

**CLEAN WATER STATE REVOLVING FUND  
(GREEN INNOVATION GRANT PROGRAM)  
(POINT SOURCE PROJECTS)**

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**«RECIPIENT\_CAPS»**

and

**NEW YORK STATE ENVIRONMENTAL  
FACILITIES CORPORATION**

**GRANT AGREEMENT  
SRF PROJECT NO.: «project\_no»  
GIGP APPLICATION NO.: «App\_ID»**

Dated as of [insert closing date]

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**TABLE OF CONTENTS**

	<u>Page</u>
Preamble.....	1
 ARTICLE I  DEFINITIONS	
Section 1.1 Definitions.....	2
Section 1.2 Rules of Construction.....	2
Section 1.3 Exhibits and Appendices Incorporated.....	2
 ARTICLE II  REPRESENTATIONS AND WARRANTIES	
Section 2.1 Representations and Warranties of the Recipient.....	3
 ARTICLE III  AGREEMENT TO PROVIDE FINANCIAL ASSISTANCE	
Section 3.1 Agreement to Provide Financial Assistance for Project Costs from the Revolving Fund.....	5
Section 3.2 Sources of Funding; Nature of Obligations.....	5
 ARTICLE IV  GRANT PROVISIONS	
Section 4.1 Grant Clauses.....	6
Section 4.2 Procedures for Advances of Grant Proceeds.....	6

ARTICLE V

COVENANTS

Section 5.1 Compliance with Laws and Agreements ..... 7

Section 5.2 Plans and Specifications ..... 9

Section 5.3 Construction of Project..... 9

Section 5.4 Ownership, Operation and Maintenance ..... 10

Section 5.5 Accounting and Records ..... 12

Section 5.6 Application of Grant Proceeds ..... 12

Section 5.7 Payment of Additional Project Costs ..... 12

Section 5.8 Third-Party Funding ..... 12

Section 5.9 Further Assurances ..... 12

Section 5.10 Covenant Against Discrimination ..... 12

Section 5.11 Leases, Intermunicipal and Other Agreements ..... 13

Section 5.12 Indemnification..... 13

ARTICLE VI

EVENTS OF DEFAULT

Section 6.1 Events of Default ..... 13

ARTICLE VII

REMEDIES

Section 7.1 Remedies ..... 14

ARTICLE VIII

MISCELLANEOUS

Section 8.1 No Obligation of State..... 15

Section 8.2 Term ..... 15

Section 8.3 Severability ..... 15

Section 8.4 Amendment of Grant Agreement..... 15

Section 8.5 Execution in Counterparts ..... 15

Section 8.6 Applicable Law..... 15

Section 8.7 Benefit of Grant Agreement..... 15

	<u>Page</u>
Section 8.8	Consent to Jurisdiction. .... 15
Section 8.9	No Warranty Regarding Condition, Suitability or Cost of Funded Project ..... 15
Section 8.10	Grant Agreement Supersedes Prior Agreements..... 16
Section 8.11	Notices ..... 16
Section 8.12	Signs ..... 16
Section 8.13	Project Promotion ..... 17
<b>Signature Page</b> .....	18

EXHIBITS

Exhibit A	Project Description and Contract Execution Schedule
Exhibit B	Estimated Project Cost
Exhibit C	Definitions
Exhibit D	Schedule of Additional Provisions
Exhibit E	Form of Opinion of Counsel to the Recipient
Exhibit F	Documentation Required in Connection With Each Requisition
Exhibit G	Form of Requisition Form
Exhibit H	Form of Certification Regarding Lobbying
Exhibit I	Davis-Bacon (DB) Prevailing Wage Requirements for SRF Recipients
Exhibit J	Required Terms for Contracts and Subcontracts

This GRANT AGREEMENT, dated as of the date set forth on the cover page hereof, between the Recipient identified on the cover page hereof and the Corporation.

WITNESSETH:

WHEREAS, the United States of America, pursuant to the Clean Water Act, requires each State to establish a water pollution control revolving fund to be administered by an instrumentality of the State as a condition to its receipt of capitalization grants under the Clean Water Act; and

WHEREAS, the State, pursuant to the State Act, has established the Revolving Fund to be used for purposes of satisfying the requirements of the Clean Water Act; and

WHEREAS, the Corporation has the responsibility, together with the DEC, to administer the Revolving Fund and to provide financial assistance from the Revolving Fund to eligible recipients for the construction of eligible projects, as provided in the State Act and the Clean Water Act; and

WHEREAS, the provisions of the Clean Water Act authorize funding for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities under the Revolving Fund; and

WHEREAS, the Corporation has determined that it is desirable and necessary to establish a program to be implemented through the Revolving Fund in order to carry out the objectives of the Clean Water Act set forth above (the "Green Innovation Grant Program"); and

WHEREAS, the Recipient has submitted to the Corporation an application for financial assistance from the Revolving Fund, for the purpose of funding the planning, design, acquisition, construction and installation of the Project, and the Corporation has reviewed and approved the funding of the Project; and

WHEREAS, on the basis of such application and the representations, warranties and covenants set forth herein, the Corporation proposes to make funding available to the Recipient, pursuant to Article IV, to fund, or to reimburse the Recipient for costs incurred in connection with the Project, and the Recipient desires to receive such funding upon the terms and conditions set forth in this Grant Agreement and the Act; and

WHEREAS, if the Recipient has received, or will receive, a commitment from a Third-Party Funding Entity (as defined herein) for Third-Party Funding, that amount, together with other funds available or expected to be available to the Recipient, is expected to be sufficient to pay all costs of the Project; and

WHEREAS, required approval of engineering or facilities plans or reports with respect to the Project has been obtained by the Recipient from DEC, subject to the provisions of applicable State environmental standards set forth in law, rules and regulations;

NOW THEREFORE, in consideration of the premises and the representations, covenants and agreements herein set forth, the Recipient and the Corporation, each binding itself, its successors and assigns, promise, covenant and agree as follows:

ARTICLE I  
DEFINITIONS

Section 1.1      Definitions.

Unless stated otherwise, each capitalized term used in this Grant Agreement has the meaning specified for it in **Exhibit C**.

