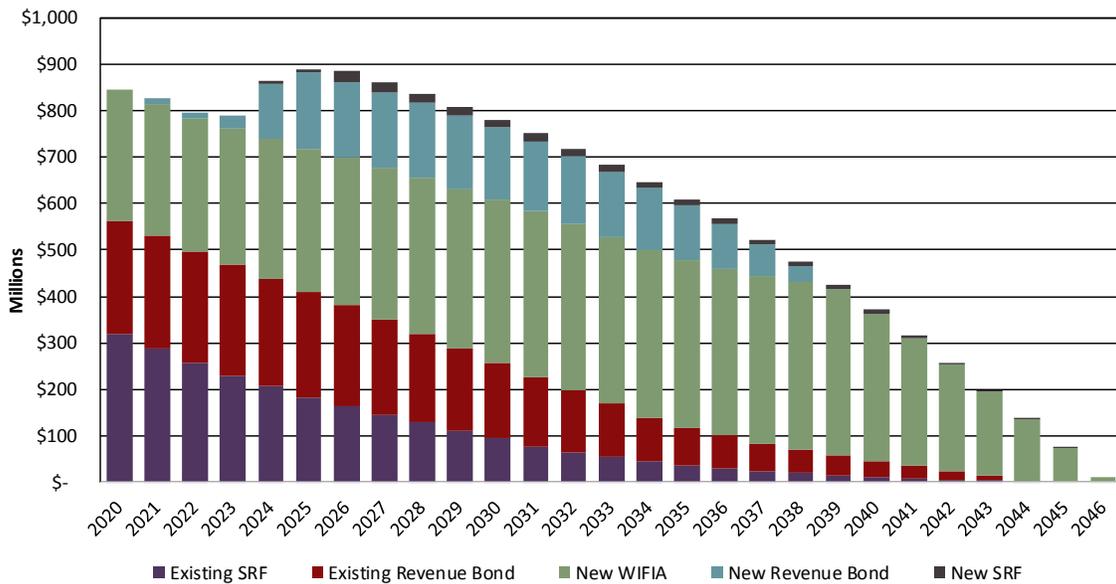
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15

16 It should be noted, and as this schedule shows, the original principal amount of \$268,721,668  
 17 increases to \$341,067,087 once repayment begins due to the capitalization of interest.

1 The following graph shows NBC’s projected total outstanding debt from FY 2020 through the  
 2 WIFIA Loan maturity in FY 2046, incorporating existing debt service, the proposed WIFIA Loan for  
 3 CSO Phase III A and additional debt issuances required to support the CSO Phase III A Facilities,  
 4 and NBC’s Capital Improvement Program including a second WIFIA loan of \$15.7 million for  
 5 Bucklin Point Resiliency (BP Resiliency). NBC submitted a Letter of Interest to USEPA on July 3,  
 6 2019 for the BP Resiliency project and will be notified by USEPA if the project has been selected  
 7 to apply for WIFIA funding this fall. The “New WIFIA” identified in the chart below reflects  
 8 projected outstanding debt for both WIFIA loans; however, NBC is only requesting approval for  
 9 the CSO Phase IIIA Facilities WIFIA loan in this application. A view of the chart shows that  
 10 outstanding debt is projected to peak in FY 2025.

11  
 12  
 13  
 14 **Existing and Projected Outstanding Debt**



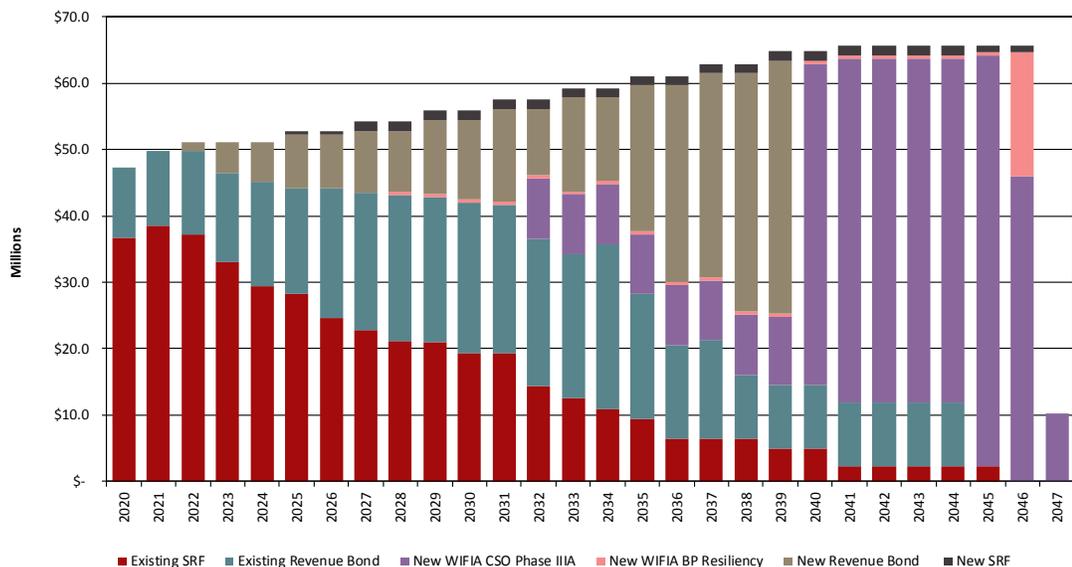
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 17

1 The following table and chart shows existing and projected debt service payments from FY 2020  
 2 through the WIFIA Loan maturity in FY 2046.

3 **Existing and Projected Debt Service Payments**

Fiscal Year	Existing SRF	Existing Revenue Bond	New WIFIA CSO Phase IIIA	New WIFIA BP Resiliency	New Revenue Bond	New SRF	Total Debt Service
2020	\$ 36,648,779	\$ 10,689,599	\$ -	\$ -	\$ -	\$ -	\$ 47,338,378
2021	38,508,041	11,228,351	-	-	-	-	49,736,392
2022	37,205,733	12,486,100	-	-	1,424,358	-	51,116,191
2023	33,125,452	13,405,172	-	-	4,585,566	-	51,116,190
2024	29,465,934	15,586,805	-	-	6,063,451	-	51,116,190
2025	28,343,259	15,722,717	-	-	8,206,436	377,264	52,649,676
2026	24,629,515	19,432,813	-	-	8,210,083	377,264	52,649,675
2027	22,840,645	20,568,902	-	-	9,401,623	1,417,997	54,229,167
2028	21,077,980	22,051,111	-	482,993	9,199,085	1,417,997	54,229,166
2029	20,957,998	21,900,461	-	482,993	11,096,593	1,417,997	55,856,042
2030	19,385,956	22,544,791	-	482,993	12,024,304	1,417,997	55,856,041
2031	19,265,611	22,348,447	-	482,993	14,016,674	1,417,997	57,531,722
2032	14,384,285	22,172,318	9,004,171	482,993	10,069,958	1,417,997	57,531,722
2033	12,601,142	21,620,662	9,004,171	482,993	14,130,709	1,417,997	59,257,674
2034	10,957,412	24,768,510	9,004,171	482,993	12,626,592	1,417,997	59,257,675
2035	9,363,932	18,903,208	9,004,171	482,993	21,863,103	1,417,997	61,035,404
2036	6,431,045	14,141,275	9,004,171	482,993	29,557,924	1,417,997	61,035,405
2037	6,425,794	14,837,775	9,004,171	482,993	30,697,737	1,417,997	62,866,467
2038	6,422,253	9,648,150	9,004,171	482,993	35,890,903	1,417,997	62,866,467
2039	4,971,105	9,652,150	10,199,311	482,993	38,028,905	1,417,997	64,752,460
2040	4,970,693	9,648,200	48,232,578	482,993	-	1,417,997	64,752,461
2041	2,231,686	9,649,200	51,818,125	482,993	-	1,417,997	65,600,000
2042	2,231,343	9,651,700	51,815,968	482,993	-	1,417,997	65,600,000
2043	2,229,908	9,650,200	51,818,902	482,993	-	1,417,997	65,600,000
2044	2,229,325	9,649,200	51,820,485	482,993	-	1,417,997	65,600,000
2045	2,229,005	-	61,847,269	482,993	-	1,040,733	65,600,000
2046	-	-	46,022,594	18,536,674	-	1,040,733	65,600,000
2047	-	-	10,239,277	-	-	-	10,239,277

4



5

1 **Q. Are there other advantages to the WIFIA program compared to borrowings through the Rhode**  
2 **Island Infrastructure Bank (RIIB) or the issuance of revenue bonds?**

3 A. Yes. The WIFIA program is also advantageous from a cost perspective. The projected annual  
4 service cost for the WIFIA loan is approximately \$20,000 - \$25,000 per year. The RIIB annual  
5 service fees would be approximately \$780,000 annually on average over the life of a loan of similar  
6 size.

7

8 In addition, the interest rate is excellent. USEPA determines the interest rate at closing and it is  
9 based on the State and Local Government Securities (SLGS) rate for the weighted average  
10 maturity of the loan. Based on the amortization of the loan as structured for modeling purposes,  
11 the interest rate is 2.64%, and will likely be lower at closing. This rate is comparable to the  
12 subsidized rate for a 20-year bond issue through RIIB and lower than what NBC would achieve  
13 through the issuance of open market revenue bonds. Please refer to the testimony of William  
14 Fazioli for additional discussion of the relative interest rates.

15

16 The loan amount is significant since it will enable the NBC to fund almost half of the CSO Phase III  
17 A program in a single low-interest rate borrowing, which will eliminate the need for multiple debt  
18 issuances and the associated costs. If WIFIA funding were not available, it is likely that NBC would  
19 need to issue a significant amount of open market revenue bonds to supplement annual  
20 borrowings from RIIB due to RIIB's loan capacity limitations. Lastly, the WIFIA program does not  
21 require the funding of a debt service reserve.

22

23 **Q. Does NBC have sufficient revenue for this borrowing?**

24 A. Based on NBC's approved revenue requirement from its most recent rate filing (Docket 4890),  
25 NBC has sufficient revenue to meet the additional bonds test as set forth in Section 205 (2)(iv) of  
26 the Trust Indenture. As indicated above, one of the advantages of the WIFIA Loan is that the  
27 WIFIA debt can be "wrapped" around NBC's existing debt, such that ratepayer impact is mitigated.  
28 As is shown in Exhibit KG-1, the ability to wrap the WIFIA debt around NBC's existing debt means  
29 that NBC has sufficient revenue to meet debt service and debt service coverage requirements  
30 until fiscal year 2040 based on current rates.

31

1 **Q. You indicated above that the WIFIA Loan can only fund approximately half of the CSO Phase III**  
2 **A Project. Will NBC require additional funds for this project??**

3 A. Yes. Since the WIFIA Loan can only cover approximately 49% of a project’s costs, NBC worked with  
4 its financial advisor, PFM Financial Advisors LLC (PFM), to optimize the funding strategy for the  
5 CSO Phase III A facilities. A linear optimization model was used to determine the funding sources  
6 and recommended amortizations. Based on the model, the following funding sources, including  
7 costs of issuance (\$3.5 million), were identified for the CSO Phase III A facilities:  
8

<b>Funding Source</b>	<b>Amount</b>
Revenue Bonds	\$ 175,611,339
SRF Loans	48,227,777
WIFIA Loan	268,721,668
Pay-go Cash	59,333,337
	<u>\$ 551,894,121</u>

9  
10 Please see the testimony of William Fazioli for additional discussion of the model.

11

12 **Q. Will NBC need future rate increases to service the non-WIFIA borrowings identified above?**

13 A. Yes. However, PFM used a constraint of a maximum 3% rate increase every other year for non-  
14 WIFIA debt service and related coverage. These increases are projected to be required to support  
15 additional open market revenue bonds or borrowings through RIIB for NBC’s share of the CSO  
16 Phase III A facilities costs that cannot be financed through pay-go capital as well as NBC’s other  
17 capital improvement projects.

18

19 **Q. Will NBC seek PUC approval for rates to service the debt for these future Open Market and/or**  
20 **RIIB borrowings?**

21 A. Yes.

22

23 **Q. Will NBC seek Division approval to enter into these future Open Market and/or RIIB**  
24 **borrowings?**

25 A. Yes.

26

27

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. For the most part, yes. However, USEPA requires a second credit rating and NBC is in the credit  
4 review process. NBC is also reviewing a number of documents that will be required to ensure  
5 compliance with federal requirements.

6  
7 **Q. Has NBC included the anticipated loan agreement as part of this application?**

8 A. Yes. The draft loan agreement is included with the testimony of Karen S.D. Grande. Additional  
9 review will take place prior to the closing of the loan.

10

11 **Q. What is the anticipated closing date for this loan?**

12 A. USEPA has set a closing date of August 26, 2019. Thus, the NBC requests approval of this  
13 application, if at all possible, by August 15, 2019.

14

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

17 A. No it does not.

18

19 **Q. Does this conclude your pre-filed testimony?**

20 A. Yes.

**Narragansett Bay Commission  
Debt Service Coverage**

Exhibit KG-1

<b>Fiscal Year</b>	<b>Available for Debt Service</b>	<b>Current Debt Service</b>	<b>Debt Service Coverage</b>	<b>Planned WIFIA</b>	<b>Total Debt Service</b>	<b>Debt Service Coverage</b>
2020	62,642,390	47,338,378	1.32	-	47,338,378	1.32
2021	62,642,390	49,736,391	1.26	-	49,736,391	1.26
2022	62,642,390	49,691,833	1.26	-	49,691,833	1.26
2023	62,642,390	46,530,624	1.35	-	46,530,624	1.35
2024	62,642,390	45,052,739	1.39	-	45,052,739	1.39
2025	62,642,390	44,065,976	1.42	-	44,065,976	1.42
2026	62,642,390	44,062,329	1.42	-	44,062,329	1.42
2027	62,642,390	43,409,546	1.44	-	43,409,546	1.44
2028	62,642,390	43,129,092	1.45	-	43,129,092	1.45
2029	62,642,390	42,858,459	1.46	-	42,858,459	1.46
2030	62,642,390	41,930,747	1.49	-	41,930,747	1.49
2031	62,642,390	41,614,058	1.51	-	41,614,058	1.51
2032	62,642,390	36,556,603	1.71	9,004,171	45,560,774	1.37
2033	62,642,390	34,221,804	1.83	9,004,171	43,225,975	1.45
2034	62,642,390	35,725,921	1.75	9,004,171	44,730,092	1.40
2035	62,642,390	28,267,141	2.22	9,004,171	37,271,312	1.68
2036	62,642,390	20,572,320	3.04	9,004,171	29,576,491	2.12
2037	62,642,390	21,263,569	2.95	9,004,171	30,267,740	2.07
2038	62,642,390	16,070,403	3.90	9,004,171	25,074,574	2.50
2039	62,642,390	14,623,255	4.28	10,199,311	24,822,566	2.52
2040	62,642,390	14,618,893	4.29	48,232,578	62,851,471	1.00
2041	62,642,390	11,880,886	5.27	51,818,125	63,699,010	0.98
2042	62,642,390	11,883,043	5.27	51,815,968	63,699,010	0.98
2043	62,642,390	11,880,108	5.27	51,818,902	63,699,010	0.98
2044	62,642,390	11,878,525	5.27	51,820,485	63,699,010	0.98
2045	62,642,390	2,229,005	28.10	61,847,269	64,076,275	0.98
2046	62,642,390			46,022,594	46,022,594	1.36
2046	62,642,390			10,239,277	10,239,277	6.12
		<u>\$ 811,091,647</u>		<u>\$ 446,843,706</u>	<u>\$ 1,257,935,353</u>	



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 21<sup>st</sup> consecutive year, PFM has maintained its position as the number one  
26 financial advisor in the industry, providing financial advisory services in more than 791  
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 first appointed in 2012 to serve as Financial Advisor to the NBC by its Board of  
3 Commissioners (Board). NBC's Board reappointed PFM as its Financial Advisor in 2018. I, as well  
4 as several colleagues at PFM, have experience working with the NBC, and we are familiar with  
5 NBC's borrowing history and capital needs.  
6

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

8 A. Yes. I have provided testimony in NBC's Docket 4364 and I also provided testimony in support of  
9 the NBC's applications for Division approval to enter into long-term debt filed on February 7, 2013,  
10 October 11, 2013, August 8, 2014, May 22, 2015, March 3, 2016 and December 18, 2018. I have  
11 also provided testimony in support of NBC's applications for Division approval to Enter Long-Term  
12 Debt and Issue Revenue Bonds to Effectuate the Refunding of two of NBC's Wastewater System  
13 Revenue Bond Issues.  
14

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

16 A. I was asked to provide testimony in support of NBC's application for Division approval to issue  
17 long-term debt as part of the planned not to exceed original principal amount of \$270 million  
18 borrowing through the Water Infrastructure Finance and Innovation Act (WIFIA) loan program  
19 administered by the United States Environmental Protection Agency (USEPA).  
20

21 **Q. Would you please discuss how PFM modeled the proposed funding of the CSO Phase III A  
22 Facilities and developed the WIFIA loan structure?**

23 A. PFM used a debt optimization model which incorporates the "What'sBest!" linear optimization  
24 tool to structure the capital financing plan. With What'sBest!, the user places constraints on the  
25 model (i.e. coverage cannot go below 1.25x in any year, RIIB loans must be 20 years of level debt  
26 service, etc.) that cannot be violated when What'sBest! is determining the solution. Outside of  
27 these constraints that are placed on the model, What'sBest! is given the ability to modify the  
28 funding source mix between WIFIA, RIIB, and NBC open market revenue bonds along with the  
29 ideal amortization length for each to determine the most inexpensive path of financing. With this  
30 approach, we're able to place a high degree of confidence on the final structure of the financing  
31 sources since every possible funding mix and amortization length for each source was  
32 contemplated by What'sBest!.

