



# TEMPLATE TERM SHEET

## SUMMARY

The following Template Term Sheet has been prepared by the U.S. Environmental Protection Agency (EPA) for prospective public system borrowers that might obtain financing from the EPA’s Water Infrastructure Finance and Innovation Act (WIFIA) program. This Template Term Sheet is intended to provide reference as to the potential terms and conditions that may be applicable in a WIFIA transaction with public system borrowers, including the various options that the WIFIA program can offer. The final terms and conditions of a transaction will take into account the specific credit, legal and technical analyses relevant to the actual borrower and project.

### THIS TEMPLATE TERM SHEET INCLUDES THE FOLLOWING SECTIONS:

- Parties to the WIFIA transaction
- Project description
- WIFIA loan amount
- Interest rate
- Payment dates
- Final maturity date
- Dedicated source of repayment
- Security and lien priority
- Conditions precedent to effectiveness and disbursement of the WIFIA loan
- Representations and warranties
- Covenants
- Events of default and potential remedies
- Additional terms
- Governing law

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Date]

[Borrower name]  
[Borrower address]

RE: WIFIA Term Sheet for the [Borrower and project name] (WIFIA ID – [number])

Ladies and Gentlemen:

This WIFIA Loan Term Sheet (this “**Term Sheet**”) constitutes (a) the approval of the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “**USEPA**”), of the application for credit assistance of the Borrower (as defined below) received [date] (the “**Application**”) and (b) the agreement of USEPA to provide financing for the above-referenced project (as further described below, the “**Project**”) in the form of a secured loan (the “**WIFIA Loan**”), pursuant to the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended, and as may be further amended from time to time, the “**Act**”), codified as 33 U.S.C. §§ 3901-3914, subject in all respects to (i) the terms and conditions contained herein and (ii) the execution and delivery of the WIFIA loan agreement, to be entered into on or after the date hereof (the “**WIFIA Loan Agreement**”) on the terms and conditions acceptable to the USEPA contained therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the [WIFIA Loan Agreement]<sup>1</sup>.

By executing this Term Sheet, the Borrower confirms its agreement to reimburse USEPA for any and all fees and expenses that USEPA incurs for legal counsel, financial advice, and other consultants in connection with the evaluation of the Project and the negotiation and preparation of the WIFIA Loan Agreement and related documents, whether or not such agreement is ultimately executed.

This Term Sheet shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable, and the internal laws of the State of [state], if and to the extent such federal laws are not applicable. This Term Sheet, and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Electronic delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

<sup>1</sup> Reference to appropriate document to be adjusted if the term sheet is executed prior to execution of the WIFIA Loan Agreement. Solely for purposes of this template, defined terms have been set out in Annex A for reference.

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INDICATIVE TERMS OF THE WIFIA LOAN

WIFIA LENDER	United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “ <b>WIFIA Lender</b> ”).
BORROWER	[ <i>Borrower name</i> ], a [ <i>type of entity</i> ] organized and existing under [ <i>specify U.S. state or territory of organization</i> ] (the “ <b>Borrower</b> ”).
PROJECT	The project consists of the [ <i>project description</i> ], located in [ <i>location of project</i> ] (the “ <b>Project</b> ”).
WIFIA LOAN AMOUNT	A maximum principal amount (sum of disbursements and excluding capitalized interest) not to exceed \$[ <i>amount</i> ]; provided that (a) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act, shall not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs, and (b) the total federal assistance for the Project, including but not limited to the maximum principal amount of the WIFIA Loan and all federal grants, shall not exceed eighty percent (80%) of Total Project Costs.
INTEREST RATE	<p>The WIFIA Loan shall bear interest at a fixed rate, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the WIFIA Loan) as published, on the execution date of the WIFIA Loan Agreement, in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities.</p> <p>The WIFIA Loan shall also bear default interest at a rate of [200][500]<sup>2</sup> basis points above the otherwise applicable interest rate, at such times and upon such terms as [shall be] provided in the WIFIA Loan Agreement.</p>
PAYMENT DATES	Principal and interest on the WIFIA Loan shall be repaid in accordance with the terms set forth in the WIFIA Loan Agreement.

<sup>2</sup> Generally, the WIFIA Lender requires 200bp where the WIFIA loan is secured on the senior lien, and 500bp where the WIFIA loan is secured on a subordinated lien.