Section 1.2      Rules of Construction.

Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Grant Agreement:

(a) *Number.* Words importing the singular number shall include the plural number and vice versa.

(b) *Approvals and Consents.* All approvals, consents, determinations and acceptances required to be given or made by any person or party hereunder shall be at the sole discretion of the person or party whose approval, consent, determination or acceptance is required.

(c) *References.* All references herein to particular articles, sections or exhibits without reference to a specific document are references to articles or sections of or exhibits to this Grant Agreement. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Grant Agreement, refer to this Grant Agreement in its entirety; and the term "hereafter" means after, and the term "heretofore" means before, the date set forth on the cover page.

(d) *Headings.* The captions and headings and table of contents herein are solely for convenience of reference and shall not constitute part of this Grant Agreement, nor shall they affect its meaning, construction or effect.

Section 1.3      Exhibits and Appendices Incorporated.

All exhibits and appendices to this Grant Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Grant Agreement.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

#### Section 2.1 Representations and Warranties of the Recipient.

As of the date set forth on the cover page and as of each date subsequent to the date hereof on which certain of the following representations and warranties are required to be restated, the Recipient represents and warrants as follows:

(a) *Authority.* The Recipient is an entity duly organized and existing under the laws of the State and has full legal right, power and authority to (i) conduct its business and own its properties, (ii) enter into this Grant Agreement and to comply with the terms hereof, (iii) adopt the Resolution, and (iv) carry out and consummate, by contract or otherwise, all other transactions contemplated by each of the aforesaid documents.

(b) *Approvals and Consents.* The Recipient has duly approved the execution and delivery of this Grant Agreement for purposes of funding the planning, design, acquisition, construction and installation of the Project; and any and all consents, authorizations and approvals of any third party required with respect thereto have been obtained.

(c) *Capacity.* The Recipient certifies that it has the legal, institutional, managerial, contractual and financial capability to ensure adequate construction, operation, and maintenance of the Project, including the proper budgeting of revenues and expenditures sufficient to meet its expenses and debt service, if any, related to the Project.

(d) *Binding Obligation.* This Grant Agreement has been duly authorized, executed and delivered by the Recipient and constitutes a legal, valid and binding obligation of the Recipient; the defense of sovereign immunity is not available to the Recipient in any proceedings by the Corporation to enforce any of the obligations of the Recipient under this Grant Agreement.

(e) *No Action.* There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or known to be threatened against the Recipient, nor is there any basis therefor (i) affecting the creation, organization or existence of the Recipient or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution of this Grant Agreement or (iii) in any way contesting or affecting the validity or enforceability of this Grant Agreement, the Resolution, or the execution of this Grant Agreement, or any agreement or instrument relating thereto or (iv) affecting the ability of the Recipient to fulfill the terms and conditions of this Grant Agreement.

(f) *No Default.* The Recipient is not in default under any loan agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness. The Recipient is not, in any respect material to the transactions contemplated by this Grant Agreement, in breach of or in default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any other agreement or instrument to which the Recipient is a party or by which it or any of its properties are bound, and no event has occurred which with the passage of time, the giving of notice or both would constitute such a breach or default. The execution and delivery of this Grant Agreement and the adoption of the Resolution and compliance with the respective provisions thereof will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Recipient is a party or by which it or any of its property is bound.

(g) *Resolution.* The Resolution has been duly adopted by the Recipient and remains in full force and effect.

(h) *Project Approvals.* The Recipient has obtained all necessary approvals from any and all governmental agencies requisite to the completion of the Project and is in compliance with all federal, State and local laws, ordinances and regulations applicable thereto.

(i) *Description of the Project.* The description of the project set forth in **Exhibit A** is an accurate description of the scope of activities to be financed, in whole or in part, pursuant to the terms of this Grant Agreement.

(j) *Estimate of Costs.* The Estimated Project Costs as shown in **Exhibit B** are equal to or in excess of the amount of the GIGP Award and represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Project.

(k) *Commitment of Third-Party Funding Entity.* If applicable, the Recipient has received a written commitment from the Third-Party Funding Entity for the Third-Party Funding, as specified in **Exhibit D**.

(l) *Eligibility for Third-Party Funding.* The Recipient is eligible to receive the full amount of the Third-Party Funding specified in **Exhibit D**, if any, and knows of no existing fact, condition or circumstance that might act to vitiate such eligibility.

(m) *SEQRA/SERP.* The Recipient certifies with respect to the Project that it has complied with all requirements of the State Environmental Quality Review Act ("**SEQRA**") and the State Environmental Review Process ("**SERP**"). The Recipient certifies that it has notified DEC and the Corporation of all actions proposed for complying with the environmental review requirements imposed by SERP and approved by EPA for Revolving Fund projects.

(n) *Leases.* Except as disclosed to the Corporation in writing in connection with the Recipient's application for the Grant, the Recipient has not entered into any lease agreements in connection with the Project and does not intend to lease the Project.

(o) *Intermunicipal and Other Agreements.* Except as disclosed to the Corporation in writing in connection with the Recipient's application for the Grant, the Recipient has not entered into any intermunicipal agreements or any other contract for the payment, use, management or operation of the Project in connection with the Grant and does not intend to enter into any other intermunicipal agreements or any other contract for the payment, use, management or operation of the Project.

(p) *Procurement, Suspension and Debarment.* The Recipient is not a debarred or suspended party under 2 CFR Part 180 and 2 CFR 1532. Further, neither the Recipient nor any of its contractors have contracted with any debarred or suspended party under 2 CFR Part 180 and 2 CFR 1532 or with any party that has been determined to be ineligible to bid under Section 316 of the Executive Law.

(q) *Restrictions on Lobbying.* The Recipient represents that it has not expended appropriated federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, officer or employee of Congress or any employee of any Member of Congress in connection with any grant or financing.

(r) *General Representations.* The Recipient certifies that all documentation and information provided to the Corporation in connection with this Grant Agreement is accurate in all respects and

acknowledges that the Corporation is executing and delivering this Grant Agreement and making this Grant in reliance upon the accuracy of said documentation and information.