1 The model prepared for NBC incorporated NBC's projected cash flows for the CSO Phase III A  
2 Facilities along with NBC's other programmed capital improvement expenditures. Other  
3 modeling considerations included maximum WIFIA funding of 49% of the project cost. The  
4 resulting draws and amortization schedule is reflected in the testimony of Karen Giebink. The  
5 balance of the funding for NBC's share of the project is from a combination of NBC open market  
6 revenue bonds, loans from the RIIB and restricted funds for pay-go capital. In this regard, the  
7 model also took into consideration that NBC desired to mitigate ratepayer impact and therefore  
8 the model incorporated constraints of 3% revenue increases for debt service and debt service  
9 coverage for Open Market and/or RIIB loans every other year.

10  
11 **Q. What makes the WIFIA loan the preferred funding source for the CSO Phase III A facilities?**

12 A. In addition to low fees and an attractive interest rate, the flexibility of the loan amortization and  
13 repayment term offer significant benefits to NBC. The modeling maximized the benefits of the  
14 amortization flexibility by capitalizing interest and structuring the loan repayment around existing  
15 and planned debt issuance. In addition, the amount of the loan is much greater than what would  
16 be available through the RIIB. Historically, RIIB loan capacity has been limited to less than \$50  
17 million annually, and if WIFIA funding were not available, NBC would have to use open market  
18 revenue bonds to fund the gap. Lastly, the sheer magnitude of the borrowing through the WIFIA  
19 program will lower ratepayer impact by reducing the costs that would otherwise be associated  
20 with multiple debt issuances.

21  
22 **Q. What is the projected interest rate of the WIFIA loan?**

23 A. The interest rate is determined at loan closing and is based on the State and Local Governments  
24 Series (SLGS) rate for the weighted average maturity of the loan. SLGS are securities that the  
25 Department of the Treasury may issue to state and local government entities to assist with  
26 complying with tax-exempt bond regulations. The daily SLGS rate is found on the Treasury Direct  
27 website. Based on the amortization of the loan as structured for modeling purposes completed in  
28 May 2019, the interest rate was 2.64%. Since that time, long-term interest rates have declined  
29 and it is possible that the interest rate at closing will be lower.

1 **Q. How does the interest rate compare to the projected RIIB or open market interest rates?**

2 A. Based on current market conditions, the WIFIA interest rate is for a 26-year bond with an average  
3 life of 22 years is comparable to a 20-year RIIB loan and lower than what NBC would be able to  
4 achieve through an open market revenue bond issue. For a RIIB loan, based on current market  
5 rates, NBC could expect a subsidized interest rate of 1.80%. To this rate, you must add 50 basis  
6 points for the RIIB service fees and you arrive at a rate of 2.30%. Inclusion of RIIB's 1.0%  
7 origination fee, which on a loan this size would be \$2.7 million, results in an effective interest rate  
8 of 2.37%.

9

10 **Q. What are the applicable schedules and deadlines for this financing?**

11 A. USEPA has planned the closing for August 26, 2019. Therefore, NBC respectfully requests a  
12 decision by the Division prior August 15, 2019, if possible.

13

14 **Q. Does this conclude your pre-filed testimony?**

15 A. Yes.

1 **NARRAGANSETT BAY COMMISSION**

2 **PRE-FILED DIRECT TESTIMONY**

3 **OF KAREN S. D. GRANDE**

4

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

6 A. My name is Karen S. D. Grande, my business address is Locke Lord LLP, 2800 Financial Plaza,  
7 Providence, Rhode Island 02903.

8

9 **Q. Could you please describe your education and employment background?**

10 A. I have a bachelor's degree from Syracuse University and a juris doctor from Suffolk University Law  
11 School. I am a partner in the law firm of Locke Lord LLP and joined the firm in 2006. I have focused  
12 my practice in the area of public finance. When I joined the firm, the name was Edwards Angell  
13 Palmer & Dodge LLP. In 2011, the firm merged and became Edwards Wildman Palmer LLP. Finally,  
14 in 2015 the firm merged into Lock Lord LLP and that name was assumed. I began my law practice  
15 with Tillinghast Licht in 1987 where I became partner in 1994. I have served as bond counsel to  
16 23 of Rhode Island's 39 cities and towns, as well as many state and municipal agencies, which  
17 finance public projects, including public water supply and wastewater projects.

18

19 **Q. Do you hold any special licenses or certifications?**

20 A. I am licensed to practice law in Rhode Island and Massachusetts. Although I have focused my  
21 practice in the area of public finance, neither the State of Rhode Island nor the Commonwealth  
22 of Massachusetts has a procedure for certification of specialization. I am a member of the Rhode  
23 Island Bar Association and an associate member of the Rhode Island Government Finance Officers  
24 Association. I am also a member of the National Association of Bond Lawyers and the sole Rhode  
25 Island member of the American College of Bond Counsel.

26

27

28

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

2 A. I have served as bond counsel to the NBC for many years. In this capacity, I have assisted the NBC  
3 with the issuance of several user fee anticipation notes, revenue notes, loans from the Rhode  
4 Island Infrastructure Bank (RIIB) formerly known as the Rhode Island Clean Water Finance Agency  
5 and revenue bonds.

6

7 **Q. Have you testified previously before the PUC?**

8 A. I have appeared before the PUC in connection with rate filings for the Kent County Water  
9 Authority, the Pawtucket Water Supply Board, the Providence Water Supply Board and the NBC.

10

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

12 A. To provide information related to the NBC's request for Division approval to borrow an original  
13 principal amount not to exceed \$270,000,000 from the United States Environmental Protection  
14 Agency (USEPA) for the purpose of financing the design and construction of certain combined  
15 sewer overflow control facilities (CSO) and to issue revenue bonds evidencing the loan.

16

17 **Q. From a legal framework perspective, how does this loan compare to NBC's other revenue bonds  
18 and borrowings through RIIB?**

19 A. The loan will be secured as a revenue pledge as senior debt, with the same security as NBC's other  
20 revenue bonds. NBC is working with USEPA to finalize the loan agreement as well as the terms  
21 and conditions. In general, the loan agreement parallels the Rhode Island Infrastructure Bank  
22 (RIIB) loan agreements although there are a few additional requirements primarily relating to  
23 compliance with federal regulations. The draft loan agreement is provided as Exhibit KSDG-1. The  
24 bond covenants also parallel those set forth in NBC's Indenture. NBC will also execute a  
25 supplemental indenture as part of this transaction.

26

27 **Q. Did the NBC's Board of Commissioners (Board) authorize this borrowing from USEPA?**

28 A. Yes. The Board approved the Authorizing Resolution at their June 18, 2019 meeting.

1 Q. Does this conclude your testimony?

2 A. Yes.



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**WIFIA LOAN AGREEMENT**

**For Up to [\$268,721,668]**

**With**

**NARRAGANSETT BAY COMMISSION**

**For the**

**CSO PHASE III PROJECT  
(WIFIA – N18132RI)**

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

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## WIFIA LOAN AGREEMENT

**THIS WIFIA LOAN AGREEMENT** (this “**Agreement**”), dated as of [\_\_\_], is by and between **NARRAGANSETT BAY COMMISSION**, a public corporation organized and existing under the laws of the State of Rhode Island (the “**State**”), with an address at One Service Road, Providence, RI 02905 (the “**Borrower**” or the “**Commission**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”).

### RECITALS:

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

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

WHEREAS, the Borrower has requested that the WIFIA Lender make the WIFIA Loan (as defined herein) in a principal amount not to exceed \$[268,721,668] (excluding interest that is capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for WIFIA financial assistance dated February 28, 2019 (the “**Application**”);

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

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

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

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

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

## ARTICLE I DEFINITIONS AND INTERPRETATION

### Section 1. Definitions.

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

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

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

“**Additional Principal Project Contracts**” means (a) any contract, agreement, letter of intent, understanding or instrument listed in Part B of **Schedule 12(n)** (*Principal Project Contracts*) and (b) any other contract, agreement, letter of intent, understanding or instrument entered into by (or on behalf of) the Borrower after the Effective Date with respect to the Project, in the case of this clause (b), (i) pursuant to which the Borrower has payment obligations in excess of \$50,000,000 in the aggregate or (ii) the termination of which could reasonably be expected to have a Material Adverse Effect, but excluding, in the case of this clause (b), any (A) insurance policies, (B) Governmental Approvals and (C) agreements, documents and instruments (1) providing for, governing or evidencing any Permitted Debt and any related Permitted Lien for such Permitted Debt or (2) entered into to consummate any Permitted Investment.

“**Additional Security**” has the meaning set forth in Section 208 (*Additional Security*) of the Indenture.

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

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

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

“**Agency Bonds**” has the meaning set forth in the Indenture.

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

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

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

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

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

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

“**Bond**” has the meaning set forth in the Indenture.

“**Bondholder**” or “**Holder**” has the meaning set forth in the Indenture.

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

“**Borrower Fiscal Year**” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt.

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

“**Business Day**” means any day other than a Saturday, a Sunday or any other day on which offices of the Government are authorized to be closed or on which any Fiduciary (as defined in the Indenture) is authorized or required by law to be closed for business.

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

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, or any successor tax code.

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

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

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

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

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such

Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “**Controlling**” and “**Controlled by**” have meanings correlative to the foregoing.

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

“**Debt Service Payment Commencement Date**” means the earliest to occur of either (a) [September 1, 2031]; or (b) if the Capitalized Interest Period ends pursuant to Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*) due to the occurrence of an Event of Default, the first Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

“**Debt Service Requirement**” has the meaning set forth in the Indenture.

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

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

“**Development Default**” means (a) the Borrower abandons work or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to the Project or (b) the Borrower fails to achieve Substantial Completion of the Project within twenty-four (24) months following the Projected Substantial Completion Date, unless delayed due to Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Final Maturity Date**” means the earlier of (a) September 1, 2046 (or such earlier date as is set forth in an updated **Exhibit F** (*WIFIA Debt Service*) pursuant to Section 8(g) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*)); and (b) the Payment Date

immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

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

“**GAAP**” means generally accepted accounting principles for governmental entities, as established by GASB, in effect from time to time in the United States of America.

“**GASB**” means the Government Accounting Standards Board, or any successor entity with responsibility for establishing accounting rules for governmental entities.

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

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

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

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

“**Indenture**” means that certain Trust Indenture, dated as of April 15, 2004, between the Borrower and the Trustee, as amended or supplemented.

“**Indenture Documents**” means the Indenture, each Supplemental Indenture (including the WIFIA Supplemental Indenture), documentation related to any Additional Security, Qualified Swap Agreements and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

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

“**Interest Payment Date**” means each March 1 and September 1, commencing on the Debt Service Payment Commencement Date.

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

“**Lien**” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest,

or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

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

“**Material Adverse Effect**” means (a) a change in, or effect on (i) the System, the Project or the Revenues or (ii) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, which would, in either case, adversely affect the Borrower’s ability to pay its Obligations when due; or (b) a material adverse effect on (i) the legality, validity or enforceability of any material provision of any Indenture Document or WIFIA Loan Document, (ii) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any Related Document, (iii) the validity, enforceability or priority of the Liens provided under the Indenture Documents on the Pledged Collateral in favor of the Secured Parties or (iv) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document.

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

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

“**NEPA Determination**” means the Finding of No Significant Impact for the Project issued by EPA on [\_\_\_], 20[\_\_\_] in accordance with NEPA.

“**Net Revenues**” has the meaning set forth in the Indenture.

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

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

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

“**Operating Expenses**” has the meaning set forth in the Indenture.

“**Organizational Documents**” means: (a) the constitutional and statutory provisions that are the basis for the existence and authority of the Borrower, including any enabling statutes, ordinances or public charters and any other organic laws establishing the Borrower and (b) the resolutions, bylaws, code of regulations, operating procedures or other organizational documents

of or adopted by the Borrower by which the Borrower, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

“**Outstanding**” has the meaning set forth in the Indenture.

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

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

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

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

“**Payment Period**” means the six (6) month period beginning on [March 1, 2031] and ending on [August 31, 2031], and each succeeding six (6) month period thereafter; provided, however, that if the Debt Service Payment Commencement Date occurs earlier than [September 1, 2031], the first Payment Period shall be the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“**Permitted Debt**” means:

- (a) Existing Indebtedness;
- (b) the WIFIA Loan;
- (c) Additional Senior Obligations;
- (d) Additional Subordinated Obligations; and
- (e) any other Obligations permitted by the Indenture.

“**Permitted Investments**” has the meaning set forth in the Indenture.

“**Permitted Liens**” means:

- (a) Liens imposed pursuant to the WIFIA Loan Documents;
- (b) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(i) (*Affirmative Covenants – Material Obligations*);

(c) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 14(i) (*Affirmative Covenants – Material Obligations*);

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

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

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

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

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

“**Pledged Collateral**” has the meaning assigned to the term “Trust Estate,” as set forth in the Indenture.

“**Principal Payment Date**” means each September 1, commencing on [September 1, 2038].

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

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

“**Project**” means the design and construction of certain combined sewer overflow control facilities and the design of regulator modifications and interceptors that will convey flow from various outfalls to the new tunnel and sewer separation, all in connection with the System and located at various sites in the greater Providence metropolitan area, as further described in **Schedule I** (*Project Definition*).

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

“**Projected Substantial Completion Date**” means [June 30, 2027], as such date may be adjusted in accordance with Section 16(d) (*Reporting Requirements – Construction Reporting*).

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

“**Qualified Swap Agreement**” has the meaning set forth in the Indenture.

“**Qualified Swap Payments**” has the meaning set forth in the Indenture.

“**Rate Covenant**” has the meaning provided in Section 14(a) (*Affirmative Covenants – Rate Covenant*).

“**Reimbursement Obligations**” has the meaning set forth in the Indenture.

“**Related Documents**” means the Indenture Documents, this Agreement, the WIFIA Bond, and the Principal Project Contracts.

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

“**Reserved Revenues**” has the meaning set forth in the Indenture.

“**Revenue Fund**” has the meaning set forth in the Indenture.

“**Revenues**” has the meaning set forth in the Indenture.

“**Secured Obligations**” means the Senior Obligations, Subordinated Obligations, Reimbursement Obligations, Qualified Swap Payments and any payments due from the Borrower or the Trustee on behalf of the Borrower, as a cost, expense or fee under the Qualified Swap Agreement, including, but not limited to, any swap termination payment or indemnification of the counterparty to a Qualified Swap Agreement; provided that (a) in the case of Qualified Swap Payments or other obligations of the Borrower or Trustee under a Qualified Swap Agreement, only to the extent the Borrower’s obligations under the Qualified Swap Agreement are secured by the Pledged Collateral pursuant to the Indenture Documents, and (b) in the case of Reimbursement Obligations, only to the extent the Borrower’s Reimbursement Obligations are secured by the Pledged Collateral pursuant to the Indenture Documents.

“**Secured Parties**” means the Trustee, the WIFIA Lender, other Bondholders, each Counterparty (as defined in the Indenture), and each provider of any Additional Security; provided that (a) in the case of a Counterparty, only to the extent the Borrower’s obligations in respect of Qualified Swap Payments to the Counterparty are secured by the Pledged Collateral pursuant to the Indenture Documents, and (b) in the case of a provider of Additional Security, only to the extent the Borrower’s Reimbursement Obligations to such provider are secured by the Pledged Collateral pursuant to the Indenture Documents.

“**Senior Obligations**” means (a) Bonds (as defined in the Indenture) other than Subordinated Obligations and (b) any other obligations secured and permitted to be secured under the Indenture by a senior Lien on the Pledged Collateral.

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

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

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

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

“**Subordinated Obligations**” means Subordinated Bonds, as defined in the Indenture.

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

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

“**Supplemental Indenture**” has the meaning set forth in the Indenture and includes the WIFIA Supplemental Indenture.

“**System**” has the meaning set forth in the Indenture.

“**System Accounts**” means those funds and accounts established pursuant to Section 502 (*Establishment of Funds and Accounts*) of the Indenture.

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

“**Trustee**” has the meaning set forth in the Indenture.

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

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

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

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

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

“**WIFIA Bond Continuing Disclosure Certificate**” has the meaning provided in Section 11(a)(xxvii) (Conditions Precedent – Conditions Precedent to Effectiveness).

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

“**WIFIA Debt Service Account**” means the debt service account established for the benefit of the WIFIA Lender in accordance with the terms of the Indenture and the WIFIA Supplemental Indenture.

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

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

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

“**WIFIA Loan**” means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed [\$268,721,668] (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by the Borrower.

“**WIFIA Loan Documents**” means this Agreement, the WIFIA Bond and the Indenture Documents (excluding documentation related to Additional Security, Qualified Swap Agreements and any Supplemental Indenture other than the WIFIA Supplemental Indenture).

“**WIFIA Supplemental Indenture**” means the Twenty-Sixth Supplemental Indenture, dated [\_\_\_\_\_], between the Borrower and the Trustee.