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	The debt service payment commencement date of the WIFIA Loan shall in no event be later than five (5) years after the Substantial Completion Date of the Project. <sup>3</sup>
FINAL MATURITY DATE	The earliest of (a) <i>[date]</i> ; (b) the date on which the maturity of the WIFIA Loan has been accelerated or subject to mandatory redemption or prepayment (as the case may be) (if applicable); and (c) the principal payment date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date, which is projected to be <i>[date]</i> . <sup>4</sup>
DEDICATED SOURCE OF REPAYMENT	The dedicated source of repayment for the WIFIA Loan shall be <i>[description of dedicated revenue source, e.g. system revenues]</i> . <sup>5</sup>
SECURITY AND LIEN PRIORITY[; WIFIA SPRINGING LIEN] <sup>6</sup>	The WIFIA Loan shall be secured by a <i>[senior][second]</i> lien on <i>[description of pledged collateral]</i> on a parity basis with <i>[defined term for parity obligations]</i> and <i>[senior][subordinated]</i> to <i>[defined term for subordinated or senior obligations, as the case may be]</i> .
CONDITIONS PRECEDENT TO CLOSING <sup>7</sup>	The WIFIA Loan Agreement shall include usual and customary conditions precedent to effectiveness for loans of this nature or that are otherwise appropriate in the judgment of the WIFIA Lender, including, without limitation:

<sup>3</sup> Debt service payment commencement date shall in no event be later than five (5) years after the Substantial Completion Date of the Project (unless the Borrower is a state infrastructure financing authority, in which case such date shall be no later than five (5) years after the date of initial disbursement of the WIFIA Loan).

<sup>4</sup> If the useful life of the Project is less than 35 years, the final maturity date may not be later than the useful life of the Project. If the Borrower is a state infrastructure financing authority, the Final Maturity Date shall not be later than 35 years after the date on which WIFIA loan amounts are first disbursed.

<sup>5</sup> Pursuant to the WIFIA statute (33 USC §3907(a)(3) and regulations (40 CFR 35.10045(a)(4)), this dedicated revenue source should also secure the other project obligations of the Project.

<sup>6</sup> If after discussions between the WIFIA Lender and the Borrower, the parties agree that the WIFIA Loan will be a subordinate debt obligation, the WIFIA Loan Agreement will require either (a) an automatic springing lien whereby the WIFIA loan becomes secured on the senior lien upon a Bankruptcy Related Event (e.g. “Upon the occurrence of a Bankruptcy Related Event with respect to the Borrower, the WIFIA Loan shall be secured by a first priority security interest in the *[pledged collateral]* and shall be *pari passu* with the Borrower’s other senior obligations, automatically and without the need for any notice to or from any Person, physical delivery, recordation, filing or further act.”) or (b) a representation and covenant that no senior obligations are or will be issued to finance the Project costs, with an automatic mandatory prepayment of the WIFIA loan in full upon the breach of such covenant.

<sup>7</sup> The following sections relating to Conditions Precedent to Closing, Conditions Precedent to Disbursement, Representations and Warranties, Covenants, Events of Default and Remedies, and Additional Terms are provided here in detail solely for reference and may not be necessary to include in the final term sheet prepared for the specific transaction.

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	<ul style="list-style-type: none"> <li>• Borrower’s authorizing resolution or ordinance</li> <li>• Copies of Borrower’s existing indenture(s) and other financing documents and existing construction contracts related to the Project</li> <li>• Legal opinions</li> <li>• Borrower certificates (e.g. closing, incumbency), confirming compliance with maximum caps of WIFIA Loan constituting no more than 49% of Eligible Project Costs and total federal assistance constituting no more than 80% of Total Project Costs; compliance with federal requirements; true and correct representations and warranties; and no Material Adverse Effect</li> <li>• Evidence of Federal Employer Identification Number, Data Universal Numbering System (“DUNS”) number and active registration with federal System for Award Management (“SAM”)</li> <li>• WIFIA CUSIP number</li> <li>• One final investment grade rating letter</li> <li>• Public benefits report (e.g. estimated jobs and environmental benefits of the WIFIA Loan)</li> <li>• Payment of invoiced fees and expenses</li> </ul>
<p>CONDITIONS PRECEDENT TO DISBURSEMENT</p>	<p>The WIFIA Loan Agreement shall include usual and customary conditions precedent to disbursement for loans of this nature or that are otherwise appropriate in the judgment of the WIFIA Lender, including, without limitation:</p> <ul style="list-style-type: none"> <li>• Disbursement request with required documentation and certifications as to no Default or Event of Default; no Material Adverse Effect; disbursements not in excess of Eligible Project Costs; compliance with federal requirements and reporting requirements; and true and correct representations and warranties</li> <li>• Updated litigation or environmental disclosures (if applicable)</li> <li>• Payment of invoiced fees and expenses</li> </ul>
<p>REPRESENTATIONS AND WARRANTIES</p>	<p>The WIFIA Loan Agreement shall include usual and customary representations and warranties for loans of this nature or that are otherwise appropriate in the judgment of the WIFIA Lender, including, without limitation:</p> <ul style="list-style-type: none"> <li>• Borrower’s organization, power and authority</li> <li>• Due execution and enforceability of Borrower documents</li> </ul>