### ARTICLE III

#### AGREEMENT TO PROVIDE FINANCIAL ASSISTANCE

##### Section 3.1 Agreement to Provide Financial Assistance for Project Costs from the Revolving Fund.

(a) *Financial Assistance.* The Corporation agrees to provide financial assistance to the Recipient pursuant to this Grant Agreement, solely from the sources and to the extent specified in Section 3.2, in an amount not greater than the GIGP Award identified in **Exhibit B** (as it may be amended in accordance with the terms hereof) as the amount requested or available for Grant. The Grant proceeds will be advanced to the Recipient in accordance with the terms of Article IV. The Corporation agrees to provide financial assistance to the Recipient for an amount not to exceed 90% of all Project Costs as set forth in **Exhibit B**, but in no event will the Corporation provide financial assistance to the Recipient for Project Costs that exceed the GIGP Award.

(b) *Retainage.* The Recipient acknowledges that the Corporation may hold back as retainage up to five percent (5%) of each Advance made to the Recipient. The total accumulated retainage, if any, shall be paid to the Recipient within thirty (30) days after the Corporation approves the Project as complete. The Project shall be deemed complete upon (i) receipt and acceptance by the Corporation of a Certificate of Substantial Completion for the Project, which must carry the seal or stamp of a New York State licensed engineer or engineering firm and set forth the following: that the Project was constructed in accordance with all approved plans and specifications, that any and all equipment was installed as designed and specified, that the Project is sufficiently complete in accordance with all Project construction contracts and that the Project can be utilized for its intended purposes; and (ii) receipt and acceptance by the Corporation of a certificate of an Authorized Person stating that the Project has been completed in accordance with this Grant Agreement and the approved plans and specifications and approved amendments thereto. The Corporation shall have the right to a final review and inspection of the Project before releasing any retainage.

(c) *Disapproval of Requisition Request.* The Recipient agrees that, in addition to the remedies set forth in Article VII of this Grant Agreement, the Corporation retains the specific remedy to reject, correct or withhold any or all requests for financial assistance where the Corporation, in its sole discretion, determines that the costs requested for reimbursement are not Eligible Costs or the Recipient has not properly documented the costs in its request for reimbursement.

##### Section 3.2 Sources of Funding; Nature of Obligations.

(a) *Sources of Funding.* The Corporation shall have no obligation to make any Advance pursuant to Section 4.2, except from the sources within the Revolving Fund provided for in this Section 3.2. Notwithstanding anything to the contrary in this Grant Agreement, the Recipient acknowledges and agrees that the Corporation's funding of any Advance of the Grant as provided in Section 4.2 of this Grant Agreement, is subject to the receipt by the Corporation of moneys in an amount equal to the aggregate amount of such Advance from moneys available under the ASAP account unless the Corporation determines to provide other available Revolving Fund moneys for such purpose.

(b) *Conditions for Advances.* The obligation of the Corporation to make any Advance of the Grant proceeds shall be subject to the terms and conditions of this Grant Agreement.

## ARTICLE IV

### GRANT PROVISIONS

#### Section 4.1 Grant Clauses.

(a) *Advances.* Subject to the conditions and in accordance with the terms of this Grant Agreement (including but not limited to Section 4.2), the Corporation hereby agrees to provide the Grant by making advances of funds ("**Advances**") to the Recipient from time to time, for a period not to exceed two (2) years from the date set forth on the cover page for costs related to construction and for a period of not to exceed five (5) years for eligible monitoring costs as reflected in Exhibit B, in an aggregate funding amount not to exceed the GIGP Award. The Corporation shall have no obligation to make Advances more frequently than once every thirty (30) days. Grant funds shall remain in the custody and control of the Corporation and will only be made available to the Recipient upon, and to the extent of, documented request of Project Costs and approval thereof by the Corporation. Subject to the Recipient complying with the terms and provisions of this Grant Agreement, the Corporation will advance funds to the Recipient within thirty (30) days of a properly completed requisition form.

In the event the Recipient shall, at any time, receive any funds in respect of the project for Project Costs from any Third-Party Funding Entity, the Recipient must draw down, in full, any Third-Party Funding prior to requesting any Advance of Grant proceeds hereunder. If the Recipient is unable to draw down in full any Third-Party Funding, the Recipient must provide a written explanation and accompanying documentation to the Corporation satisfactorily substantiating its need for the release of Grant proceeds prior to the full draw down of any Third-Party Funding.

(b) *Eligible Cost Invoices and Proof of Payment.* The Recipient shall provide the Corporation with eligible cost invoices and proof of payment of such invoices within forty-five (45) days of Advances to the Recipient. Proof of payment submitted by the Recipient shall be sufficient to allow the Corporation to document that billings and invoices were paid, such as copies of invoices, purchase orders, cancelled checks, payroll and machinery use records certified by the Recipient and such other forms of cost documentation as may reasonably be requested by the Corporation. Where the Corporation determines that the Recipient has provided inadequate documentation or has utilized prior Advances for ineligible costs, the Corporation may take any action permitted hereunder or under applicable law, including making adjustments by deducting an appropriate amount from subsequent Advances to the Recipient in subsequent disbursements.

#### Section 4.2 Procedures for Advances of Grant Proceeds.

(a) *Request for Advance.* Advances of Grant proceeds shall be made pursuant to requests for Advances set forth in Requisition Forms submitted by the Recipient to, and approved by, the Corporation as follows: copies of each Requisition Form shall be delivered to the Corporation in accordance with this Grant Agreement (including **Exhibit F**). Bills, invoices, evidence of payment or other evidence that Project Costs for which an Advance is requested have been incurred by the Recipient shall be delivered to the Corporation in accordance with **Exhibit F**.

(b) *Change Orders.* Advances of Grant proceeds shall not be made for costs related to any change orders in connection with the Project unless and until the change order has been approved and accepted by the Corporation. The Recipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs for change orders which have not been accepted by the Corporation.

ARTICLE V  
COVENANTS

Section 5.1      Compliance with Laws and Agreements.

The Recipient agrees that at all times during the Term of any Grant the Recipient shall cause the Project to be in compliance with all applicable Federal, State and local laws, regulations and enforcement orders.