Section 2. Interpretation.

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE II THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed \$[268,721,668] (excluding any interest that is capitalized in accordance with the terms hereof). WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*).

### Section 4. Disbursement Conditions.

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

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

(c) At the time of any disbursement, the sum of all prior disbursements of WIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current Federal Fiscal Year set forth in the Anticipated

WIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Subject to this Section 4 (*Disbursement Conditions*), any scheduled disbursement (as reflected in the Anticipated WIFIA Loan Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall automatically roll forward to be available in the succeeding Federal Fiscal Year, having the effect of automatically updating the Anticipated WIFIA Loan Disbursement Schedule without need for the WIFIA Lender's approval. The Borrower may also amend the Anticipated WIFIA Loan Disbursement Schedule by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be granted or denied in the WIFIA Lender's sole discretion.

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

Section 6. Interest Rate. The interest rate with respect to the Outstanding WIFIA Loan Balance (the "**WIFIA Interest Rate**") shall be [ ] percent ([ ]%) per annum. Interest will accrue and be computed on the Outstanding WIFIA Loan Balance (as well as on any past due interest) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, in the event of an Event of Default, the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate, in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and, in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (x) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement and (y) the Outstanding WIFIA Loan Balance has been paid in full in cash.

Section 7. Security and Priority; Flow of Funds.

(a) As security for the WIFIA Loan, the Borrower shall pledge, assign and grant to the WIFIA Lender, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the WIFIA Lender, Liens on the Pledged Collateral in accordance with the provisions of the Indenture Documents and shall deliver to the WIFIA Lender, as the registered owner or Bondholder, the WIFIA Bond. The WIFIA Loan shall constitute a Bond for purposes of the Indenture, entitled to all of the benefits of a Bond under the Indenture, and shall be secured by the Liens on the Pledged Collateral, which Liens shall at all times be (i) *pari passu* in right of payment and right of security with the Liens on the Pledged Collateral for the benefit of the other Holders of Bonds and (ii) senior in right of payment and right of security to the Liens on the Pledged Collateral for the benefit of the Holders of Subordinated Obligations. Except for Permitted Liens, the Pledged Collateral will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, of equal rank with or senior to the pledge of the Borrower created under the Indenture Documents.

(b) The Indenture provides that all Revenues, except for certain exclusions as set forth in Section 504 (*Revenue Fund*) of the Indenture, and certain other moneys shall be

deposited in the Revenue Fund and applied in accordance with the requirements specified in Section 504 (*Revenue Fund*) of the Indenture. A copy of such section, as of the Effective Date, is attached hereto as **Schedule VI** (*Flow of Funds*).

(c) The Indenture provides that, during the continuance of an Event of Default (as defined in the Indenture), moneys, Reserve Deposits (as defined in the Indenture), Additional Security, if any, and funds and such Revenues and income therefrom held by and available to the Trustee, including as a result of the exercise of remedies by the Trustee on behalf of the Holders of Obligations, shall be applied as set forth in Section 702 (*Application of Revenues and Other Moneys after Default*) of the Indenture. A copy of such section, as of the Effective Date, is attached hereto as **Schedule VII** (*Flow of Funds Following Default*).

#### Section 8. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the WIFIA Loan by making payments in accordance with the provisions of this Agreement, the WIFIA Bond, and the Indenture Documents, in the case of interest, on each Interest Payment Date, and in the case of principal, on each Principal Payment Date, and in each case, on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of the acceleration of the maturity of the WIFIA Loan or otherwise); provided, that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment in respect of the WIFIA Bond shall be treated as a payment in respect of the WIFIA Loan and any prepayment of principal in respect of the WIFIA Loan shall be treated as a redemption in respect of the WIFIA Bond. With respect to the WIFIA Loan (and the corresponding WIFIA Bond), interest shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as has been approved by the WIFIA Lender) have been made available to the Borrower for use on the Project in accordance with Section 4 (*Disbursement Conditions*).

(b) Capitalized Interest Period. No payment of the principal of or interest on the WIFIA Loan is required to be made during the Capitalized Interest Period. Interest on amounts capitalized pursuant to this Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*) shall commence on the date such interest is added to the principal balance of the WIFIA Loan (and corresponding WIFIA Bond) during the Capitalized Interest Period. On each March 1 and September 1 occurring during the Capitalized Interest Period, interest accrued on the WIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding WIFIA Loan Balance. Within thirty (30) days after the end of the Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower stating the Outstanding WIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other WIFIA Loan Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the Borrower by the WIFIA Lender that an Event of Default has occurred, in which case the provisions of this Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*) shall no longer apply and payments of principal and interest shall be currently due and payable in accordance with the terms hereof and interest shall no longer be capitalized. For

purposes of this subsection, an Event of Default under Section 17(a)(v) (*Events of Default and Remedies – Cross Default with Other Financing Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of principal of, interest on or redemption price of Senior Obligations when due, regardless of whether the holders of the applicable Obligations or the Trustee for the applicable obligations, or any legal order, has waived, permitted deferral of, or forgiven any such payment.

(c) Payment of WIFIA Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay WIFIA Debt Service in the amounts set forth in respect of such Payment Date on **Exhibit F** (*WIFIA Debt Service*), as the same may be revised as provided in Section 8(g) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*), which payments shall be made in accordance with Section 8(d) (*Payment of Principal and Interest – Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement (and the WIFIA Bond, which payments shall not be duplicative) shall be made by wire transfer on or before each Payment Date in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions set forth in **Schedule V** (*WIFIA Payment Instructions*), as modified in writing from time to time by the WIFIA Lender. The Borrower may make any such payment or portion thereof (or direct the Trustee to make such payment) with funds then on deposit in the WIFIA Debt Service Account.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the WIFIA Loan and corresponding WIFIA Bond are subject to prepayment prior to maturity thereof or shall be accelerated pursuant to the terms of the Indenture).

(f) WIFIA Bond. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the Effective Date, the WIFIA Bond substantially in the form of **Exhibit A** (*Form of WIFIA Bond*), having a maximum principal amount (excluding capitalized interest) of \$[268,721,668] (subject to increase or decrease as herein provided), bearing interest at the rate set forth in Section 6 (*Interest Rate*) and having principal and interest payable on the same dates set forth herein.

(g) Adjustments to Loan Amortization Schedule.

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

Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(ii) The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** (*WIFIA Debt Service*) from time to time, in accordance with the principles set forth below in this clause (ii), to reflect (A) any change to the Outstanding WIFIA Loan Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (C) such other information as the WIFIA Lender may determine is necessary for administering the WIFIA Loan and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any partial prepayments of the Outstanding WIFIA Loan Balance pursuant to Section 9 (*Prepayment*) shall be applied in accordance with Section 9(d) (*Prepayment – General Prepayment Instructions*). Any adjustments or revisions to the Loan Amortization Schedule as a result of changes in the Outstanding WIFIA Loan Balance other than prepayments shall be applied to reduce future payments due on the WIFIA Bond in inverse order of maturity. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. The WIFIA Lender shall provide the Borrower and the Trustee with a copy of **Exhibit F** (*WIFIA Debt Service*) as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents.

Section 9. Prepayment.

(a) [RESERVED].

(b) Optional Prepayments. The Borrower may prepay the WIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the WIFIA Lender such principal amount of the WIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the WIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 9(b) (*Prepayment – Optional Prepayments*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) Borrower's Certificate. Each prepayment pursuant to this Section 9 (*Prepayment*) shall be effected pursuant to the WIFIA Supplemental Indenture and accompanied

by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(d) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or its representative at the principal office of the WIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender may make a notation on **Exhibit F (WIFIA Debt Service)** indicating the amount of principal of and interest on the WIFIA Loan then being prepaid. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F (WIFIA Debt Service)** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. All such partial prepayments of principal shall be applied to reduce future payments due on the WIFIA Loan in inverse order of maturity. If such funds have not been so paid on the prepayment date, such principal amount of the WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 10. Fees and Expenses.

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

(i) a servicing set-up fee equal to \$20,430 (the "**Servicing Set-Up Fee**"), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date);

(ii) an annual construction period servicing fee equal to \$20,430 (the "**Construction Period Servicing Fee**"), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period (including the Federal Fiscal Year during which the Substantial Completion Date occurs); provided, that the initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date), in a pro-rated amount equal to \$[\_\_\_\_]; and

(iii) an annual operating period servicing fee equal to \$7,660 (the "**Operating Period Servicing Fee**"), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Maturity Date; provided, that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Maturity Date.

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

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

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

### ARTICLE III CONDITIONS PRECEDENT

#### Section 11. Conditions Precedent.

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

(i) The Borrower shall have duly executed and delivered to the WIFIA Lender this Agreement and the WIFIA Bond, each in form and substance satisfactory to the WIFIA Lender, and the Authenticating Agent (as defined in the Indenture) shall have authenticated the WIFIA Bond.

(ii) The Borrower shall have delivered to the WIFIA Lender certified, complete, and fully executed copies of each Indenture Document (excluding documentation related to Additional Security and Qualified Swap Agreements), together

with any amendments, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the WIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided, that for purposes of this Section 11(a)(ii) (*Conditions Precedent – Conditions Precedent to Effectiveness*), any such waiver shall be subject to the WIFIA Lender’s consent in its sole discretion).

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

(iv) The Borrower shall have provided a certificate from the Borrower’s Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** (*Certification Regarding Debarment, Suspension and other Responsibility Matters*) with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995).

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

(vi) The Borrower shall have delivered to the WIFIA Lender a certificate from the Borrower’s Authorized Representative in the form attached hereto as **Exhibit I** (*Form of Borrower’s Officer’s Certificate*) (A) as to the satisfaction of certain conditions precedent set forth in this Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) as required by the WIFIA Lender, (B) designating the Borrower’s Authorized Representative, and (C) confirming such person’s position and incumbency.

(vii) The Borrower shall have demonstrated to the WIFIA Lender’s satisfaction that as of the Effective Date the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date.

(viii) The Borrower shall have provided to the WIFIA Lender certified, complete, and fully executed copies of each Existing Principal Project Contract, together

with any amendments, waivers or modifications thereto, and each such agreement shall be in full force and effect and in form and substance satisfactory to the WIFIA Lender.

(ix) The Borrower shall have demonstrated to the WIFIA Lender's satisfaction (A) that it has obtained all Governmental Approvals required (1) as of the Effective Date in connection with the Project and (2) to execute and deliver, and perform its obligations under the WIFIA Loan Agreement and (B) that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach or revocation).

(x) The Borrower shall have delivered to the WIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date; (C) reflect principal amortization and interest payment schedules acceptable to the WIFIA Lender, (D) demonstrate that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project; and (E) otherwise be in form and substance acceptable to the WIFIA Lender.

(xi) The Borrower shall have (A) provided evidence satisfactory to the WIFIA Lender that the Borrower is authorized, pursuant to Sections 46-25-5, 46-25-58 and 46-25-59 of the Rhode Island General Laws, to pledge, assign, and grant the Liens on the Pledged Collateral purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Pledged Collateral (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents or required pursuant to applicable law, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Related Documents or any instruments, certificates or financing statements in connection with the foregoing.

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

(xiii) The Borrower shall have (A) provided evidence satisfactory to the WIFIA Lender of compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project and (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the WIFIA Lender of such compliance upon request by the WIFIA Lender.

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

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

(xvi) Each of the insurance policies obtained by the Borrower in satisfaction of the conditions in Section 14(f) (*Affirmative Covenants – Insurance and Condemnation*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(xvii) The Borrower shall have provided to the WIFIA Lender evidence that the Borrower is duly organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including a copy of the Borrower's Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents shall be certified by the Borrower's Authorized Representative to be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate.

(xviii) The Borrower shall have provided to the WIFIA Lender (i) an executed copy of the WIFIA Supplemental Indenture, (ii) all other resolutions, ordinances, or supplements (as the case may be), if any, authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the WIFIA Loan Documents to which it is a party, and (iii) all further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the WIFIA Loan Documents, and in each case such documents have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only documents required and adopted by the Borrower relating to the matters described therein.

(xix) [RESERVED].

(xx) The Borrower shall have received certified, complete and fully executed copies of each performance security instrument (if any) required to be delivered to the Borrower pursuant to any Principal Project Contract as of the Effective Date, each of which performance security instruments shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract and (B) in full force and effect.

(xxi) The representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct, as of the Effective Date, except to

the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxii) The Borrower shall have provided the WIFIA Lender with evidence satisfactory to the WIFIA Lender that, as of the Effective Date (A) the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (B) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

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

(xxiv) [RESERVED].

(xxv) The Borrower shall have provided the WIFIA Lender with a CUSIP number for the WIFIA Loan for purposes of monitoring through EMMA.

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

(xxvii) The Borrower shall have duly executed and delivered to the WIFIA Lender the continuing disclosure certificate with respect to the WIFIA Bond in form and substance reasonably satisfactory to the WIFIA Lender (the “**WIFIA Bond Continuing Disclosure Certificate**”).

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

(i) The Borrower shall have provided to the WIFIA Lender evidence satisfactory to the WIFIA Lender that (i) the aggregate amount of all disbursements of the WIFIA Loan (including the requested disbursement but excluding any interest that is capitalized in accordance with the terms hereof) shall not exceed the amount of Eligible Project Costs paid or incurred by the Borrower and (ii) the Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.

(ii) The Borrower shall have provided all information required as of the relevant disbursement date pursuant to Section 16(a) (*Reporting Requirements – Financial Reporting*) and Section 16(b) (*Reporting Requirements – Annual Financial Statements*).

(iii) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender certified, complete and fully executed copies of any Indenture Documents entered into after the Effective Date.

(iv) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have provided certified copies of all Principal Project Contracts (including, in each case, any amendment, modification or supplement thereto) entered into after the Effective Date.

(v) The Borrower shall have demonstrated to the WIFIA Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect (including approval from the Rhode Island Coastal Resources Management Council for those construction activities subject to its regulatory authority).

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

(vii) At the time of, and immediately after giving effect to, any disbursement of WIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder shall have occurred and be continuing and (B) no event of default or default that, with the giving of notice or the passage of time or both, would constitute an event of default, in each case, under any other Related Document, shall have occurred and be continuing.

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

(ix) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since February 28, 2019.

(x) The Borrower shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and the WIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition.

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

(xii) To the extent not previously received by the Borrower, the Borrower shall have received complete and fully executed copies of each performance security instrument (if any) required to be delivered to the Borrower pursuant to any Principal Project Contract as of the date of disbursement of the WIFIA Loan, each of which performance security instruments shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract and (B) in full force and effect.

(xiii) The Borrower shall have provided the WIFIA Lender with evidence satisfactory to the WIFIA Lender that, as of the relevant disbursement date, the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

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

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

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

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

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a

party has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

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

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by any of the foregoing documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of any of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed; provided, however, that, in respect of this clause (ii), the Borrower may require approval of rate increases from the Rhode Island Public Utilities Commission.

(f) Litigation. There is no action suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the System (including the Project) or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the System (including the Project), the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge after reasonable and diligent inquiry, there are no actions of the type described above pending or, threatened against or affecting any of the Principal Project Parties, except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Revenues in amounts sufficient to meet the Loan Amortization Schedule. The Borrower is not in

default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents and Sections 46-25-5, 46-25-58 and 46-25-59 of the Rhode Island General Laws establish, in favor of the Trustee for the benefit of the WIFIA Lender, the valid and binding Liens on the Pledged Collateral that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Pledged Collateral except for the Permitted Liens arising by operation of law, and not *pari passu* with any obligations other than the Senior Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Pledged Collateral pursuant to and in accordance with the Indenture Documents, and the security interests created in the Pledged Collateral have been duly perfected under applicable State law. The Borrower is not in breach of any covenants set forth in Section 14 (*Affirmative Covenants*) or in the Indenture Documents with respect to the matters described in such Section. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents (including UCC-1 financing statements) and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable and perfected Lien on the Pledged Collateral in favor of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid.

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

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

(j) Compliance with Federal Requirements. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable federal laws, rules, regulations and requirements, including (i) 40 U.S.C. §§ 3141-3144, 3146, and 3147 and regulations relating thereto (Davis-Bacon Act Requirements), (ii) 33 U.S.C. § 3914 (relating to American iron and steel products), and (iii) those set forth in **Exhibit E** (*Compliance With Laws*). To ensure such compliance, the Borrower has included in all contracts with respect to the Project requirements that its contractor(s) shall comply with applicable federal

laws, rules, regulations, and requirements set forth in this Section 12(j) (*Representations and Warranties of Borrower – Compliance with Federal Requirements*) and follow applicable federal guidance, and has required that the contractor(s) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by applicable federal laws, rules, regulations and requirements set forth in this Section 12(j) (*Representations and Warranties of Borrower – Compliance with Federal Requirements*). With respect to the Davis-Bacon Act Requirements, the Borrower has inserted in full in all contracts relating to the Project the contract clauses set forth in the Code of Federal Regulations, Title 29 Part 5.5, and required and ensured that its contractor(s) have inserted such clauses in all subcontracts and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.