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	<ul style="list-style-type: none"> <li>• Non-contravention with Borrower documents or laws</li> <li>• Consents and approvals</li> <li>• Litigation</li> <li>• Security and pledge</li> <li>• No debarment or lobbying</li> <li>• Compliance with laws, including federal requirements (such as NEPA, Davis-Bacon, and American iron and steel) and sanctions laws</li> <li>• Investment-grade credit rating</li> <li>• No defaults, prohibited liens, delinquent taxes or federal debt, or securities/blue sky registration</li> <li>• Construction contracts</li> <li>• Accuracy of representations and warranties and information</li> <li>• Insurance</li> <li>• Financial statements</li> <li>• Sufficient funds</li> <li>• Sovereign immunity</li> </ul>
<p>COVENANTS</p>	<p>The WIFIA Loan Agreement shall include usual and customary covenants for loans of this nature or that are otherwise appropriate in the judgment of the WIFIA Lender, including, without limitation:</p> <ul style="list-style-type: none"> <li>• Rate covenant or debt service coverage ratio</li> <li>• Preservation of security and pledged collateral</li> <li>• Use of proceeds</li> <li>• Prosecution of work; federal verification requirements</li> <li>• Operations and maintenance</li> <li>• Insurance; loss proceeds</li> <li>• Legal structure</li> <li>• System accounts; permitted investments</li> <li>• Compliance with laws and federal requirements</li> <li>• Taxes</li> <li>• Maintain active SAM registration and DUNS number</li> <li>• Sovereign immunity</li> <li>• Maintain accounting and audit procedures, access, records</li> <li>• Additional bonds/indebtedness tests</li> <li>• No prohibited liens, sales, mergers and acquisitions, or speculative hedging</li> <li>• No adverse amendments to related documents</li> <li>• Restricted payments and transfers</li> </ul>

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	<ul style="list-style-type: none"> <li>• Other reporting requirements, including but not limited to:             <ul style="list-style-type: none"> <li>○ Updated financial model or plan</li> <li>○ Annual audited financial statements</li> <li>○ Quarterly construction monitoring reports; final specifications</li> <li>○ Public benefits report (e.g. estimated jobs, environmental benefits of Project)</li> <li>○ Notices</li> </ul> </li> </ul>
<p>EVENTS OF DEFAULT; REMEDIES</p>	<p>The WIFIA Loan Agreement shall include usual and customary events of default for loans of this nature or that are otherwise appropriate in the judgment of the WIFIA Lender, including, without limitation:</p> <ul style="list-style-type: none"> <li>• Payment default</li> <li>• Occurrence of a Bankruptcy Related Event</li> <li>• Cross-acceleration of Borrower’s other obligations</li> <li>• Invalidity of WIFIA loan documentation</li> <li>• Covenant default</li> <li>• Misrepresentation default</li> <li>• Enforcement of Borrower’s other financing documents</li> <li>• Material adverse judgments</li> <li>• Development Default</li> </ul> <p>Remedies upon an Event of Default may include but are not limited to the following:</p> <ul style="list-style-type: none"> <li>• Suspension or termination of disbursements</li> <li>• Cessation of permitted capitalized interest on the WIFIA Loan</li> <li>• Application of default interest rate on the WIFIA Loan</li> <li>• Suspension or debarment of the Borrower</li> <li>• Right to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid under the WIFIA Loan Agreement or to enforce performance of obligations under the WIFIA loan documents</li> <li>• Declaration of the unpaid principal amount of, and interest accrued on, the WIFIA Loan and all fees and other amounts payable under the WIFIA Loan Agreement to be immediately due and payable</li> </ul>