(a) *Compliance.* The Recipient shall construct and operate the Project (or cause the Project to be constructed and operated) in compliance at all times with all applicable federal, State and local laws and regulations (including, without limitation, the Act, the Water Quality Act and Sections 204(d)(2) and 513 of the Clean Water Act, 40 CFR Part 31, 29 CFR Parts 1, 3 and 5, the Federal Funding Accountability and Transparency Act and the requirements of Davis-Bacon, as set forth in **Exhibit I**), ordinances, rules, regulations, Executive Orders and this Grant Agreement, and in compliance with all other applicable laws and regulations to the extent necessary to ensure the availability of the Project for its intended purposes and to ensure the safety of the public. The Recipient agrees to ensure that the Project will effectively protect water quality, employ good management practices and fulfill all federal and State requirements, all requirements of this Grant Agreement and all applicable instructions issued by the Commissioner to ensure that these requirements are met.

The Recipient further agrees that if its Project is determined by the Corporation, to be subject to the federal audit requirements of the Single Audit Act of 1984 (31 USC 7501 *et seq.*), it will comply with such requirements and all laws and regulations implementing same including without limitation 40 CFR Part 31, all as amended from time to time. The Recipient agrees, as applicable, to provide the Corporation with a copy of the Single Audit for its review.

(b) *Enforcement.* Regardless of acceptance by DEC or the Corporation of a certification by the Recipient that a Project requirement has been met, the Recipient shall permit DEC or the Corporation to take any actions necessary to confirm the accuracy of such certification. The making of Advances by the Corporation shall not constitute an acknowledgment or agreement by the Corporation that the Recipient is in compliance with the terms and conditions of this Grant Agreement.

(c) *Affirmative Action, Equal Employment Opportunity, Minority and Women's Business Enterprises and Disadvantaged Business Enterprises.* The Recipient acknowledges that contracts for the Project that are paid for with funds provided pursuant to this Grant Agreement, including, but not limited to, construction, engineering, architectural, legal and fiscal services thereto, shall be subject to the requirements and provisions of Article 15-A of the Executive Law (Article 15-A) and 5 NYCRR 140-145 (the Regulations) and, for such purposes, any such contract shall be considered a State Contract as defined therein. The Recipient agrees that it shall comply, and it shall require its authorized representatives, contractors, subcontractors and consultants paid with funds provided pursuant to this Grant Agreement to comply, with all federal and State laws, regulations, and executive orders applicable to this Project, including but not limited to Article 15-A of the Executive Law (Article 15-A) and 5 NYCRR 140-145 (the "Regulations"), as well as MWBE participation goals. Recipient acknowledges, and agrees to advise all contractors, subcontractors and consultants with contracts for the project that are paid for with funds provided pursuant to this Grant Agreement, that the MWBE goals in effect at the time of execution of each contract shall be applied to the GIGP Award. The Recipient agrees that it shall provide to the Corporation such documentation as it receives from contractors, subcontractors and consultants, including quarterly periodic reports, as may be required by law or requested by the Corporation regarding affirmative action, equal employment opportunity ("EEO"), minority and women's

business enterprises (“MWBE”) and disadvantaged business enterprises (“DBE”). The Recipient agrees that it will require all contractors, subcontractors and consultants to submit no later than execution of contracts: (i) an MWBE Utilization Plan (prime contractors only); (ii) an EEO policy statement and (iii) an acceptable EEO workforce staffing plan for service provider (non-construction) contracts. Upon receipt, the Recipient shall submit to the Corporation all reports and documentation required pursuant to this paragraph. The Recipient’s approval of a Utilization Plan or waiver request is subject to the prior consent of the Corporation. If required by the law, the Recipient shall document and submit to the Corporation information received from the Recipient’s contractors, subcontractors and consultants regarding all good faith efforts made by them to comply with the MWBE participation goals as set forth in Article 15-A and the Regulations, including any waiver requests. The Recipient agrees to cause the provisions set forth in Exhibit I attached hereto to be included in all State Contracts entered into on and after October 13, 2010 which are to be paid with funds provided pursuant to this Grant Agreement. The requirements of this paragraph shall be limited to the laws and requirements in effect on the date of each respective contract, without regard to the date of any amendments to construction contracts.

(d) *Special Project Conditions.* The Recipient agrees to comply with any and all special Project conditions set forth in **Exhibit D**.

(e) *Receipt.* The Recipient shall notify the Corporation promptly of the date scheduled for the Recipient's receipt of any Third-Party Funding and shall permit representatives of the Corporation to attend any meeting held for that purpose between the Recipient and any Third-Party Funding Entity regardless of whether or when any proceeds of any Third-Party Funding are actually received by the Recipient.

(f) *Project Approvals.* The Recipient shall obtain all necessary approvals from any and all governmental agencies requisite to the completion of the Project and compliance with all federal, State and local laws, ordinances and regulations applicable thereto.

(g) *SEQRA/SERP.* The Recipient certifies that it shall continue to notify DEC and the Corporation of all actions proposed for complying with the environmental review requirements imposed by SERP and approved by EPA for Revolving Fund projects.

(h) *NEPA.* If the Commissioner determines that, in addition to all such requirements of SEQRA and SERP, there are additional requirements associated with a National Environmental Protection Act (“NEPA”) environmental review, the Recipient shall comply with those additional requirements. The Recipient agrees to provide copies of all environmental documents as may be required by DEC and the Corporation.

(i) *Procurement, Suspension and Debarment.* The Recipient shall ensure that no sub-award, contract or agreement for the purchase of goods or services shall be made with any debarred or suspended party under 2 CFR Part 180 and 2 CFR 1532 or with a party determined to be ineligible to bid under Section 316 of the Executive Law.

(j) *Restrictions on Lobbying.* The Recipient represents that it will not expend appropriated federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, officer or employee of Congress or any employee of any Member of Congress in connection with any grant or financing. Furthermore, the Recipient agrees to execute the attached certification in substantially the form of **Exhibit H**. The Recipient agrees to obtain a certification from each contractor and subcontractor with which it has a contract for this Project which exceeds \$100,000 and to have such contractor and subcontractor execute a certification in substantially the form of **Exhibit H** and to maintain the same in its records and to forward to the Corporation such certifications.