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

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

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

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

(o) Information. The information furnished by or on behalf of the Borrower to the WIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided, that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model and the assumptions therein) except that the Base Case Financial Model (i) is based on assumptions that were reasonable in all material respects when made, (ii) was prepared in good faith and (iii) represents, in the opinion of the Borrower, reasonable projections at the time made of the future performance of the System and the Project (it being understood that projections are not to be considered or regarded as facts and contain significant uncertainties and contingencies, many of which are beyond the control of the Borrower, that actual results may differ significantly from projections and that no representation is made with respect to the accuracy of such projections).

(p) OFAC; Anti-Corruption Laws. The Borrower (i) is not in violation of nor, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act; (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; and (ii) is not a Person (A) that is charged with, or has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws; or (B) that has been, since the date that is five (5) years prior to the Effective Date, convicted of any violation of, has been subject to criminal or civil penalties pursuant to, had any of its property seized or forfeited under, or has entered into any agreement with the Government or a state or local government related to violations of any such laws. Neither the Borrower nor, to the knowledge of the Borrower after reasonable and diligent inquiry, any Principal Project Party, is a Person (i) that is named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list); or (ii) with whom any U.S. Person (as defined by the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law.

(q) Compliance with Law. The Borrower has, and to the Borrower’s knowledge, each of the Borrower’s contractors and subcontractors at all tiers with respect to the Project, has complied in all material respects with, and has conducted (or caused to be conducted) its management and operation of the System (including the Project) in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 12(r) (*Representations and Warranties of Borrower – Environmental Matters*)), including those set forth on **Exhibit E** (*Compliance With Laws*), to the extent applicable. To the Borrower’s knowledge after reasonable and diligent inquiry, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws as they relate to the Project, including those set forth on **Exhibit E** (*Compliance With Laws*), to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower or, to the Borrower’s knowledge after reasonable and diligent inquiry and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

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

(s) Sufficient Rights. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the System (including the Project), in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the System (including the Project). As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower sufficient to enable the Borrower to own, construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party.

(t) Insurance. The Borrower is in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower's self-insurance program is actuarially sound and the Borrower has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower's self-insurance program is actuarially sound.

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

(v) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the WIFIA Lender pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial

condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

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

(x) Taxes. The Borrower is not required to file tax returns in respect of income tax with any Governmental Authority.

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

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

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

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

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

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

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

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

## ARTICLE V COVENANTS

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

(a) Rate Covenant. The Borrower shall fix, charge and collect rates, fees and charges for the System during each Borrower Fiscal Year which:

(i) comply with the requirements specified in Section 603 (*Covenant as to Rates and Charges*) of the Indenture, which requirements are hereby incorporated herein and a copy of such section, as of the Effective Date, is attached hereto as **Schedule VIII (Rate Covenant)**; and

(ii) will be at least sufficient to yield, in each Borrower Fiscal Year, Net Revenues equal to at least one hundred twenty-five percent (125%) of the Debt Service Requirement during such Borrower Fiscal Year with respect to all Outstanding Obligations (including Agency Bonds based on debt service net of any interest rate subsidy), as of the first day of such fiscal year (together with clause (i), the "**Rate Covenant**").

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

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

(d) Prosecution of Work; Verification Requirements.

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

(ii) The Borrower shall ensure that each Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to the Borrower and shall ensure that any letter of credit provided pursuant to any Principal Project Contract meets the requirements therefor set forth in such Principal Project Contract.

(iii) The Borrower shall comply with the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320 (relating to debarment).

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the System (including, but not limited to, the Project) (A) in a reasonable and prudent manner and (B) substantially in accordance with the information submitted by the Borrower pursuant to Section 16(a) (*Reporting Requirements – Financial Reporting*) (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the System (including the Project)) and (ii) maintain the System (including the Project) in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance and Condemnation. The Borrower shall comply with the requirements specified in Section 606 (*Insurance and Condemnation*) of the Indenture, which requirements are hereby incorporated herein. The Borrower shall cause all liability insurance policies (if any) that it maintains (and, during the Construction Period, that are maintained by any Principal Project Party), other than workers' compensation insurance, to reflect the WIFIA Lender as an additional insured. All such policies shall be available at all reasonable times for inspection by the WIFIA Lender, its agents and representatives.

(g) Permitted Investments. The Borrower shall comply with the requirements specified in Section 514 (*Investments*) of the Indenture, which requirements are hereby incorporated herein.

(h) Compliance With Laws. The Borrower shall, and shall require its contractors and subcontractors at all tiers with respect to the Project to, comply in all material respects with all applicable federal, State and local laws, rules, regulations and requirements, including without limitation (i) 40 U.S.C. §§ 3141-3144, 3146, and 3147 (Davis-Bacon Act requirements), (ii) 33 U.S.C. § 3914 (relating to American iron and steel products), and (iii) all items set forth in **Exhibit E** (*Compliance With Laws*). To ensure such compliance, the Borrower shall include in all contracts with respect to the Project requirements that its contractor(s) shall comply with applicable federal laws, rules, regulations, and requirements set forth in this Section 14(h) (*Affirmative Covenants – Compliance With Laws*) and follow applicable federal guidance, and shall require that the contractor(s) incorporate in all subcontracts (and cause all

subcontractors to include in all lower tier subcontracts) such terms and conditions as are required to be incorporated therein by applicable federal laws, rules, regulations and requirements set forth in this Section 14(h) (*Affirmative Covenants – Compliance With Laws*). With respect to the Davis-Bacon Act Requirements, the Borrower shall insert in full in all contracts relating to the Project the contract clauses set forth in the Code of Federal Regulations, Title 29 Part 5.5, and require and ensure that its contractor(s) insert such clauses in all subcontracts with respect to the Project and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.

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

(j) [RESERVED].

(k) SAM Registration. The Borrower shall obtain and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry).

(l) DUNS Number. The Borrower shall obtain and maintain from Dun & Bradstreet (or a successor entity) a Data Universal Numbering System Number (a “**DUNS Number**”).

(m) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the System (including the Project) or any part thereof, the Borrower shall comply with the requirements specified in Section 605 (*Operation, Maintenance and Reconstruction*) of the Indenture and Section 606 (*Insurance and Condemnation*) of the Indenture.

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

(o) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (i) Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (ii) Project-related costs, WIFIA Loan requisitions submitted, WIFIA Loan proceeds received, payments made by the Borrower with regard to the Project, other sources of

funding for the Project (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in year 2019 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the WIFIA Loan, to the Administrator, or the designee thereof, for any such project or programmatic audit.

(p) Access; Records.

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

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

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

(a) Indebtedness. The Borrower shall not issue any Obligations, unless the conditions described in this Section 15(a) (*Negative Covenants – Indebtedness*) are satisfied:

(i) The Borrower shall comply with the requirements specified in Section 205 (*General Provisions for Issuance of Bonds*) of the Indenture and Section 607 (*Creation of Liens, Other Indebtedness*) of the Indenture, which requirements are hereby incorporated herein and a copy of each such section, as of the Effective Date, is attached hereto as **Schedule IX** (*Additional Bonds Test*); and

(ii) The Borrower has demonstrated that, for the three (3) full Borrower Fiscal Years following issuance of the Obligations (including the Borrower Fiscal Year in which such Obligations are issued), the estimated annual Net Revenues for each such Borrower Fiscal Year together with the amounts of Reserved Revenues, if any, available in such fiscal year (as calculated by an Authorized Officer (as defined in the Indenture) at the time of the issuance of such Obligations but without double-counting the amount of Reserved Revenues included in the estimated Net Revenues) will be at least equal to one hundred twenty-five percent (125%) of (A) the Debt Service Requirement for all Outstanding Obligations (including Agency Bonds based on debt service net of any interest rate subsidy) for such fiscal year less (B) the amount, if any, of proceeds available or projected to be available to pay Principal Installments (as defined in the Indenture) and interest becoming due in such fiscal year on Outstanding Obligations or projected to be Outstanding as of the first day of such fiscal year.

(iii) Upon the incurrence of Additional Senior Obligations, the Borrower shall provide to the WIFIA Lender a certificate signed by the Borrower's Authorized Representative, (A) specifying the closing date with respect to such proposed indebtedness and (B) confirming that such proposed satisfies the applicable requirements set forth in this Section 15(a) (*Negative Covenants – Indebtedness*).

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender: (i) release all or substantially all the Pledged Collateral from the Lien of the Indenture or otherwise extinguish or materially impair (as to the WIFIA Loan or any other Secured Obligations the proceeds of which are applied to fund Total Project Costs) the pledged source of repayment granted pursuant to the Indenture; (ii) extinguish the Rate Covenant; (iii) amend, modify or supplement any Indenture Document in a manner that could reasonably be expected to disproportionately affect the WIFIA Lender in connection with the WIFIA Loan compared to other holders of Obligations; (iv) amend, modify or supplement any Indenture Document in a manner that would affect the order of priority in which funds are to be applied to the Operation and Maintenance Account and the Debt Service Fund (as defined in the Indenture) for the Bonds as set forth in Section 504 (*Revenue Fund*) of the Indenture as of the Effective Date; (v) assign any Related

Document; or (vi) terminate, replace, amend, modify or supplement any Principal Project Contract in a manner that could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Project, the Pledged Collateral, the Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Principal Project Contract, unless pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) Restricted Payments and Transfers. The Borrower shall not permit Revenues or other assets of the System, or any funds in any accounts held under the Indenture or in any other fund or account held by or on behalf of the Borrower in respect of the System, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of the System, except with the consent of the WIFIA Lender, which consent shall be in the WIFIA Lender's sole discretion.

(e) No Prohibited Sale, Lease or Assignment. The Borrower shall comply with requirements specified in Section 604 (*Sale, Lease or Encumbrance of System*) of the Indenture, which requirements are hereby incorporated herein. The Borrower reasonably expects that no portion of the Project will be sold prior to the Final Maturity Date of the WIFIA Loan.

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

(g) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge into another Person except in accordance with Section 604 (*Sale, Lease or Encumbrance of System*) of the Indenture.

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

(i) OFAC Compliance. The Borrower shall not: (i) violate (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act, (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State, or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or (ii) be a Person (A) that is charged with, or that has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws, (B) that is convicted of any violation of, is subject to civil or criminal penalties pursuant to, has any of its property seized or forfeited under, or enters into any agreement with the Government or a state or local government related to violations of, any such laws, (C) that is named on the list of "Specially Designated Nationals and Blocked Persons" maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State

(or any successor Government office or list), (D) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law, (E) that is owned, Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this clause (ii), or (F) that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States of America and the jurisdiction where the Person resides, is domiciled or has its principal place of business. The Borrower shall not knowingly make a payment to any Principal Project Party that is a Person (A) that is named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list) or (B) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law.

(j) Hedging. Other than Qualified Swap Agreements expressly permitted under the Indenture, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, “cap” or “collar” transactions, futures, or any other hedging transaction, in each case, payable from the Pledged Collateral.

Section 16. Reporting Requirements.

(a) Financial Reporting. The Borrower shall provide the WIFIA Lender with the following:

(i) unless included as part of the annual budget pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*) or the annual financial statements pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*), an analysis of operating revenues and expenses, including a description of the status of all revenues securing the WIFIA Bond and of any operating expenses in excess of budget, not later than one hundred eighty (180) days after the end of each Borrower Fiscal Year;

(ii) a copy of the annual budget of the Borrower, not later than fifteen (15) days after its adoption;

(iii) unless included as part of the annual budget pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*) or the annual financial statements pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*), a schedule of current and projected short-term and long-term debt service, concurrently with each annual budget provided pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*); and

(iv) unless included as part of the annual budget pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*) or the annual financial statements pursuant to Section 16(b) (*Reporting Requirements – Annual*

*Financial Statements*), a schedule of capital replacement reserves, concurrently with each annual budget provided pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*).

(b) Annual Financial Statements. The Borrower shall post to EMMA, no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year:

(i) a copy of the audited income statement and balance sheet of the Borrower as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and (C) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein); and

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

(c) Final Design Specifications. The Borrower shall deliver, upon the request of the WIFIA Lender the final designs, plans and specifications relating to the development and construction of the Project.

(d) Construction Reporting. The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation or other information as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information. During the period through Substantial Completion of the Project, the Borrower shall furnish to the WIFIA Lender, on a quarterly basis, a report on the status of the Project, substantially in the form of **Exhibit K** (*Form of Quarterly Report*). The report shall be executed by the Borrower's Authorized Representative and, for any quarter, shall be delivered to the WIFIA Lender not later than the fifteenth (15<sup>th</sup>) day of the following quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date later than the Projected Substantial Completion Date, the Borrower shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the

reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the System (if any), and that the new date could not reasonably be expected to result in a Material Adverse Effect or a material and adverse effect on the Project or the System. The Projected Substantial Completion Date shall automatically be adjusted to the date specified by the Borrower in its report unless the WIFIA Lender objects to the adjustment in writing to the Borrower within sixty (60) days following receipt of the Borrower's report on the basis that the Borrower's report does not demonstrate the matters specified in this Section 16(d) (*Reporting Requirements – Construction Reporting*).

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

(f) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the WIFIA Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than ten percent (10%), which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the System. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the WIFIA Lender's security or the Borrower's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

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

(h) Continuing Disclosure; Notices.

(i) Continuing Disclosure. The Borrower shall comply with its continuing disclosure obligations under (A) the WIFIA Bond Continuing Disclosure Certificate and (B) the WIFIA Supplemental Indenture or other documentation for its other

Obligations and, in the case of clauses (A) and (B) above, and shall post such information on EMMA with an email to the WIFIA Lender that includes a link to the posting of the relevant document on EMMA. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section [●] of the WIFIA Bond Continuing Disclosure Certificate, the Borrower's Authorized Representative shall provide a statement to the WIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto. The Borrower shall also provide the WIFIA Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters disclosed pursuant to this Section 16(h)(i) (*Reporting Requirements – Continuing Disclosure; Notices*).

(ii) Certain Material Events. The Borrower shall, within ten (10) Business Days after the Borrower learns of the occurrence, give the WIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event: (A) any Default or Event of Default; (B) (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim; and (2) any judgments against the Borrower with award amounts in excess of \$50,000,000, either individually or in the aggregate; and (C) any material notice of violation or material change in finding under any Environmental Law related to the Project or any material changes to the NEPA Determination.

(iii) Substantial Completion. The Borrower shall give the WIFIA Lender notice of the occurrence of Substantial Completion within ten (10) Business Days of its occurrence, such notice to be provided in the form set forth in **Exhibit J** (*Form of Certificate of Substantial Completion*).

(iv) 2 C.F.R. § 180.350 Notices. The Borrower shall provide the WIFIA Lender with a copy of any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335.

(v) The Borrower shall give the WIFIA Lender notice, within ten (10) Business Days after the Borrower learns of the occurrence, of any event or condition, including without limitation any notice of breach from a contract counterparty or any holder of any Obligations, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project or the System.

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

(j) Annual Officer's Certificate. The Borrower shall furnish to the WIFIA Lender, concurrently with the delivery of the same to the Trustee, a copy of the certificate required to be delivered to the Trustee pursuant to Section 603(4) (*Covenant as to Rates and Charges*) of the Indenture; provided that the failure of the Borrower to deliver such certificate to the WIFIA Lender concurrently with the delivery to the Trustee shall not constitute a Default or Event of Default unless (i) the WIFIA Lender shall have provided the Borrower with written notice of such failure, and (ii) the Borrower shall have failed to deliver such certificate to the WIFIA Lender within thirty (30) days after the date of delivery of such notice.

## ARTICLE VI EVENTS OF DEFAULT

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

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

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

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Bond or any other WIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Lender of written notice thereof or (B) the Borrower's knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the WIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided, that no Event of Default shall be deemed to have occurred under this clause (iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(h) (*Representations and Warranties of*

*Borrower – No Debarment*), Section 12(j) (*Representations and Warranties of Borrower – Compliance with Federal Requirements*), Section 12(p) (*OFAC; Anti-Corruption Laws*), or Section 12(aa) (*Representations and Warranties of Borrower – Patriot Act*), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured, (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation, and (F) the Borrower diligently pursues such cure during such thirty (30) day period.

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

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

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

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

(viii) Invalidity of WIFIA Loan Documents and Indenture Documents. (A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective or to grant a valid and binding security interest on any material portion of the Pledged Collateral other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby; or (C) any event occurs that results in the material impairment in the perfection or priority of the WIFIA Lender's security interest in the Pledged Collateral or in the value of such Pledged Collateral.

(ix) [RESERVED].

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

(xi) Default Under Principal Project Contracts. The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract or any Principal Project Contract shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this clause if, in the case of any termination of a Principal Project Contract, the Borrower replaces such Principal Project Contract with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness and experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the WIFIA Lender) and (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (2) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the WIFIA Lender) and (3) effective as of the date of termination of the Principal Project Contract being replaced.

(xii) Cessation of System Operations. Following the Substantial Completion Date, operation of the System shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated).

(xiii) Failure to Maintain Legal Structure. The Borrower shall fail to maintain its existence as a public corporation organized and existing under its Organizational Documents and the laws of the State.

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

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

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

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

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

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

(v) subject to the provisions of the Indenture, the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the WIFIA Bond or the other WIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the WIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents. The WIFIA Lender acknowledges that it has no right to accelerate the Outstanding amount of the WIFIA Loan except as permitted under the Indenture.

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

## ARTICLE VII MISCELLANEOUS

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

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

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

equity solely by reason of the WIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the WIFIA Lender with respect to the WIFIA Loan made pursuant to this Agreement.