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	In addition, upon the occurrence of a Bankruptcy Related Event relating to the Borrower, all obligations of the WIFIA Lender to make disbursements shall automatically be terminated. <sup>8</sup>
ADDITIONAL TERMS	<p>The WIFIA Loan Agreement shall include additional provisions relating to the WIFIA Loan, including:</p> <ul style="list-style-type: none"> <li>• Flow of funds</li> <li>• Optional prepayments, without penalty or premium</li> <li>• Fees and expenses</li> <li>• Indemnification</li> <li>• Sale of WIFIA Loan</li> </ul>
WIFIA LOAN DOCUMENTATION	The WIFIA Loan shall be subject to the preparation, execution and delivery of the WIFIA Loan Agreement and any other loan documentation required by the WIFIA Lender in connection therewith, in each case acceptable to the WIFIA Lender and the Borrower, which will contain certain conditions precedent, representations and warranties, affirmative and negative covenants, events of default, and other provisions as agreed between the WIFIA Lender and the Borrower.
GOVERNING LAW	Federal laws of the United States of America, if and to the extent such federal laws are applicable, and the internal laws of the State of [ <i>specify U.S. state or territory</i> ], if and to the extent such federal laws are not applicable.

<sup>8</sup> If the WIFIA Loan is subordinate debt, additional remedies may include either (a) upon a Bankruptcy Related Event, an automatic springing lien for the WIFIA Loan to a first priority security interest, with the right of the WIFIA Lender to inspect records relating to transfers of funds to ensure that the WIFIA Loan is being treated as a senior obligation in all respects, including relating to priority of payments or (b) an automatic mandatory prepayment of the WIFIA loan in full upon the issuance of any senior obligations relating to the Project.

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ANNEX A  
DEFINITIONS<sup>9</sup>

“**Bankruptcy Related Event**” means, with respect to any Person, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person 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 such Person 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) such Person 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) solely with respect to the Borrower, fail to make a payment of WIFIA debt service in accordance with the WIFIA Loan Agreement 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 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 of the Borrower, 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 of the Borrower upon the occurrence and during the continuation of an Event of Default under the WIFIA Loan Agreement or an event of default under the Borrower’s other financing documents for application to the prepayment or repayment of any principal amount of the Borrower’s senior obligations other than in accordance with the provisions of such other financing documents.

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<sup>9</sup> Solely for reference purposes for this template term sheet.

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

“**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),<sup>10</sup> 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 of the Borrower 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.

“**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.

<sup>10</sup> Inclusion of costs incurred before receipt of credit assistance will be determined on a case by case basis. In no event will costs that are not federally eligible be included.

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“**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.

“**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 and notice to the WIFIA Lender in accordance with the WIFIA Loan Agreement, that Substantial Completion has occurred.

“**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 costs of issuance; (b) amounts, if any, required by the Borrower’s indenture documents or the WIFIA Loan documents to be paid into any fund or account upon the incurrence of the WIFIA Loan or any senior obligations of the Borrower; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) in respect of any indebtedness of the Borrower or any credit facility maintained by the Borrower, in each case in connection with the acquisition, design, construction and equipping of the Project (other than the WIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

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

THIS TEMPLATE TERM SHEET IS NOT A CONTRACT OR AN OFFER TO ENTER INTO A CONTRACT. IT HAS NOT BEEN APPROVED BY THE ENVIRONMENTAL PROTECTION AGENCY (“USEPA”) AND DOES NOT INDICATE A COMMITMENT BY USEPA TO PARTICIPATE IN ANY TRANSACTION OR TO BE BOUND IN ACCORDANCE WITH ANY TERM OR CONDITION SET FORTH HEREIN. ANY REPRESENTATION TO THE CONTRARY IS VOID. THIS TEMPLATE TERM SHEET IS BEING PROVIDED FOR REFERENCE PURPOSES ONLY AND IS SUBJECT TO CHANGE AT ANY TIME AT THE SOLE DISCRETION OF THE USEPA. IT MAY NOT BE RELIED UPON BY ANY PERSON OR ENTITY. ONLY A DOCUMENT AS EXECUTED BY USEPA WILL CONTAIN THE TERMS THAT BIND IT.

If the foregoing terms are acceptable, please countersign this letter in the space indicated below.

Sincerely,

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

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

*[Signature page to [Borrower and Project name] – WIFIA Term Sheet]*

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ACKNOWLEDGED AND AGREED:

**[BORROWER NAME],**  
by its authorized representative

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

TEMPLATE

*[Signature page to [Borrower and Project name] – WIFIA Term Sheet]*

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