(k) *Prevailing Wage Requirements.* If this is a public work contract covered by Article 8 of the New York State Labor Law, the Recipient agrees to comply, in all applicable respects, with the prevailing wage requirements under such statute.

(l) *Public Bidding Requirements.* The Recipient certifies that it has complied, or will comply, with all applicable public bidding requirements in connection with the Project including, but not limited to, the requirements of General Municipal Law Section 101.

(m) *Local Match.* The Recipient agrees to provide at least 10% of all Project Costs as its local match requirement under the Green Innovation Grant Program as set forth in **Exhibit B**. The Corporation agrees that the local match requirement may be met with local funds or in-kind contributions from the Recipient, from State funds or from any non-federal Third-Party Funding.

Section 5.2      Plans and Specifications.

(a) *Design and Construction.* The Recipient shall cause this Project to be designed and constructed in accordance with plans and specifications delivered to, and approved by, DEC and consistent with **Exhibit A**. The Recipient shall proceed with the acquisition and expeditious construction of the Project in conformity with law, with this Grant Agreement and with all applicable requirements of governmental authorities having jurisdiction with respect thereto, subject to such modifications of plans and specifications as may be approved by DEC as necessary or advisable to effectuate the purposes of the Act.

(b) *Performance Standards.* The Recipient agrees to take any corrective action necessary to bring the Project into compliance with the Project performance standards contained in the approved engineering report or facilities plan for this Project.

Section 5.3      Construction of Project.

(a) *Contracts and Security Bonds.* DEC and the Corporation have the right to review all contracts for services and construction funded pursuant to this Grant Agreement in order to determine eligibility for funding hereunder and to determine compliance with all relevant plans and terms of this Grant Agreement. Recipient agrees to provide the Corporation with all executed prime contracts funded pursuant to this Grant Agreement. Whenever a security bond is posted by a successful bidder for the faithful performance of a contract funded pursuant hereto, the name and address of the bonding company or person issuing the security bond, the number of such bond, and such other information as may be required by DEC or the Corporation shall be transmitted to the requesting party for review prior to award of such contract. The original of such bond shall remain in the office of the Recipient.

(b) *Inspection.* The Recipient agrees to provide competent and adequate inspection of all Project construction by a professional engineer licensed in the State and to notify the Corporation in advance of the date of such inspection in order to provide the Corporation with the opportunity to participate in the walkthrough and inspection. The Recipient shall direct such engineer to inspect work necessary for the construction of this Project and to determine whether the construction conforms to the approved plans and specifications. At the completion of construction, the engineer shall be required to certify to the Recipient, DEC and the Corporation that the construction is in accordance with the approved plans and specifications or approved amendments thereto. The Recipient shall cause any work not completed in accordance with approved plans and specifications to be remedied, unless such noncompliance is waived in writing by the Corporation and DEC.

The Recipient agrees to require a determination by the Project construction manager or

design professional (landscape architect, architect or engineer) of 30%, 60% and 90% of Project completion. At 30%, 60% and 90% of Project completion, Recipient shall provide to the Corporation photographic documentation satisfactory to the Corporation, evidencing the progress of construction.

(c) *Change Orders.* The Recipient agrees to submit all change orders to the Corporation within thirty (30) days following the date they are accepted. The Recipient agrees that change orders which will materially alter the Project will not be accepted without prior written approval by DEC or the Corporation.

(d) *Completion Certificate.* **Within seven (7) Business Days following completion of the Project,** the Recipient shall deliver to the Corporation a certificate of an Authorized Person stating that the Project has been completed in accordance with this Grant Agreement and providing photographic documentation adequate to evidence 100% of Project completion.

(e) *Required Approvals and Permits.* Upon completion of the Project, the Recipient shall obtain from appropriate authorities all permits and authorizations, if any, required for operation and use of the Project as contemplated by this Grant Agreement.

(f) *Project Insurance.* The Recipient agrees that it will require each Project consultant, Project contractor and Project subcontractor to secure and deliver to the Recipient appropriate policies of insurance issued by an insurance company licensed to do business in the State of New York. The policies must name both the Recipient and the Corporation as additional insured/loss payee parties and shall cover the contractor's public liability and property damage insurance, contractor's contingent liability insurance, "all-risk" insurance and worker's compensation for the Project. The Recipient shall require that copies of the applicable insurance policies be made available to the Corporation for review upon request. In addition, the Recipient shall secure at its own expense, property insurance in such amounts as required by the Corporation provided by the insurance companies licensed in the State of New York covering the equipment and facilities funded with Grant proceeds.

#### Section 5.4 Ownership, Operation and Maintenance.

(a) *Notice of Beginning Operation.* Within thirty (30) days following the completion of the Project, the Recipient agrees to so notify DEC and the Corporation in writing.

(b) *Operation and Maintenance.* The Recipient agrees to ensure proper and efficient operation and maintenance of this Project satisfactory to the Corporation and to retain a sufficient number of qualified staff to cause performance of required tests and compliance with all other requirements. After completion of the Project, the Recipient shall at all times operate the Project, or otherwise cause the Project to be operated, properly and in a sound and economical manner and shall maintain, preserve and keep the Project, or cause the Project to be maintained, preserved and kept, in good repair, working order and condition and shall make, or cause to be made, all necessary and proper repairs, replacements and renewals from time to time, so that at all times, the Project is operated properly in a manner consistent with the project performance standards contained in the engineering report or facilities plan for the Project, with this Grant Agreement and with the requirements of any related State permit.

(c) *Continued Ownership and Operation.* Unless authorized by the Commissioner or the Corporation to cease operations or dispose of the Project, the Recipient shall own, operate and maintain the Project during the Term of this Grant Agreement. Without the approval of the Corporation, the Recipient shall not discontinue operation of, or sell or otherwise dispose of, the Project, except for portions of the Project sold, or otherwise disposed of, in the course of ordinary repair and replacement of obsolete or worn out parts. Except as authorized in writing by the Corporation and the Commissioner, there shall be no alterations to the

Project which would materially affect the Project in any manner. In addition, no improvements, structures or appurtenances shall be placed, constructed or developed on the site of the Project (the "Project Site") in such a way as to interfere with the express purpose of the Project.