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

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

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

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

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

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

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

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

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

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

Section 31. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:<sup>1</sup>

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

If to Borrower: Narragansett Bay Commission  
[Address]  
Attention: [ ]  
Email: [ ]

If to Trustee: [Name]  
[Address]  
Attention: [ ]  
Email: [ ]

Unless otherwise instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email to the email address noted above for the WIFIA Lender.

<sup>1</sup> Note to Borrower: Please provide notice information, including notice details for Trustee and other relevant parties.

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

Section 32. Indemnification. The Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender and any official, employee, agent or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the WIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 32 (*Indemnification*) is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32 (*Indemnification*). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the WIFIA Lender shall assert, and each of the Borrower and the WIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the WIFIA Loan or the use of the proceeds thereof, provided, that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due

to any Indemnitee under this Section 32 (*Indemnification*) shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 (*Indemnification*) shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32 (*Indemnification*)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

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

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

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

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

*[Signature pages follow]*

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

**NARRAGANSETT BAY COMMISSION**

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

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

By: \_\_\_\_\_  
Name: Andrew R. Wheeler  
Title: Administrator

**SCHEDULE I****PROJECT DEFINITION**

The Project is more particularly described in the following Borrower contracts:

1. Contract 30800 – CSO Phase III Facilities Design and Land Acquisition and Construction;
2. Contract 30801 – CSO Phase III Facilities Pawtucket Tunnel and Pumpstation;
3. Contract 30802 – CSO Phase III Facilities Tunnel Pump Station Fit-Out;
4. Contract 30803 – CSO Phase III Facilities of 205;
5. Contract 30804 – CSO Phase III Facilities – of 210, 213, 214;
6. Contract 30805 – CSO Phase III Facilities – of 217;
7. Contract 30806 – CSO Phase III Facilities – of 218;
8. Contract 30807 – CSO Phase III Facilities Regulator Modifications;
9. Contract 30809 – CSO Phase III Facilities – GSI Projects;
10. Contract 30810 – Bucklin Point Wastewater Treatment Facilities Clarifiers And Flow Splitters;
11. Contract 30812 – CSO Phase III Facilities – Dexter Street Stormwater Infrastructure; and
12. Contract 30813 – CSO Phase III Facilities – Site Demolition.

**SCHEDULE II**  
**PROJECT BUDGET**

<b>SOURCES OF FUNDS</b>	<b>AMOUNT (\$ USD)</b>	<b>PERCENTAGE<sup>2</sup> (%)</b>
Bond Par	\$144,423,055	26%
Bond OID/OIP	\$31,188,284	6%
SRF Loan	\$48,227,777	9%
WIFIA Loan	\$268,721,668	49%
Paygo Cash	\$59,333,337	11%
<b>Total Sources of Funds</b>	\$551,894,121	100%
<b>USES OF FUNDS</b>	<b>AMOUNT (\$ USD)</b>	<b>PERCENTAGE (%)</b>
CSO Phase III	\$548,411,567	99%
Bond COI/UD	\$3,084,776	1%
SRF COI/UD	\$397,778	<1%
<b>Total Uses of Funds</b>	\$551,894,121	100%
<b>Total Eligible Project Costs</b>	\$551,894,121	100%
<b>Total Project Costs</b>	\$551,894,121	100%

<sup>2</sup> The percentages add up to a value greater than 100% due to rounding.

**SCHEDULE III**  
**CONSTRUCTION SCHEDULE**

[To be provided by Borrower]<sup>3</sup>

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<sup>3</sup> Note to Borrower: The schedule should clearly specify the projected substantial completion date, which should match up with the WLA's definition of "Projected Substantial Completion Date" and also be reflected accordingly in the Base Case Financial Model.

**SCHEDULE IV**  
**EXISTING INDEBTEDNESS**

[To be provided by Borrower]

**A. Senior Obligations**

	Agreement/Series	Outstanding Principal <sup>4</sup>
1.	Series [ ] Senior Bonds, issued pursuant to the [ ] Series Ordinance, dated [ ], maturing on [ ]	
2.	SRF Loan Agreement, dated as of [ ], between Borrower and [ ], maturing on [ ]	
3.		
4.		
5.		

**B. Subordinated Obligations**

	Agreement/Series	Outstanding Principal <sup>5</sup>
1.	Series [ ] Subordinate Bonds, issued pursuant to the [ ] Series Ordinance, dated [ ], maturing on [ ]	
2.		
3.		
4.		
5.		

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<sup>4</sup> As of Effective Date

<sup>5</sup> As of Effective Date

## SCHEDULE V

### WIFIA PAYMENT INSTRUCTIONS

#### Acceptable Methods for WIFIA Payments to EPA

##### Option 1 PAY.GOV

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

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

##### Option 2 FEDWIRE

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

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

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

1. Send FedWire deposits as early as possible and no later than 5 p.m. ET on the desired EPA receipt date
2. Review the FedWire form Instructions provided in Attachment 1 and complete the form. It is very important that all relevant details identified in the instructions are accurate.
3. Send an email to [lvfc-grants@epa.gov](mailto:lvfc-grants@epa.gov) and [wifia\\_portfolio@epa.gov](mailto:wifia_portfolio@epa.gov) informing that a payment has been made.

##### Option 3 CHECK PAYMENTS

1. Send checks to:
  - U.S. EPA
  - Las Vegas Finance Center
  - 4220 S. Maryland Pkwy, Bldg C, Ste 503
  - Las Vegas NV 89119
2. Provide the following information on your check payment to ensure proper credit please:
  - Company/remitter's name (borrower name as it appears on EPA document)
  - Complete address, including city, state, zip
  - Remitter's point of contact person and phone number
  - EPA WIFIA Loan # (NOT the remitter's number)
  - Payment Type/Reason for payment from the Fee Notice letter
  - Reference number from the Fee Notice letter.
3. Send an email to [lvfc-grants@epa.gov](mailto:lvfc-grants@epa.gov) and [wifia\\_portfolio@epa.gov](mailto:wifia_portfolio@epa.gov) informing that a payment has been submitted.

*NOTE: When checks are provided as payment, you authorize the EPA to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When the EPA uses information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.*

**Attachment 1 – FedWire Payment Form and Instructions**

		<b>U.S. Environmental Protection Agency FUNDS TRANSFER DEPOSIT</b>		
<b>PC</b>		<b>INSTRUCTIONS:</b> Explicit completion and routing instructions are located on the reverse of this form. It is requested that prudent care be taken to ensure that all information is provided in the requested format. Failure to provide the information in the requested format may cause a delay in the notification of the funds transfer to EPA.		
<b>TO</b> 021030004	<b>TYPE</b> 10			
<b>FROM</b>	<b>CL</b>	<b>REF</b>	<b>AMOUNT</b> \$	
<b>SENDER</b>				
<b>RECEIVER</b> TREAS NYC/(68011233)EPA				
<b>THIRD PARTY INFORMATION</b>				

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

TO (ABA)	021030004
TYPE	10
RECEIVER	TREAS NYC/(68011233)EPA
THIRD PARTY INFORMATION	To ensure proper credit please include the following information on your payment: <ul style="list-style-type: none"> <li>• Company/remitter's name (borrower name as it appears on EPA document)</li> <li>• Complete address, including city, state, zip code</li> <li>• Remitter's point of contact person and phone number</li> <li>• EPA WIFIA Loan # (NOT the remitter's number)</li> <li>• Payment Type/Reason for payment from the Fee Notice letter</li> <li>• Reference number from the Fee Notice letter</li> </ul>
Shaded Areas	Those items that are shaded on the Form are to be entered by the bank on the funds transfer message. (Depending on the Federal Reserve District, some items may not be required.)
<b>*Important: Failure to initiate the FedWire electronic wire transaction properly with the above fields included, will result in untimely or non-receipt of funds at EPA.</b>	

**For questions about payments to EPA please contact EPA Las Vegas Finance Center:**

Phone: (702)798-2485, Office Hours: 7am to 4:30pm PST. Voicemails can be left when calling outside these hours  
Email: lvfc-grants@epa.gov

**For questions about the WIFIA program:**

Email: wifia@epa.gov

**SCHEDULE VI**  
**FLOW OF FUNDS**

*All terms used in this Schedule VI shall have the meaning assigned to such terms as provided in the Indenture. All section references used in this Schedule VI shall be references to the appropriate section in the Indenture.*

Section 504. Revenue Fund.

(1) All Revenues, except (i) proceeds of insurance and condemnation to the extent provided in Section 606, (ii) proceeds of any sale or other disposition of any part of the System to the extent provided in Section 604, (iii) earnings on investment of the funds and accounts hereunder to the extent provided in Section 514 hereof and (iv) Debt Service Assistance deposited in the Debt Service Assistance Account as provided in Section 506, shall be collected by or for the account of the Commission and deposited by or on behalf of the Commission as promptly as practicable in the Revenue Fund. There shall also be deposited in the Revenue Fund any other moneys so directed by the Indenture and any other moneys of the Commission which the Commission may in its discretion determine to so apply unless required to be otherwise applied by the Indenture.

There shall be established in the Revenue Fund, a Narragansett Bay Environmental Enforcement Fund. There shall be deposited in the Narragansett Bay Environmental Enforcement Fund such sums as the Commission may, from time to time, deposit, or sums recovered by any administrative or civil enforcement action brought under the authority of the Act. All sums shall be expended for emergency response activities, enforcement activities, additional activities and the retirement of Bonds as provided in Rhode Island General Laws Section 46-25-38.1, as amended.

(2) On the third day prior to the last Business Day of each calendar month, the Commission (or during such times as the Trustee shall hold the Revenue Fund, the Trustee) shall apply amounts available in the Revenue Fund to the following purposes and in the following order:

- (i) To the Commission for deposit in the Operation and Maintenance Account of the Operation and Maintenance Fund, the amount specified by an Authorized Officer in accordance with Section 608; provided that if no amount has been specified by such Authorized Officer, the Operating Expenses for such month shall be deemed to be 125% of the Operating Expenses expended in the same calendar month in the preceding year or such lesser amount as an Authorized Officer shall certify in writing to the Trustee, but in no event less than 100% of such amount;
- (ii) To the Debt Service Fund, an amount, which together with other amounts on deposit in such Fund, will equal the Debt Service Fund Requirement as of the first day of the next ensuing month and;
- (iii) To the Rebate Fund, the amount which together with the amounts on deposit therein, will equal the Rebate Requirement as of such day;

- (iv) Subject to Section 508, to the Debt Service Reserve Fund, an amount which, together with the amounts on deposit therein, will equal the Debt Service Reserve Fund Requirement as of the first day of the next ensuing month;
- (v) To the Debt Service Assistance Account in the Debt Service Fund an amount specified by an Authorized Officer in a certificate delivered to the Trustee, as amended from time to time;
- (vi) To the Stabilization Account of the Debt Service Fund the amount, if any, designated by the Commission as further provided in Section 504(4);
- (vii) To make deposits and payments with respect to obligations secured by the Revenues junior and subordinate to the Bonds as required pursuant to this Indenture, including but not limited to, swap termination payments provided that following any swap termination payment the Commission shall have funds as necessary to make the next succeeding Debt Service Payment for each Series of Bonds, or any indenture or instrument pursuant to which such obligations are issued;
- (viii) Subject to Section 608, to the Operation and Maintenance Reserve Fund, an amount necessary for such Fund to equal the Operation and Maintenance Reserve Fund Requirement as of such day;
- (ix) To the Commission for deposit in the Insurance Reserve Fund, the amount, if any, determined by the Commission pursuant to Section 606(3) as necessary to maintain such Fund at the Insurance Reserve Fund Requirement;
- (x) Subject to Section 609, to the Renewal and Replacement Reserve Fund, an amount, which together with the amounts on deposit therein, will equal the Renewal and Replacement Reserve Fund Requirement as of such day;
- (xi) To the one or more Operating Capital Accounts of the Project Fund, such amount as requested by the Commission but only upon receipt by the Trustee of (a) a copy of the resolution of the Commission approving the Capital Improvements to be funded in whole or in part from such Accounts, certified by an Authorizing Officer and (b) a certificate of an Authorized Officer stating that such deposit will not impair the ability of the Commission to either (A) meet the requirements of the Revenue Fund in the succeeding months of such Fiscal Year based on the then current Annual Budget prepared in accordance with Section 608 or (B) satisfy the requirements of Section 603 in the current or next succeeding Fiscal Year;
- (xii) To such other funds or accounts as shall be required by any Supplemental Indenture; and

- (xiii) To such other funds or accounts established by the Commission in compliance with applicable law or as required by any order of the PUC, including, but not limited to, transfers to an Operating Capital Account in accordance with Section 503(5) hereof.

(3) On the last Business Day of each Fiscal Year, the Commission shall, after making the deposits required by Sections 504(2), apply amounts available in the Revenue Fund to the Unrestricted Fund, the amount, if any, directed to be deposited therein in writing by an Authorized Officer.

Any balance remaining in the Revenue Fund following the above payments shall be retained in the Revenue Fund to be available for payments therefrom in the succeeding months, provided that if the Commission shall have issued Notes in accordance with Section 607(2)(i) or (iii), amounts in the Revenue Fund remaining after the above payments have been made may be used by the Commission to pay the principal of such notes at maturity or upon earlier redemption.

(4) Notwithstanding the foregoing, in the event that any order of the PUC requires that Revenues be held in a restricted account, the Commission shall request the Trustee to make such transfers as may be required to comply with any rate order. In the event that Revenues must be restricted in an account for debt service, such monies shall be deposited by the Trustee into the Stabilization Account of the Debt Service Fund.

(5) If, on the last Business Day of any month, the amounts deposited pursuant to Section 504(2)(ii) are, as of such date of calculation, less than the amounts required to be deposited therein, the Trustee shall promptly notify the Agency of any such deficit.

## SCHEDULE VII

### FLOW OF FUNDS FOLLOWING DEFAULT

*All terms used in this Schedule VII shall have the meaning assigned to such terms as provided in the Indenture. All section references used in this Schedule VII shall be references to the appropriate section in the Indenture.*

#### Section 702. Application of Revenues and Other Moneys after Default.

(1) The Commission covenants that if an Event of Default shall happen and shall not have been remedied, the Commission, upon demand of the Trustee, shall pay over and assign to the Trustee (i) forthwith, all moneys, securities, Reserve Deposits, Additional Security, if any, and funds then held by the Commission in any fund or account pledged under the Indenture including, without limitation, funds then held by it in the Revenue Fund, and (ii) as promptly as practicable after receipt thereof the Revenues.

(2) During the continuance of an Event of Default, the Trustee shall apply the moneys, Reserve Deposits, Additional Security, if any, and funds held by the Trustee and such Revenues and the income therefrom as follows and in the following order:

- (i) to the payment of the reasonable and proper charges and expenses of the Fiduciaries and of its agents, representatives, advisors and legal counsel, and of any engineer or firm of engineers selected by the Trustee pursuant to this Article and to the payment of any fees and expenses required to keep any Reserve Deposits or Additional Security in full force and effect;
- (ii) to the payment of the amounts required for reasonable and necessary Operating Expenses, including reasonable and necessary reserves and working capital therefor, and for the reasonable repair and replacement of the System necessary to prevent loss of Revenues or to provide for the continued operation of the System, as certified to the Trustee by an independent engineer or firm of engineers of recognized standing (who may be an engineer or firm of engineers retained by the Commission for other purposes) selected by the Trustee;
- (iii) to the payment of the interest and Principal Amount or Redemption Price then due on the State Obligations and the Bonds, as follows:
  - (a) unless the Principal Amount of all of the Bonds shall have become or have been declared due and payable,

First: To the payment to the persons entitled thereto of all installments of interest or Qualified Swap Payments then due in the order of the maturity of such installments maturing (or payments due), and, if the amount available shall not be sufficient to pay in full all installments maturing (or payments due) on the same date, then to the payment

thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid Principal Amount or Redemption Price of any State Obligations and Bonds which shall become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all the State Obligations and Bonds due on any date, then to the payment thereof ratably, according to the amounts of Principal Amount or Redemption Price due on such date, to the persons entitled thereto, without any discrimination or preference; and

(b) if the Principal Amount of all of the Bonds shall have become or have been declared due and payable, to the payment of the Principal Amount and interest or Qualified Swap Payments then due and unpaid upon the State Obligations and Bonds without preference or priority of Principal Amount over interest or Qualified Swap Payments or of interest over Principal Amount or Qualified Swap Payments, or of any installment of interest (or payment due) over any other installment of interest (or payment due), or of any Bond over any other Bond, ratably, according to the amounts due respectively for Principal Amount and interest and Qualified Swap Payments, to the persons entitled thereto without any discrimination or preference;

(3) If and whenever all overdue installments of interest on all Bonds together with the reasonable and proper charges and expenses of the Fiduciaries including without limitation the fees and disbursements of its legal counsel, and all other sums payable by the Commission under the Indenture, including the Principal Installments and Redemption Price of and accrued unpaid interest on all Bonds which shall then be payable by declaration or otherwise, shall either be paid by or for the account of the Commission, or provision satisfactory to the Trustee shall be made for such payment and all defaults under the Indenture or the Bonds shall have been cured, the Trustee shall pay over to the Commission all moneys, securities and funds remaining unexpended in all funds and accounts provided by the Indenture to be held by the Commission, and thereupon the Commission and the Trustee shall be restored, respectively, to their former positions and rights under the Indenture and all Revenues shall thereafter be applied as provided in Article V. No such payment over to the Commission by the Trustee or resumption of the application of Revenues as provided in Article V shall extend to or affect any subsequent default under the Indenture or impair any right consequent thereon.