(d) *Title.* The Recipient shall obtain and maintain such title, estate or interest in the Project Site, including easements and rights-of-way, as may be necessary to ensure undisturbed use and possession for the purposes of constructing, operating and maintaining the Project during the Term of this Grant Agreement.

Section 5.5      Accounting and Records.

(a) *Establishment of Project Accounts.* The Recipient shall maintain Project accounts in accordance with generally accepted government accounting standards and any instructions issued by the Commissioner or the Corporation.

(b) *Access to Records.* The Recipient shall: (i) permit EPA, DEC, the State Comptroller, and the Corporation, or their authorized representatives to review or audit all records relative to this Project; (ii) produce or cause to be produced all records relating to any work performed under the terms of this Grant Agreement for examination at such times as may be designated by any of them or their authorized representatives; (iii) permit extracts and copies of Project records to be made by them or their authorized representatives; and (iv) promptly fulfill information requests by any of them or their authorized representatives.

(c) *Access to Project and Work.* The Recipient shall permit agents, consultants and representatives of DEC, the Comptroller of the State and the Corporation to have access to the Project and its components at all reasonable times. All contracts of the Recipient for construction or operation of all or any portion of the Project shall contain provisions that permit such access to the Project, and shall ensure that the contractor shall provide proper facilities for such access and inspection and shall permit extracts and copies of Project records to be made by the foregoing agents, consultants and representatives.

(d) *Record Retention.* The Recipient shall retain all files and records relating to the construction of the Project for at least six (6) years after Project completion and retain all other Project files and records for the Term of this Grant Agreement. As-built plans and specifications for the Project shall be retained by the Recipient for the Term of this Grant Agreement. The Recipient shall make available to the Administrator of the EPA or representatives of the Administrator any files or records necessary to determine compliance with the Clean Water Act.

Section 5.6      Application of Grant Proceeds.

The Recipient shall apply the proceeds of the Grant solely for Project Costs in accordance with this Grant Agreement and shall reimburse the Revolving Fund in the event that it fails so to apply such proceeds.

Section 5.7      Payment of Additional Project Costs.

In the event that Grant proceeds are not sufficient to pay the costs of this Project in full, the Recipient shall nonetheless complete the Project and pay such portion of the Project Costs as may be in excess of available Grant proceeds, and the Recipient shall not be entitled to any reimbursement or funding therefor from the Corporation.

Section 5.8 Third-Party Funding.

(a) *Necessary Actions.* The Recipient shall take, in a timely fashion, all actions required or necessary to enable it to obtain the full anticipated proceeds of any Third-Party Funding.

(b) *Compliance with Conditions and Requirements.* The Recipient shall comply with all stated conditions to any Third-Party Funding commitment, as the same may be amended and supplemented by any Third-Party Funding Entity, and all applicable present and future eligibility requirements of such Third-Party Funding commitment.

(c) *Prompt Notice.* The Recipient shall promptly, and in any event within five (5) days after having notice or knowledge thereof, inform the Corporation in writing of any anticipated failure on its part to (i) meet all eligibility requirements of any Third-Party Funding Entity, (ii) be qualified to receive any Third-Party Funding proceeds in an amount at least equal to such Third-Party Funding Entity commitment, or (iii) receive the proceeds of such Third-Party Funding.

(d) *Documentation.* Where the Recipient has failed to submit documentation and/or vouchers required to obtain any Third-Party funding, the Recipient shall permit the Corporation, at its option, to prepare and submit to such documentation and/or vouchers on its behalf. The Recipient shall cooperate fully with the Corporation by providing necessary data for preparing, executing and submitting such documentation. The Recipient further authorizes any Third-Party Funding Entity to release any information respecting such assistance to the Corporation.

Section 5.9 Further Assurances.

The Recipient, at the request of the Corporation, shall authorize, execute, acknowledge and deliver such further certifications, resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable, in the sole discretion of the Corporation, for better assuring, conveying, granting, assigning and confirming the rights, representations and agreements granted or intended to be granted by or set forth in this Grant Agreement, including without limitation, any such certifications, resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be requested by the Corporation in connection with the issuance of this Grant. In addition, the Recipient shall furnish the Corporation with such additional information concerning the condition of the Project as the Corporation may reasonably request from time to time.

Section 5.10 Covenant Against Discrimination.

The Recipient in the performance of this Grant Agreement shall not discriminate or permit discrimination against any person or group of persons on the grounds of age, race, creed, color, religion, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status or domestic violence victim status in any manner prohibited by the laws of the United States of America or of the State.

Section 5.11 Leases, Intermunicipal and Other Agreements.

The Recipient covenants and agrees that (i) in the event that it has entered into one or more leases, intermunicipal agreements or other contracts relating to the Project for its use, management or operation, it will not renew, extend or amend the lease, intermunicipal agreement or other contract, and (ii) it will not enter into any new lease or contract for the use, management or operation of the Project, in either case

without notifying the Corporation in writing and receiving written consent to said action. The Recipient may deem the Corporation's consent to have been provided if the Corporation fails to respond to a written request for consent, and such failure continues for sixty (60) days.

Section 5.12 Indemnification.

To the fullest extent permitted by law, the Recipient agrees to indemnify, defend and hold harmless the Corporation against any loss or liability arising out of any claim or action brought against the Corporation for death, injury or damage to persons or property occurring in connection with the planning, design, construction, operation or maintenance of the Project. In each case, such obligation of the Recipient shall be conditioned upon (i) prompt written notice, by the Corporation to the Recipient, of the institution of any such claim or action and (ii) the assignment, by the Corporation to the Recipient, of the right to conduct the defense of any such claim or action, provided that such defense shall be undertaken by counsel reasonably satisfactory to the Corporation, and provided further that, absent the Corporation's prior written consent, no settlement, compromise or other voluntary resolution shall be entered into which would impose any liability or obligation on the Corporation. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against the Corporation with respect to any such claim or action and any settlement, compromise or other voluntary resolution thereof.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.1 Events of Default.

The occurrence of any of the following shall be considered an Event of Default:

(a) *Misrepresentation, Etc.* Any warranty, representation or other statement made: (i) by or on behalf of the Recipient in, pursuant to, or in connection with this Grant Agreement; (ii) in connection with any other financing made by the Corporation to the Recipient; or (iii) by or on behalf of the Recipient in the application filed in connection therewith, is false, incorrect or misleading in any respect.

(b) *Sale or Transfer.* A sale, transfer or other disposition of the Project.

(c) *Default Under Indebtedness.* The Recipient defaults in the performance of any term, covenant, condition or agreement of any indebtedness.

(d) *Failure to Remedy Default.* The Recipient fails to correct any breach of this Grant Agreement. The Recipient fails to rectify within thirty (30) days of written notification from the Corporation a breach of any of the terms and conditions of Article V of this Grant Agreement.

(e) *Other Failure to Perform.* The Recipient fails to perform and/or comply with any covenant or condition, including any special condition set forth in **Exhibit D**, required under this Grant Agreement.

## ARTICLE VII

### REMEDIES

#### Section 7.1 Remedies.

Upon the occurrence of an Event of Default, as defined in Article VI hereof, the Corporation may take whatever action at law or in equity may appear necessary or desirable to remedy such default, in addition to the remedies below. Failure by the Corporation to exercise, or delay in exercising, any right or remedy under this Article VII shall not operate as a waiver of such right or remedy.

(a) *Reimbursement of Revolving Fund.* Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default, the Recipient agrees that the Corporation may at its election, upon written notice to the Recipient, require the Recipient to immediately repay to the Corporation all Advances of Grant funds made to the Recipient, together with all other sums owed to the Corporation. Upon such notification, such advanced Grant funds shall become immediately due and repayable, despite anything to the contrary in this Grant Agreement.

(b) *Rejection or Adjustment of Advances.* The Corporation is under no obligation to make any Advances of Grant proceeds upon the occurrence of and during the continuance of, an Event of Default by Recipient.

(c) *Nonexclusive Remedy.* If the Corporation or DEC determines that the Recipient or any authorized representative is not complying with federal or State laws, regulations or requirements or instructions of the Corporation or DEC relating to the Project or terms of this Grant Agreement, the Corporation may, and at the direction of the Commissioner shall, in addition to exercising any or all of the remedies described herein, exercise any or all the remedies otherwise provided by federal or State Law or regulations executed subsequent hereto, at law or in equity, including but not limited to rights to seek injunctive relief or specific performance with respect to the obligations hereunder.

(d) *Right to Remedial Action.* Nothing in this Grant Agreement affects the right of DEC or the Corporation to take remedial action including but not limited to administrative enforcement action and actions for breach of contract if the Recipient fails to carry out its obligations under this Grant Agreement.

(e) *Costs of Default.* The Recipient agrees to pay to the Corporation, as such expenses are incurred, the amount of any expenses (including but not limited to the reasonable fees and expenses of the Corporation and attorneys representing the Corporation) incurred as a result of the Recipient's failure to comply with the terms of this Grant Agreement.

## ARTICLE VIII

### MISCELLANEOUS

#### Section 8.1 No Obligation of State.

Nothing in this Grant Agreement shall constitute a commitment of the State to appropriate or reappropriate any Federal or State funds.

Section 8.2 Term.

This Grant Agreement shall remain in full force and effect during the Term of this Grant Agreement, which shall commence upon the date set forth on the cover of this Grant Agreement and continue through the estimated useful life of the Project as set forth in **Exhibit D**; provided, however, that the terms of Article V and Article VII shall survive any termination of this Grant Agreement. The estimated useful life of the Project shall commence upon the date of construction completion as set forth in **Exhibit A** to this Grant Agreement.

Section 8.3 Severability.

If any provision of this Grant Agreement is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 8.4 Amendment of Grant Agreement.

This Grant Agreement may not be amended except by an instrument in writing signed by each of the parties hereto.

Section 8.5 Execution in Counterparts.

This Grant Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.6 Applicable Law.

This Grant Agreement shall be governed by and construed in accordance with the laws of the State, including the Act.

Section 8.7 Benefit of Grant Agreement.

The rights of the Corporation to enforce the duties, covenants, obligations and agreements of the Recipient set forth in this Grant Agreement may at any time, in whole or in part, be assigned and pledged by the Corporation and thereafter such duties, covenants, obligations and agreements so assigned and pledged shall be for the benefit of and enforceable by the Corporation and such assignee.

Section 8.8 Consent to Jurisdiction.

To the fullest extent permitted by law, the Recipient consents to the initiation of any such proceedings in any court of competent jurisdiction and, if applicable, agrees not to assert the defense of sovereign immunity in any such proceedings.

Section 8.9 No Warranty Regarding Condition, Suitability or Cost of Funded Project.

Neither the Corporation nor DEC makes any warranty, express or implied, as to the Project or its condition or that it will be suitable for the Recipient's purposes or needs, or that the proceeds of the Grant will be sufficient to pay the costs of the Project. Review or approval of engineering reports, facilities plans, design drawings and specifications or other documents, or the inspection of Project construction by DEC or the Corporation, does not relieve the Recipient of its responsibility to plan, design, and build the Project properly, and to operate and maintain the Project effectively, as required by laws, regulations, permits

and good management practices. The Recipient acknowledges and agrees that DEC and the Corporation or their representatives are not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other Project documents. Nothing in this section prohibits a Recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

Section 8.10 Grant Agreement Supersedes Prior Agreements.

This Grant Agreement supersedes any other prior or contemporaneous agreements or understandings, written or oral, between the parties relating to the funding of the Project.

Section 8.11 Notices.

All notices, certificates or other communications hereunder shall be sufficiently given, and shall be deemed given, when delivered in writing to the address, facsimile number, or e-mail (if expressly permitted in the provision requiring such communication) of the identified party or parties set forth below, or to such other address, facsimile number, or e-mail as the appropriate party may hereafter designate by notice in writing given to the others.