(4) The proceeds of any Reserve Deposits and Additional Security shall be applied by the Trustee in the manner provided in the applicable Supplemental Indenture authorizing such Reserve Deposits and Additional Security.

## SCHEDULE VIII

### RATE COVENANT

*All terms used in this Schedule VIII shall have the meaning assigned to such terms as provided in the Indenture. All section references used in this Schedule VIII shall be references to the appropriate section in the Indenture.*

#### Section 603. Covenant as to Rates and Charges.

(1) To the extent not otherwise provided by a Supplemental Indenture, so long as any Bonds are Outstanding, the Commission shall take all actions within its power to establish and maintain Rates and Charges adequate at all times, with other available funds, to provide Revenues and other moneys, including Reserved Revenues from the Stabilization Account of the Debt Service Fund at least sufficient to pay or provide for, as the same become due or are payable (i) all Operating Expenses, (ii) all payments of Principal Installments and Redemption Price of and interest on the Bonds and all other bonds, notes or other evidences of indebtedness of or assumed by the Commission which are payable from Revenues of the System, (iii) all amounts, if any, payable to the Operation and Maintenance Reserve Fund, Debt Service Reserve Fund, the Renewal and Replacement Reserve Fund and, if any, the Insurance Reserve Fund, (iv) all repairs, replacements, and renewals of the System deemed necessary by the Commission which are payable from Revenues of the System and (v) all other amounts which the Commission may by law or contract be obligated to pay from Revenues of the System including amounts payable under Qualified Swap Agreements. Provided the Commission complies with Section 504(4) and has complied or is diligently proceeding to comply with the requirements of subsection (3) and (4) of this Section 603, the Trustee shall take no action pursuant to Section 701 or Section 703 on account of any failure by the Commission to comply with the requirements of this subsection; provided that the setting of the Rates and Charges shall, to the extent required by law, be subject to the approval of the PUC.

(2) Without limiting the generality of the foregoing, the Commission shall take all actions within its power to establish and maintain Rates and Charges at levels sufficient so that total Net Revenues in each Fiscal Year during which Bonds are Outstanding, shall equal at least one hundred twenty-five percent (125%) of the Debt Service Requirement during such Fiscal Year with respect to all Bonds Outstanding, other than Agency Bonds, as of the first day of such Fiscal Year and one hundred thirty-five percent (135%) of the Required Debt Service Fund Deposits for Agency Bonds (based on debt service net of any interest rate subsidy) for such Fiscal Year. Failure by the Commission to comply with the requirements of this subsection (2) shall not be considered an Event of Default under the Indenture so long as the Commission has complied or is diligently proceeding to comply with the requirements of subsection (3) and (4) of this Section 603.

(3) On or before the day which is six months prior to the last Business Day of each Fiscal Year the Commission shall review the adequacy of its Rates and Charges to satisfy the requirements of this Section for the next succeeding Fiscal Year. If such review indicates that the Rates and Charges are, or are likely to be, insufficient to meet the requirements of this Section for the next succeeding Fiscal Year, or if it otherwise appears at any time during such Fiscal Year that Rates and Charges are or are likely to be insufficient to meet such requirements, the Commission shall promptly take such steps as are permitted by law and as are necessary to cure or avoid the

deficiency, including but not limited to, making an emergency request to the Public Utilities Commission to raise its Rates and Charges.

(4) Within one hundred and eighty days of the close of each Fiscal Year while Bonds are Outstanding, the Commission shall deliver to the Trustee a certificate of an Authorized Officer (which may be based on unaudited financial statements) stating, if such was the case, that the Commission satisfied the requirements of subsections (1) and (2) of this Section 603 in such Fiscal Year or, if such was not the case, specifying in reasonable detail the corrective steps taken by the Commission so that it will comply with such requirements in the then current Fiscal Year. If such certificate is based on unaudited financial statements, then within 270 days of the close of each Fiscal Year while the Bonds are Outstanding, the Commission shall deliver to the Trustee an additional certificate based on audited financial statements. Any certificate based on audited financial statements shall be accompanied by a certificate of the independent public accountant or firm of accountants regularly auditing the books of the Commission in accordance with Section 610 setting forth the Net Revenues for the preceding Fiscal Year.

**SCHEDULE IX****ADDITIONAL BONDS TEST**

*All terms used in this Schedule IX shall have the meaning assigned to such terms as provided in the Indenture. All section references used in this Schedule IX shall be references to the appropriate section in the Indenture.*

**Section 205. General Provisions for Issuance of Bonds.**

- (1) Bonds of any Series shall be authorized by a Supplemental Indenture which shall specify:
- (i) the authorized Principal Amount, designation, manner of numbering and lettering and Series of such Bonds;
  - (ii) the date of such Bonds and the date or dates of maturity thereof;
  - (iii) the Redemption Price or Prices and the time or times and other terms of redemption, if any, of any of such Bonds;
  - (iv) the amount and date of each Sinking Fund Payment, if any, required to be paid for the retirement of any of such Bonds of like maturity;
  - (v) the manner in which the proceeds, if any, of such Bonds are to be applied;
  - (vi) the Project or Projects, if any, to be financed by such Bonds and the designation of a Project Account, if any, for the Bonds of such Series;
  - (vii) the form or forms of the Bonds of such Series;
  - (viii) the Series Debt Service Reserve Fund Requirement, if any, applicable to the Bonds of such Series;
  - (ix) if the Bonds are Agency Bonds, the Required Debt Service Fund Deposits to be made to the Debt Service Fund in compliance with the applicable Agency Loan Agreement, taking into account any principal or interest subsidies available to the Commission in connection with such Agency Loan Agreement;
  - (x) the minimum denomination, if any, applicable to the Bonds of such Series; and
  - (xi) any other provisions deemed advisable by the Commission not in conflict with the Indenture.

(2) The Bonds of each Series shall be executed by the Commission and delivered to the Authenticating Agent for such Series of Bonds and by it authenticated and delivered to or upon the order of the Commission, but only upon receipt by the Trustee of:

- (i) written order signed by an Authorized Officer of the Commission as to the authentication and delivery of such Bonds;
- (ii) a copy of the applicable Supplemental Indenture executed by an Authorized Officer;
- (iii) an amount of moneys or Reserve Deposits in a stated amount such that following the issuance of such Bonds and application of their proceeds, the amounts on deposit in and the aggregate stated and unpaid amount of all Reserve Deposits held as part of the Debt Service Reserve Fund shall equal the Debt Service Reserve Fund Requirement, if any; provided, however, that the applicable Supplemental Indenture may provide that the Series Debt Service Reserve Fund Requirement, if any, attributable to any Series of Agency Bonds may be funded in substantially equal monthly installments over a period of time after issuance as specified in the applicable Supplemental Indenture (which period shall not exceed 24 months);
- (iv) a certificate of a Consulting Engineer or Certified Public Accountant (a) setting forth the estimated annual Net Revenues for each of the three full Fiscal Years following the issuance of such Bonds (including the Fiscal Year in which such Bonds are issued), after giving effect to any increases or decreases in Rates and Charges projected to be in effect for such period, and to the Series Debt Service Reserve Fund Requirement attributable to such Bonds and to any additional Revenues projected to be available during such period, and (b) showing for each of such Fiscal Years that the estimated annual Net Revenues for such Fiscal Year together with the amounts of Reserved Revenues, if any, available in such Fiscal Year (as calculated by an Authorized Officer at the time of the issuance of such Bonds) will be, except with respect to Agency Bonds, at least equal to one hundred twenty-five percent (125%) and with respect to Agency Bonds, at least equal to one hundred thirty-five percent (135%) of the Required Debt Service Fund Deposits for Agency Bonds (based on debt service net of any interest rate subsidy) for such Fiscal Year (or such higher amount as may be set forth in the Supplemental Indenture authorizing the issuance of such Series of Bonds) of (A) the Debt Service Requirement for such Fiscal Year less (B) the amount, if any, of Bond proceeds available or projected to be available to pay Principal Installments and interest becoming due in such Fiscal Year on Bonds Outstanding or projected to be Outstanding as of the first day of such Fiscal Year; provided that the Consulting Engineer's or Certified Public Accountant's certificate shall not project any increase in Rates and Charges during the first full Fiscal Year of the projection period which has not been adopted by the Commission for such Fiscal Year on or before the date of such certificate;

- (v) if on the date of issuance of such Series of Bonds the Commission has any outstanding obligation to replenish the Debt Service Reserve Fund under Section 508(4), evidence that the Commission has made at least one monthly payment with respect to such obligation on or before the date required thereunder;
- (vi) a certificate of an Authorized Officer stating that, as of the date of delivery of such Bonds, no Event of Default, as described in Section 701, has occurred and is continuing; and
- (vii) to the extent required by law, an order of the Division of Public Utilities approving the issuance of the Bonds.

Section 607. Creation of Liens, Other Indebtedness.

(1) The Commission shall not issue any bonds, notes or other evidences of indebtedness, other than the Bonds and Subordinated Bonds, secured by a pledge of or other lien on the Revenues of the System and other moneys, securities, Reserve Deposits, if any, and funds held or set aside by the Commission or by the Fiduciaries under the Indenture, and shall not otherwise create or cause to be created any lien or charge on the Revenues of the System, moneys, securities, Reserve Deposits, if any, and funds, except to the extent provided in this Section 607.

(2) Notwithstanding anything herein to the contrary the Commission may at any time or from to time issue notes or other evidences of indebtedness (and renewals thereof);

- (i) in anticipation of Bonds to the extent and in the manner provided in Section 207, which Bond Anticipation Notes, if so determined by the Commission, may be secured by a pledge of Revenues, provided that such pledge shall in all respects be subordinate to the provisions of the Indenture and the pledge created by the Indenture;
- (ii) in anticipation of the receipt by the Commission of any grant-in-aid from the United States of America or the State or any agency, instrumentality or political subdivision of either of them, for or on account of Capital Improvements and payable solely out of, or secured by a pledge of, the amounts to be received (which amounts shall not be deemed Revenues hereunder while any such notes are outstanding); provided that no such notes shall be issued unless (a) the Commission shall have received and accepted an agreement, whether conditional or unconditional, providing for the grant-in-aid anticipated by such notes executed by authorized officers of the grantor, (b) the aggregate principal amount of such notes (excluding renewals thereof issued by the Commission) shall not exceed the aggregate amount of the grant-in-aid provided for in such agreement and not yet received by the Commission and (c) all such notes or renewals thereof shall be issued to mature not later than four (4) years after the date of issuance and (d) the Commission shall have received the approval of the Governor of the State as required by the Act; or

- (iii) in anticipation of the Revenues to be received in any Fiscal Year, which notes may be payable out of, or secured by a pledge of, Revenues; provided that (a) any such pledge shall in all respects be subordinate to the provisions of the Indenture and the pledge created by the Indenture, (b) any such notes shall be payable no later than one year from date of issue (or, in the case of notes issued to renew such notes, no later than one year from the date of issue of the original issue of notes), (c) the aggregate amount of such notes outstanding at any one time in a Fiscal Year shall not exceed eighty percent (80%) of the Revenues for the immediately preceding Fiscal Year and (d) the proceeds of such notes (other than the proceeds of renewal notes require to pay notes) shall be deposited in the Revenue Fund.

(3) Notwithstanding anything herein to the contrary, the Commission may issue bonds, notes or other evidences of indebtedness secured solely by the revenues, receipts or other moneys derived by the Commission from the lease, license, operation, sale or other disposition of any facility or equipment constituting part of the System hereafter constructed or acquired by or on behalf of the Commission with the proceeds of such bonds, notes or evidences of indebtedness. Such revenues, receipts and other moneys shall not be considered Revenues or Rates and Charges hereunder provided that (i) neither the debt service on such bonds, notes, or other evidences of indebtedness nor any cost of the acquisition, construction, operation, maintenance or repair of any such facility or equipment nor provision for reserves for any of the foregoing shall be paid from the proceeds of Bonds or from Revenues (other than Revenues deposited in the Unrestricted Fund pursuant to Section 504) or shall be included in Operating Expenses, and (ii) any such receipts and moneys in excess of such debt service cost of acquisition, construction operation, maintenance, repair and reserves shall be deposited in the Revenue Fund (and upon such deposit shall be deemed Revenues); and (iii) prior to the issue of any such bonds, notes or other evidences of indebtedness, the Commission shall deliver to the Trustee a certificate of a Consulting Engineer or Certified Public Accountant stating that the lease, license, operation, sale or other disposition of such facility or equipment and the application of the revenues, receipts and other moneys derived therefrom to the operation, maintenance and repair thereof and the payment of the debt service on the bonds, notes or other evidences of indebtedness issued therefor and the provision of reserves for the foregoing, will not result in any decrease in the Net Revenues projected by such Consulting Engineer or Certified Public Accountant to be received by the Commission during the succeeding five Fiscal Years (including the Fiscal Year in which such bonds, notes or other evidences of indebtedness are issued).

(4) The Commission hereby reserves the right, and nothing herein shall be construed to impair such right, to finance improvements to the System by the State's issuance of its general obligation bonds for the benefit of the Commission, provided that nothing herein shall be construed as requiring the issuance of any such bonds and that no such bonds shall be deemed to be Bonds for any purpose hereunder.

(5) Nothing in this Section or in this Indenture shall prevent the Commission from issuing Notes or otherwise incurring contractual obligations which are payable solely out of, or solely secured by a pledge of amounts which may be deposited in the Unrestricted Fund pursuant to Section 504, provided that the pledge of such amounts shall in all respects be subordinate to the provisions of this Indenture.

(6) Notwithstanding anything herein to the contrary, the Commission may provide for the payment of swap termination payments from Revenues, provided that such payment obligations are junior and subordinate to the Bonds and any payments due to the Bond Insurer as required by this Indenture and provided that following any swap termination payment, the Commission shall have funds as necessary to make the necessary Debt Service Fund Requirement for each Series of Bonds.

**SCHEDULE 12(n)**  
**PRINCIPAL PROJECT CONTRACTS**

**A. Effective Principal Project Contracts (effective as of the date of this Agreement)**

Contract	Date	Parties	Description

**B. Expected Additional Principal Project Contracts (expected to either be executed, or are executed and expected to become effective, at a future date)**

Contract	Expected Effective Date	Parties	Description

**SCHEDULE 12(r)**  
**ENVIRONMENTAL MATTERS**

[To be provided by Borrower]

## EXHIBIT A

FORM OF WIFIA BOND<sup>6</sup>

**UNITED STATES OF AMERICA**  
**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**NARRAGANSETT BAY COMMISSION**  
**WASTEWATER SYSTEM REVENUE BONDS (CSO PHASE III PROJECT),**  
**2019 SERIES C**

**(WIFIA – N 18132RI)**  
**WIFIA BOND**

**Maximum Principal Amount: \$ [268,721,668]**  
**(excluding the maximum amount of capitalized interest that has been authorized)**

**Effective Date:** \_\_\_\_\_ **Due:** \_\_\_\_\_

**NARRAGANSETT BAY COMMISSION**, a public corporation organized and existing under the laws of the State of Rhode Island (the “**Borrower**” or the “**Commission**”), for value received, hereby promises to pay to the order of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the “**WIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the WIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the WIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the WIFIA Loan Agreement.<sup>7</sup> The principal hereof shall be payable in the manner and at the place provided in the WIFIA Loan Agreement in accordance with **Exhibit F** (*WIFIA Debt Service*) to the WIFIA Loan Agreement, as revised from time to time in accordance with the WIFIA Loan Agreement, until paid in full (which **Exhibit F**, as modified from time to time in accordance with the terms of the WIFIA Loan Agreement, is incorporated in and is a part of this WIFIA Bond). The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** to the WIFIA Loan Agreement from time to time in accordance with the terms of the WIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on **Exhibit F** to the WIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to

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<sup>6</sup> To be further developed.

<sup>7</sup> Discuss capitalized interest and what will be necessary for approval purposes.

make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

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

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

This WIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the WIFIA Lender such principal amount of the WIFIA Bond in accordance with the WIFIA Loan Agreement.

This WIFIA Bond shall be subject to acceleration in accordance with the Indenture.

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to the Indenture.

THE PRINCIPAL OF OR REDEMPTION PRICE AND INTEREST ON THIS WIFIA BOND ARE PAYABLE ONLY FROM THE REVENUES OR ASSETS OF THE COMMISSION PLEDGED THEREFOR AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE SHALL BE OBLIGATED TO PAY THIS BOND. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF OR INTEREST ON THIS WIFIA BOND.

This WIFIA Bond is one of a duly authorized issue of bonds of the Commission (herein called the “Bonds”), issued and to be issued pursuant to Chapter 25 of Title 46 of the General Laws of the State of Rhode Island, 1956 (2007 Reenactment) as amended (the “Act”) and under and pursuant to a Trust Indenture by and between the Commission and the Trustee dated as of April

15, 2004, as amended and supplemented by a First Supplemental Indenture dated as of April 15, 2004, a Second Supplemental Indenture dated as of December 30, 2004, a Third Supplemental Indenture dated August 4, 2005, a Fourth Supplemental Indenture dated as of 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 November 28, 2012, a Seventeenth Supplemental Indenture dated March 21, 2013, 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, 2016, a Twenty-Third Supplemental Indenture dated July 30, 2016, a Twenty-Fourth Supplemental Indenture dated June 2, 2016, a Twenty-Fifth Supplemental Indenture dated April 4, 2019 and a Twenty-Sixth Supplemental Indenture dated [     ], 2019 (the Trust Indenture, as amended and supplemented including the Twenty-Sixth Supplemental Indenture are collectively referred to herein as the “Indenture”), each by and between the Commission and U.S. Bank National Association, as successor trustee (the “Trustee”). As provided in the Indenture, Bonds may be issued from time to time in one or more series in various principal amounts, may mature at different times, may bear interest at different rates, and may otherwise vary as provided in the Indenture. Except as provided in the Indenture, the aggregate principal amount of Bonds which may be issued thereunder is not limited and all Bonds issued and to be issued under said Indenture are and will be equally secured by the pledge and covenants provided therein.

This WIFIA Bond is a general obligation of the Commission, to which its full faith and credit are pledged. The Commission has also pledged to the payment of the principal and redemption price of and interest on the Bonds, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture, the proceeds of the Bonds, all Revenues (as defined in the Indenture) of the Commission, and all moneys, securities and other amounts in all funds and accounts established by or pursuant to the Indenture, except the Operation and Maintenance Fund, the Rebate Fund, the Purchase Fund, if any, and the Unrestricted Fund of the Commission.

This WIFIA Bond is one of a series of Bonds designated as “Wastewater System Revenue Bonds (CSO PHASE III PROJECT), 2019 Series C” (herein called the “2019 Series C Bonds”), issued under the Indenture, and limited to the aggregate Outstanding Principal Sum. Copies of the Indenture are on file at the office of the Commission and at the principal corporate trust office of the Trustee and reference to the Indenture and any supplements thereto and to the Act is made for a description of the pledge securing the Bonds and covenants relating thereto, the manner of enforcement of the pledge, the rights and remedies of the Holders of the Bonds with respect thereto, the terms and conditions upon which the Bonds are issued and may be issued thereunder, the conditions upon which the Indenture may be amended with or without the consent of the Holders of the Bonds, and the terms upon which Bonds may no longer be secured by the Indenture.

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

[The Holder of this WIFIA Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein to take any action with respect to an Event of Default under the Indenture or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.]

[This WIFIA Bond is transferable, as provided in the Indenture, only upon the books of the Commission at the Principal Office of the Trustee by the Holder hereof in person or by his attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the Holder or his duly authorized attorney, and thereupon the Commission shall issue in the name of the transferee a new registered Bond or Bonds of the same aggregate principal amount, interest rate and maturity as the surrendered Bond, as provided in the Indenture, and upon the payment of the charges therein prescribed. This WIFIA Bond may also be exchanged, alone or with other Bonds of the same series, interest rate and maturity, at the Principal Office of the Trustee, for a new Bond or Bonds of the same aggregate principal amount, interest rate and maturity, without transfer to a new registered owner or Holder, as provided in the Indenture and upon the payment of the charges therein prescribed.]<sup>8</sup>

The 2019 Series C Bonds shall be issued in denominations of \$100,000.

No recourse shall be had for the payment of the principal or redemption price of or the interest on the Bonds or for any claim based thereon or on the Indenture against any member, officer or employee of the Commission or any person executing the Bonds.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State and the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this WIFIA Bond, exist, have happened and have been performed and that the issue of this WIFIA bond, together with all other indebtedness of the Commission, is within every debt and other limit prescribed by law. This WIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

This WIFIA Bond shall not be entitled to any security, right or benefit under the Indenture or be valid or obligatory for any purpose, unless the certificate of authentication hereon has been duly executed by the Trustee.

IN WITNESS WHEREOF, the Narragansett Bay Commission has caused this WIFIA Bond to be executed in its name by the manual or facsimile signature of an authorized officer of the Commission and its corporate seal (or a facsimile thereof) to be affixed, imprinted, engraved

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<sup>8</sup> We have included these bracketed provisions from the NBC draft for discussion purposes. Please note that any transfer provisions in the WIFIA Bond will need to be consistent with the provisions of Section 33 (*Sale of WIFIA Loan*) of the WIFIA Loan Agreement.

or otherwise reproduced hereon and countersigned by the manual or facsimile signature of another authorized officer of the Commission, all as of the Effective Date set forth above.

(Seal)

NARRAGANSETT BAY COMMISSION

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

Attested:

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

*[Series C Bond]*

CERTIFICATE OF AUTHENTICATION

This 2019 Series C Bond is the WIFIA Bond described in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee (as successor to Wells Fargo Bank, N.A., as  
successor trustee to The Bank of New York Trust  
Company, N.A., as successor trustee in interest to  
J.P. Morgan Trust Company, National Association)

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

(FORM OF ASSIGNMENT)

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

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

the within bond and all rights thereunder.

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

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

**EXHIBIT B**

**ANTICIPATED WIFIA LOAN DISBURSEMENT SCHEDULE**

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

**EXHIBIT C****CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS**

The undersigned, on behalf of Narragansett Bay Commission, hereby certifies that Narragansett Bay Commission has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995):

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

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

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

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

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

**NARRAGANSETT BAY COMMISSION<sup>9</sup>**

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

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<sup>9</sup> To be executed by Borrower's Authorized Representative.

## EXHIBIT D

### REQUISITION PROCEDURES

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

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

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

The WIFIA Lender agrees to promptly send to the Borrower in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement, an acknowledgement of receipt of each Requisition in the form attached as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to this **Exhibit D** setting forth the date of receipt by the WIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Lender. All disbursement requests must be received by the WIFIA Lender at or before 5:00 P.M. (EST) on the first (1<sup>st</sup>) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15<sup>th</sup>) day of such calendar month or, if either such day is not a Business Day, the next succeeding

Business Day. If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the WIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the WIFIA Loan;
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid;
- (e) submitted without an accompanying engineer's certificate setting out a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied; or
- (f) submitted without a copy of the most recent update to the Risk Register.

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

Section 4. Correction. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 5. Withholding. The WIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of WIFIA Loan proceeds if:

- (a) a Default or an Event of Default shall have occurred and be continuing; or
- (b) the Borrower:
  - (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or
  - (ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or with good engineering practices, where such failure prevents or materially impairs the Project from

fulfilling its intended purpose, or prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the WIFIA Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the WIFIA Loan Agreement; or

(iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement; or

(v) fails to deliver documentation satisfactory to the WIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the WIFIA Loan Agreement; provided, that in such case the WIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

**APPENDIX ONE TO EXHIBIT D**  
**FORM OF REQUISITION**

United States Environmental Protection Agency  
c/o  
[Insert Address]  
Washington, D.C.

[Loan Servicer]  
[Address]  
[Attention]

Re: CSO PHASE III PROJECT (WIFIA # 18132RI)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [Dated Date] (the “**WIFIA Loan Agreement**”), by and between NARRAGANSETT BAY COMMISSION (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), we hereby request disbursement in the amount of \$[\_\_\_\_\_] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [\_\_\_\_\_].
2. The Borrower’s DUNS number is 14-477-5335.
3. The requested date of disbursement is [\_\_\_\_\_] 15, 20[\_\_\_] (the “**Disbursement Date**”)[, which is the first Business Day following [\_\_\_\_\_] 15, 20[\_\_\_\_]].
4. The amounts previously disbursed under the WIFIA Loan Agreement equal, in the aggregate, \$[\_\_\_\_\_].
5. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Loan proceeds.
6. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the WIFIA Loan, and the amount of this Requisition together with the sum of all disbursements of WIFIA Loan proceeds made and to be made for the current Federal Fiscal Year will not exceed the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule.

7. All documentation evidencing the Eligible Project Costs to be reimbursed to the Borrower by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the WIFIA Loan Agreement.
8. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds) for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (including approval from the Rhode Island Coastal Resources Management Council for those construction activities subject to its regulatory authority) (and is not subject to any notice of violation, breach or revocation).
9. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 11(a)(xvi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
10. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the WIFIA Lender and with good engineering practices in accordance with the highest standards of the Borrower's industry.
11. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
12. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), (i) no Default or Event of Default and (ii) no event of default under any other Related Document and no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing.
13. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since February 28, 2019.
14. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.
15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.
16. A copy of this requisition has been delivered to each of the above named addressees.

17. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Borrower/Trustee.]

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

**NARRAGANSETT BAY COMMISSION<sup>10</sup>**

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

Name:

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

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<sup>10</sup> To be executed by the Borrower's Authorized Representative.

**APPENDIX TWO TO EXHIBIT D**

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

Requisition Number [\_\_\_\_\_] is [approved in the amount of \$[\_\_\_\_\_] [approved in part in the amount of \$[\_\_\_\_\_] [not approved]<sup>11</sup> by the WIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [Dated Date], by and between Narragansett Bay Commission (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”).

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

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

By: \_\_\_\_\_  
WIFIA Lender’s Authorized Representative  
Name:  
Title:  
Dated:

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<sup>11</sup>Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

**EXHIBIT A TO APPENDIX TWO TO EXHIBIT D**

**[Insert reasons for any partial or full denial of approval.]**

**EXHIBIT E****UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
COMPLIANCE WITH LAWS**

The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to water and wastewater projects. It is not intended to be exhaustive.

## Environmental Authorities

- Archeological and Historic Preservation Act, Pub. L. 93-291, as amended
- Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-mm
- Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668c
- Clean Air Act, Pub. L. 95-95, as amended
- Clean Water Act, Titles III, IV and V, Pub. L. 92-500, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Farmland Protection Policy Act, Pub. L. 97-98
- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations Environmental Justice, Executive Order 12898
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- Floodplain Management, Executive Order 11988, 42 FR 26951, May 24, 1977, as amended by Executive Order 13690, 80 FR 6425, February 4, 2015
- Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407
- Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712
- National Historic Preservation Act, Pub. L. 89-655, as amended
- National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.
- Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq.
- Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608

- Rivers and Harbors Act, 33 U.S.C. 403
- Safe Drinking Water Act, Pub L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-54, as amended
- Wilderness Act, 16 U.S.C. § 1131 et seq.

#### Economic and Miscellaneous Authorities

- Debarment and Suspension, Executive Order 12549
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89 -754, as amended, and Executive Order 12372
- Drug-Free Workplace Act, Pub. L. 100-690
- Labor Standards, 33 U.S.C. § 1372 and 40 U.S.C. 3141-3144, 3146 and 3147
- New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.)

#### Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- Age Discrimination Act, Pub. L. 94-135
- Equal Employment Opportunity, Executive Order 11246
- Section 13 of the Clean Water Act, Pub. L. 92-500
- Section 504 of the Rehabilitation Act, Pub. L 93-112 supplemented by Executive Orders 11914 and 11250
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.)
- Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements

**EXHIBIT F**  
**WIFIA DEBT SERVICE**

**EXHIBIT G-1****OPINIONS REQUIRED OF COUNSEL TO BORROWER**

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

(a) the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization;

(b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party;

(c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action;

(d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms;

(e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;

(f) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject; and

(g) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.<sup>12</sup>

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<sup>12</sup> Other opinions to be added as appropriate.

**EXHIBIT G-2****OPINIONS REQUIRED FROM BOND COUNSEL**

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

(a) The Borrower has been duly created and validly exists as a body corporate and politic and a public instrumentality of the State under and pursuant to the laws of the State (including [Title 46, Chapter 25 of the Rhode Island General Laws], as amended to the date hereof) (the “**Borrower Act**”), with good right and power to issue the WIFIA Bond.

(b) The Borrower has the right and power under the laws of the State, including the Borrower Act, to enter into the Related Documents, and each has been duly authorized, executed and delivered by the Borrower, is in full force and effect, and constitutes a legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions.

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

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

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

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

(g) [the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code];<sup>13</sup> and

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

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<sup>13</sup> Note to Borrower: To be discussed.

**EXHIBIT H**  
**FORM OF CERTIFICATE OF TRUSTEE**  
**NARRAGANSETT BAY COMMISSION**

**WIFIA Bond,  
CSO PHASE III Project  
(WIFIA – N18132RI)**

The undersigned, [\_\_\_\_\_] (the “*Trustee*”), by its duly appointed, qualified and acting [\_\_\_\_\_] certifies with respect to the above referenced bond (the “*WIFIA Bond*”) dated as of [\_\_\_\_\_] 20[\_\_\_], as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Indenture (as defined below)):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of [\_\_\_\_\_].
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the WIFIA Bond have been obtained and are in full force and effect.
3. That the documents pertaining to the issuance of the WIFIA Bond to which the Trustee is a party were executed and the WIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the WIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the WIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture (“*Trusts*”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section 205 (*General Provisions for Issuance of Bonds*) of that certain Indenture (the “*Indenture*”), dated as of April 15, 2004, between Narragansett Bay Commission (the “*Borrower*”) and the Trustee, as amended and supplemented.

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

8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee and Paying Agent for and in respect of the WIFIA Bond as set forth in the Indenture and the WIFIA Loan Agreement, including from time to time redeeming all or a portion of the WIFIA Bond as provided in Article IV (*Redemption of Bonds*) of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Article VIII (*The Fiduciaries*) of the Indenture.

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

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

[TRUSTEE]

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

**ANNEX ONE TO EXHIBIT H**  
**OFFICERS OF TRUSTEE**

**ANNEX TWO TO EXHIBIT H**  
**RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE**

**EXHIBIT I****FORM OF BORROWER'S OFFICER'S CERTIFICATE**

Reference is made to that certain WIFIA Loan Agreement, dated as of [\_\_\_\_], 20[\_\_\_] (the "WIFIA Loan Agreement"), by and among Narragansett Bay Commission (the "Borrower") and the United States Environmental Protection Agency, acting by and through the Administrator (the "WIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement.

1. The undersigned, [\_\_\_], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 11(a)(ii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit A are complete and fully executed copies of each Indenture Document (excluding documentation related to Additional Security and Qualified Swap Agreements), together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the WIFIA Lender in its sole discretion;
- (b) pursuant to Section 11(a)(vi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 21 (*Borrower's Authorized Representative*) of the WIFIA Loan Agreement;
- (c) the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget to pay Total Project Costs are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;
- (d) pursuant to Section 11(a)(viii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit C are true, correct and complete copies of each Existing Principal Project Contract (as listed in Part A of Schedule 12(n) (*Principal Project Contracts*)) to the WIFIA Loan Agreement, and each such Existing Principal Project Contract is in full force and effect and has not been amended, amended and restated, modified or supplemented;
- (e) the Borrower has obtained all Governmental Approvals needed (1) as of the Effective Date in connection with the Project and (2) to execute and deliver, and perform its obligations under the WIFIA Loan Agreement, and all such

Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach or revocation);

- (e) pursuant to Section 11(a)(x) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit D is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender, (iv) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over its useful life and (v) otherwise meets the requirements of Section 11(a)(x) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement;
- (f) the Borrower (i) is authorized, pursuant to Sections 46-25-5, 46-25-58 and 46-25-59 of the Rhode Island General Laws and its Organizational Documents, to pledge, assign, and grant the Liens on the Pledged Collateral purported to be pledged, assigned, and granted pursuant to the Indenture Documents without the need for notice to any Person, physical delivery, recordation, filing or further act, (ii) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all other documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Lien on the Pledged Collateral (for the benefit of the WIFIA Lender and the other Secured Parties) to the extent contemplated by the Indenture Documents and this Agreement, and (iii) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents and this Agreement or any instruments, certificates or financing statements in connection with the foregoing;
- (g) pursuant to Section 11(a)(xiii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, (i) attached hereto as Exhibit E is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof, (ii) the Borrower has complied with all other applicable federal, state or local environmental review and approval requirements with respect to the Project, and (iii) the Borrower has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
- (h) pursuant to Section 11(a)(xv) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 06-1471715, (ii) the Borrower's Data Universal Numbering System number is 14-477-5335, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as Exhibit F is evidence of each of (ii) and (iii);

- (i) pursuant to Section 11(a)(xvi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, each of the insurance policies obtained by the Borrower in satisfaction of the conditions in Section 14(f) (*Affirmative Covenants – Insurance and Condemnation*) of the WIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider;
- (j) pursuant to Section 11(a)(xvii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit G is a copy of the Borrower's Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the [certificate];
- (k) pursuant to Section 11(a)(xviii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit H is a copy of (i) the WIFIA Supplemental Indenture, (ii) all other resolutions, ordinances, or supplements (as the case may be), if any, authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the WIFIA Loan Documents to which it is a party, and (iii) all further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the WIFIA Loan Documents, and in each case such documents have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only documents required and adopted by the Borrower relating to the matters described therein;
- (l) the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (m) (i) the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 3908(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

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

**NARRAGANSETT BAY COMMISSION**

By: \_\_\_\_\_  
Name:  
Title: Authorized Person

**EXHIBIT B TO EXHIBIT I**  
**INCUMBENCY CERTIFICATE**

The undersigned certifies that he/she is the [Secretary] of Narragansett Bay Commission, a public corporation organized and existing under the laws of the State of Rhode Island, (the “Borrower”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents as the Borrower’s Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of [\_\_\_\_], 20[\_\_\_\_].

**NARRAGANSETT BAY COMMISSION**

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

**EXHIBIT J****FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION***[Letterhead of Borrower]**[Date]*

WIFIA Program Office  
 [Insert Proper Address]  
 Attention: Administrator

**Project: CSO Phase III (WIFIA – N18132RI)**

Dear Director:

This Notice is provided pursuant to Section 16(h)(iii) (*Reporting Requirements – Continuing Disclosure; Notices – Substantial Completion*) of that certain WIFIA Loan Agreement (the “WIFIA Loan Agreement”), dated as of [\_\_\_\_], by and between Narragansett Bay Commission (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through its Administrator (the “**WIFIA Lender**”).

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

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

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

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 [Borrower’s Authorized Representative]
 

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**EXHIBIT K****FORM OF QUARTERLY REPORT**

Set forth below is an example monthly report of the Borrower. Each quarterly report shall combine the Borrower's monthly reports regarding the implementation of the Project for the applicable quarter, providing Project status and information concerning the procurement, engineering, construction, permitting and implementation of the Project, including information of the nature reflected in the example monthly report.

***[Form of Borrower monthly report to be inserted.]***

## EXHIBIT L

## FORM OF PUBLIC BENEFITS REPORT

Pursuant to Section 11(a)(xiv) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement and Section 16(e) (*Reporting Requirements – Public Benefits Report*) of the WIFIA Loan Agreement, Narragansett Bay Commission (the “**Borrower**”) is providing this Public Benefits Report in connection with the CSO Phase III Project (WIFIA – N18132RI):

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

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

**(ii) With respect to the report delivered [prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) following the fifth anniversary of the Substantial Completion Date], the number of jobs projected to be created by the Project during the period between the Effective Date and the Substantial Completion Date:**

The Borrower projects [ ] jobs to be created by the Project during the period between [[(1)] the Effective Date and the Substantial Completion Date]<sup>14</sup> [and] [[(2)] the Substantial Completion Date and the fifth anniversary of the Substantial Completion Date]<sup>15</sup>.

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

[ ].

**(iv) The amount by which the Project will [assist the Borrower (measured by percent annually) in reducing levels of Nitrogen, Phosphorus, biochemical oxygen demand (BOD) and total suspended solids (TSS)][increase the volume of potable water produced (measured in MGD annually)][increase the volume of water recycled, recharged or redirected (measured in MGD annually)][increase Class [A][B] biosolids (measured in tons annually)]<sup>16</sup>:**

[ ].

<sup>14</sup> Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the Substantial Completion Date.

<sup>15</sup> Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the fifth anniversary of the Substantial Completion Date.

<sup>16</sup> Include one of the bracketed items as applicable.

1 **NARRAGANSETT BAY COMMISSION**

2 **PRE-FILED DIRECT TESTIMONY**

3 **OF KATHRYN KELLY, P.E.**

4

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

6 A. Kathryn Kelly. My business address is the Narragansett Bay Commission, One Service  
7 Road, 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 CSO Program Manager.

11

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

13 A. I have been employed at the NBC since August 2000. I began my employment as a  
14 Pretreatment Engineer, was promoted to Environmental Engineer in March 2004, and  
15 then promoted to Principal Environmental Engineer in 2007. On July 1, 2018, I was  
16 promoted to my current position of CSO Program Manager. Prior to my employment with  
17 the NBC, I worked for Waterlink, Inc. as an Applications Engineer for just over one year.

18

19 **Q. Have you previously testified before the Rhode Island Public Utilities Commission or the  
20 Rhode Island Division of Public Utilities and Carriers?**

21 A. Yes. I testified on behalf of the NBC in Rhode Island Public Utilities Commission Dockets  
22 4885 and 4890.

23

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

25 A. To provide the Rhode Island Division of Public Utilities and Carriers with some background  
26 on the third and final phase of the Combined Sewer Overflow (CSO) Abatement Program,  
27 a portion of which will be funded by a loan through a federal credit program established  
28 by the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA), which is  
29 administered by the United States Environmental Protection Agency (USEPA).

30

31

1 **Q. Would you please provide some background regarding NBC's CSO program?**

2 A. Yes, the NBC is under a Consent Agreement with the Rhode Island Department of  
3 Environmental Management (RIDEM) to implement a federally mandated CSO program  
4 in three phases. The cities of Providence, Pawtucket and Central Falls have combined  
5 sewers that overflow at approximately 63 locations during significant wet weather  
6 events. The CSO program will mitigate the impact of these overflows, which are the  
7 responsibility of the NBC, through the construction of wet weather facilities.  
8 Approximately 98% of the annual CSO volume will receive treatment when all three  
9 phases are completed.

10

11 The first phase, which addresses and treats 40% of the CSO Volume, became operational  
12 in October 2008, and involved the construction of the Main Spine tunnel, drop shafts, and  
13 Tunnel Pump Station for an overall cost of approximately \$348 million. Since its inception,  
14 over 8 billion gallons of flows that would have previously overflowed directly into  
15 Narragansett Bay and its tributaries have been stored and treated.

16

17 The second phase of the CSO Program, which addresses and treats 20% of the CSO  
18 Volume, became operational in December 2014, and the most significant components  
19 were the construction of two main interceptors in the Field's Point service area, sewer  
20 separation projects, and a wetlands treatment facility. The construction costs for phase  
21 two were approximately \$177.5 million.

22

23 The third phase (CSO Phase III) is the final phase of the CSO program, which will address  
24 and treat the remaining CSO Volume, includes four phases, A, B, C, and D, to be completed  
25 by 2041. Each of the four phases also includes expenditures of \$10 million for the  
26 construction of Green Stormwater Infrastructure (GSI) to reduce stormwater inflow to  
27 the existing CSO system. The total pre-design estimate for CSO Phase III in 2018 dollars is  
28 \$779.1 million. This is \$35.1 million less than the previous estimate of \$815.0 million as  
29 a result of changes made as part of a reevaluation and optimization plan approved by  
30 RIDEM in December 2017.

31

1 **Q. Can you please provide an update on the status of the CSO Phase III reevaluation?**

2 A. Yes. NBC's Consent Agreement with RIDEM for the CSO Program required NBC to  
3 complete preliminary design of the Phase III CSO facilities within one year of completion  
4 of construction of Phase II and final design one year after approval of the preliminary  
5 design. The Phase III CSO facilities are described in a Conceptual Design Report  
6 Amendment (CDRA) approved by RIDEM twenty years ago in 1998. In 2014, NBC initiated  
7 a reevaluation of the Phase III facilities proposed in the CDRA to determine if there was a  
8 more cost effective approach that could either reduce the cost or extend the schedule of  
9 Phase III by employing new techniques and approaches, specifically Integrated Planning,  
10 Affordability Analysis and Green Technology. NBC hired an engineering firm, Stantec  
11 (formerly MWH), to perform engineering services for the reevaluation of Phase III, and  
12 the analysis included the following:

- 13 • An evaluation to determine if the recommended abatement method proposed in the  
14 CDRA is still the most cost effective, including an evaluation of green infrastructure  
15 alternatives, particularly where sewer separation is currently proposed, to reduce or  
16 eliminate storm water at its source;
- 17 • Evaluation of changes in water quality since Phase I went on line to determine if Phase  
18 III is still necessary, and if so, to determine if the facilities required now to meet water  
19 quality standards could be reduced in scope;
- 20 • Development of a cost estimate for Phase III, including the evaluation of the impact  
21 on sewer rates, and conducting an affordability analysis based on Environmental  
22 Protection Agency (EPA) criteria and using an Integrated Planning Framework (IPF)  
23 approach to establish priorities;
- 24 • Establishment of a Stakeholders Group to update them on progress to date and  
25 obtain input on the Phase III Reevaluation;
- 26 • Development of the Bucklin Point Service Area Hydraulic Model Development to  
27 determine the overflow volumes for the 3-month design storm;
- 28 • Updating of the water quality model incorporating the water quality improvements  
29 from Phase I and Phase II to assess pollutant loading and water quality; and,
- 30 • Completion of technology screening and control strategy assessment to develop four  
31 alternatives including:
  - 32 ○ Green Stormwater Infrastructure (GSI)

- 1                   ○ Sewer Separation
- 2                   ○ Tunnels
- 3                   ○ Interceptors
- 4                   ○ Regulator Modifications
- 5                   ○ Near Surface Storage Tanks,
- 6                   ○ Treatment (Screening and Disinfection) and Discharge
- 7                   ○ Wetland Treatment

8

9                   As a result of this study, four alternatives were developed including the original  
10                  alternative included in the CDRA. Cost estimates were also developed and an affordability  
11                  analysis was completed for each of the alternatives. During this time, a number of  
12                  Stakeholder meetings were held to discuss the alternatives and the project was also  
13                  discussed with NBC’s Board of Commissioners (Board) at several meetings and technical  
14                  sessions. The four alternatives were:

15

- 16                  • Alternative 1 – Baseline CDRA
- 17                  • Alternative 2 – Modified Baseline with Phased Implementation
- 18                  • Alternative 3 - Modified and Phased Baseline with Extended Schedule and  
19                  Interim Water Quality Projects
- 20                  • Alternative 4 – Bucklin Point Wastewater Treatment Facility Storage and  
21                  Treatment

22

23                  Alternatives 1, 2 and 3 included the construction of a deep rock tunnel but Alternative 4  
24                  did not.

25

26                  Ultimately, the Board selected Alternative 2 at the April 28, 2015 meeting as it met the  
27                  higher water quality standards, provided a schedule that allowed for adaptive  
28                  management and resulted in the most favorable sewer rate of the three tunnel  
29                  alternatives. While Alternative 4 also met NBC’s affordability criteria, the water quality  
30                  model showed that it had the lowest water quality improvement and would not achieve  
31                  the water quality goals of the CSO program.

1 The selected alternative has a pre-design and construction cost of \$779.1 million in 2018  
2 dollars. The most significant change to the CDRA is the proposed phasing of the program.  
3 The schedule for the completion of the CSO Phase III facilities has been increased from 9  
4 years to 23 years, with an estimated completion date in 2041.

5

6 The reevaluation report was submitted to the RIDEM in July 2015 and RIDEM provided  
7 comments in March 2016. The NBC incorporated RIDEM's comments into an amended  
8 reevaluation report along with an updated Environmental Assessment of the Program,  
9 both of which RIDEM approved in December 2017. NBC's Consent Agreement with RIDEM  
10 has been renegotiated based upon the final approved plan. RIDEM has also required NBC  
11 to complete the design of the Phase III B facilities concurrently with the Phase III A design.

12

13 **Q. What is the current status of this project?**

14 A. NBC has begun the design of Phase III A facilities which includes the following:

- 15 • 28' internal diameter deep rock tunnel in Pawtucket, RI approximately 13,000' in  
16 length along the Seekonk and Blackstone Rivers.
- 17 • The tunnel will provide a storage volume of 58.6 MG
- 18 • Two launching, receiving work shafts - 30' internal diameter and 145'-200' deep
- 19 • Four drop shafts - 6'-8' internal diameter and 145'-175' deep
- 20 • 260' deep tunnel pump station and cavern located near the Bucklin Point Wastewater  
21 Treatment Facility in East Providence
- 22 • Several consolidation conduits, regulator modifications and green infrastructure  
23 projects.
- 24 • The design and construction of the upper Blackstone Valley Interceptor relief  
25 structure and 30" consolidation conduit previously scheduled in Phase III B
- 26 • The project also includes the design of regulator modifications and interceptors that  
27 will convey flow from various outfalls to the new tunnel and sewer separation.

28

29 **Q. What is the estimated cost for Phase III A, which the NBC seeks to partially fund with  
30 the WIFIA Loan?**

31 A. In the CDRA, the design and construction of the Phase III A facilities was estimated to cost  
32 \$502.4 million in 2018 dollars. This Project cost was refined between the issuance of the  
33 CDRA and the submittal of the WIFIA Application. In addition, the USEPA requires project  
34 costs to be adjusted to the projected year of construction so that the WIFIA loan is

1 appropriately sized. Therefore, each of the thirteen construction contracts for Phase III A  
2 were inflated from 2018 dollars to the projected construction start date at an inflation  
3 rate of 3% per year. Thus, the estimate cost for Phase III A is now approximately \$548.4  
4 million.

5

6 **Q. Does this conclude your testimony?**

7 A. Yes.

**NARRAGANSETT BAY COMMISSION**  
**STATEMENT OF NET POSITION**  
**JUNE 30, 2019**

## ASSETS

## CURRENT ASSETS

Cash and cash equivalents	\$ 21,257,283.67
Accounts receivable sewer use (net of allowance)	16,193,702.51
Accounts receivable sewer use unbilled	4,924,564.02
Accounts receivable series 2019A (PL20)	31,393,420.66
Accounts receivable series 2019B (PL21)	7,333,218.89
Receivables, other	17,755.27
Prepaid expense	820,942.76
Total Current Assets	<u>81,940,887.78</u>

## NON-CURRENT ASSETS

## Restricted Assets

Cash and cash equivalents, restricted for environmental enforcement fund	69,948.17
Cash and cash equivalents, restricted for debt service	30,419,348.79
Cash and cash equivalents , restricted for operating reserve for revenue stability fund	4,508,559.69
Cash and cash equivalents, restricted stabilization	3,947,511.23
Cash and cash equivalents, restricted for debt service reserve fund	3,503,651.84
Cash and cash equivalents, restricted for the acquisition and construction of capital assets	16,587,144.96
Total Restricted Assets	<u>59,036,164.68</u>

## Capital Assets

Land	2,754,407.48
Plant and equipment	103,442,085.54
Capital projects completed	780,648,298.16
Construction in progress	376,609,107.07
	<u>1,263,453,898.25</u>
Less accumulated depreciation	(238,129,789.69)
Total Net Capital Assets	<u>1,025,324,108.56</u>

## Other assets

Net pension asset - Non-Union Defined Benefit Plan	184,381.00
Total Non-current Assets	<u>1,084,544,654.24</u>

## TOTAL ASSETS

1,166,485,542.02

## DEFERRED OUTFLOWS OF RESOURCES

Loss on refunding of debt	1,788,829.87
Pension related outflows	5,984,557.00
OPEB related outflows	601,910.00
TOTAL DEFERRED OUTFLOWS OF RESOURCES	<u>8,375,296.87</u>

**NARRAGANSETT BAY COMMISSION**  
**STATEMENT OF NET POSITION**  
**JUNE 30, 2019**

LIABILITIES	
CURRENT LIABILITIES	
Accounts and contracts payable	\$ 4,246,722.11
Accrued interest payable	5,856,011.32
Accrued expenses	467,996.11
Total Current Liabilities	<u>10,570,729.54</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	3,188,428.96
Long-term loans payable, net	346,974,434.30
Long-term debt	261,553,306.57
Total Non-current Liabilities	<u>635,358,572.83</u>
TOTAL LIABILITIES	<u>645,929,302.37</u>
DEFERRED INFLOWS OF RESOURCES	
Gain on refunding debt	152,251.58
Pension related inflows	2,641,088.00
OPEB related inflows	274,666.00
TOTAL DEFERRED INFLOWS OF RESOURCES	<u>3,068,005.58</u>
NET POSITION	
Net Investment in capital assets	504,260,346.01
Restricted - environmental enforcement	69,948.17
Restricted - debt service reserve	3,503,651.84
Restricted - operating reserve for revenue stability	4,508,559.69
Unrestricted	13,521,025.23
TOTAL NET POSITION	<u>\$ 525,863,530.94</u>

**NARRAGANSETT BAY COMMISSION**  
**STATEMENT OF REVENUE, EXPENSE, AND CHANGES IN NET POSITION**  
**FOR THE PERIOD ENDING JUNE 30, 2019**

OPERATING REVENUE	
User fees, residential	\$ 56,064,503.61
User fees, commercial and industrial	41,207,347.79
Sewer connection fees	126,300.00
Pretreatment fees	1,066,369.24
Environmental enforcement fees	4,738.71
Septage income	321,035.99
Renewable energy credits	69,935.94
Miscellaneous	276,120.42
Late charge penalties	1,052,670.75
Total Operating Revenues	<u>100,189,022.45</u>
OPERATING EXPENSES	
Personnel	24,382,523.80
Operations and maintenance	1,412,814.63
Maintenance contracts and service agreements	1,584,307.53
Biosolid disposal expense	5,125,303.69
Insurance expense	1,244,037.92
Electricity expense	2,703,162.50
Other utilities	712,094.14
Chemicals expense	1,049,960.05
Supplies	1,318,179.81
Professional services	1,100,809.33
Depreciation	16,401,371.84
Miscellaneous	737,259.63
Total Operating Expenses	<u>57,771,824.87</u>
OPERATING INCOME	<u>42,417,197.58</u>
NON-OPERATING REVENUES (EXPENSES)	
Interest income	1,510,884.86
Interest expense	(16,816,320.78)
Miscellaneous non-operating revenue	145,161.39
Bond and note fees	(511,115.00)
Total Non-operating Revenue (Expenses)	<u>(15,671,389.53)</u>
NET INCOME (LOSS) BEFORE CAPITAL CONTRIBUTIONS	26,745,808.05
Capital Contribution	<u>1,000,000.00</u>
CHANGE IN NET POSITION	27,745,808.05
TOTAL NET POSITION, BEGINNING	<u>498,117,722.89</u>
TOTAL NET POSITION, ENDING	<u>\$ 525,863,530.94</u>