- (a) *Corporation:*  
New York State Environmental Facilities Corporation  
625 Broadway  
Albany, New York 12207-2997  
Attn.: Director of Technical Advisory Services  
Facsimile No.: (518) 402-7086  
E-Mail Address: GIGP@efc.ny.gov

With a copy of such communications delivered to the attention of the General Counsel at the address set forth above.

- (b) *Corporation's Paying Agent:*  
  
Manufacturers and Traders Trust Company  
One M & T Plaza  
Buffalo, New York 14240  
Attn.: Corporate Trust Department  
Facsimile No.: (716) 842-5905

- (c) *Recipient:*  
  
At the address specified on the signature page of this Agreement.

Section 8.12 Signs.

In recognition of the financial assistance provided hereunder for this Project, the Recipient agrees that a Project sign will be posted for the Project. Such Project sign, or as appropriate in the discretion of the Recipient, multiple signs, shall be designed, rendered and thereupon erected on or near the Project in order to communicate educational narratives and graphics to help members of the public learn about the specifics of the Project, Project components and the reason(s) such Project is considered an innovative green practice. The sign(s) shall incorporate information concerning funding acknowledgments, contact information and maintenance information and shall be sufficiently durable to

provide 10 years of service toward the objective of informing the public about the Project and its green innovation objectives. Guidance for the design and fabrication of the Project sign(s) is available at: <http://www.efc.ny.gov/Default.aspx?tabid=445>.

Section 8.13 Project Promotion.

In order to spur green innovation, build green capacity and facilitate technology transfer throughout the State, the Recipient agrees and consents to the Corporation using images, descriptions and depictions of the Project for promotional and education presentations, outreach and publications.

**IN WITNESS WHEREOF**, the Recipient and the Corporation have each caused this Grant Agreement to be executed and delivered as of the date first written above.

«RECIPIENT\_CAPS»

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

«auth\_rep»

«auth\_rep\_title»

Notice Address:

«Recipient»

«recip\_address1»

«recip\_address2»

«recip\_town», NY «recip\_zip»

«auth\_rep\_email»

NEW YORK STATE ENVIRONMENTAL  
FACILITIES CORPORATION

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

Matthew J. Driscoll

President and CEO

**EXHIBIT A**

**PROJECT DESCRIPTION and CONTRACT EXECUTION SCHEDULE**

**SRF Project No.:** «project\_no»  
**GIGP Application No.:** «App\_ID»  
**Recipient:** «Recipient»  
**County:** «County»

**PROJECT DESCRIPTION**

«project\_description»

**CONSTRUCTION SCHEDULE**

Construction Commencement «construct\_start\_dt»

Construction Completion «construct\_end\_dt»

**EXHIBIT B**

**ESTIMATED PROJECT COSTS**

**SRF Project No.: «project\_no»**  
**GIGP Application No.: «App\_ID»**  
**Recipient: «Recipient»**  
**County: «County»**

## EXHIBIT C

### DEFINITIONS

Capitalized terms used in this Grant Agreement have the meanings set forth in this **Exhibit C** or, if not defined herein, have the meanings set forth in the Regulations.

"Act" means the NYSEFC Act and the State Act.

"Advance" or "Advances" has the meaning set forth in Section 4.1.

"ASAP" means the Automated Standard Application for Payments system established by EPA to make capitalization grant payments to the State under the Water Quality Act, which payments are allocated by the Corporation as a source of funding the Grant.

"Authorized Person" means the person so authorized to act on behalf of the Recipient in connection with the delivery of the Requisition Forms by the Recipient.

"Business Day" means any day on which State offices are open to conduct business.

"Clean Water Act" means the Federal Water Pollution Control Act, as amended.

"Commissioner" means the Commissioner of DEC

"Corporation" means the New York State Environmental Facilities Corporation established under the NYSEFC Act, and any entity which may succeed to its rights and duties respecting the Revolving Fund.

"DEC" means the New York State Department of Environmental Conservation and any entity which may succeed to its rights and duties respecting the Revolving Fund.

"EPA" means the United States Environmental Protection Agency and any entity which may succeed to the administration of the program.

"Estimated Project Costs" means the projected costs to the Recipient that are eligible for funding by the Corporation under the State Act; that are allowable costs under the Regulations and that are reasonable, necessary and allocable by the Recipient to the Project under generally accepted government accounting standards, as set forth in the application of the Recipient, which projections are set forth in **Exhibit B**.

"Event of Default" means an event described in Article VI.

"Grant" means financial assistance provided by the Corporation to a Recipient under the Revolving Fund.

"Grant Agreement" means this Grant Agreement, as it may be amended and supplemented in accordance with the terms hereof.

"GIGP Award" means the amount of Grant, as set forth in **Exhibit D**.

"NYSEFC Act" means the New York State Environmental Facilities Corporation Act,

constituting Title 12 of Article 5 of the Public Authorities Law and Chapter 43-A of the Consolidated Laws of the State of New York, as from time to time amended and supplemented.

"Project" means the green infrastructure, water or energy efficiency improvements or other environmentally innovative activities, certified as eligible by DEC and the Corporation and subject to the approval of Corporation described in **Exhibit A**, as such exhibit may be amended and supplemented in accordance with the terms hereof.

"Project Costs" means the incurred project costs of the Recipient which are eligible for financial assistance from the Revolving Fund under the State Act, which are allowable costs under the Regulations and which are reasonable, necessary and allocable by the Recipient to the funded Project under generally accepted governmental accounting standards.

"Recipient" means the entity named on the cover page of this Grant Agreement.

"Regulations" means the regulations of the Corporation and/or DEC promulgated pursuant to the State Act, constituting 21 NYCRR Part 2602 and 6 NYCRR Part 649, respectively, as such may be amended from time to time.

"Requisition Form" means a document, in substantially the form of **Exhibit G**, executed by an Authorized Person and delivered in order to obtain an Advance.

"Resolution" means the ordinances and resolutions of the Recipient authorizing the undertaking of the Project, the local match, any applicable borrowing, the execution and delivery of this Grant Agreement and the receipt of the [Grant](#) proceeds.

"Revolving Fund" means the Clean Water State Revolving Fund established pursuant to the State Act.

"State" means the State of New York.

"State Act" means Chapter 565 of the Laws of New York of 1989, as amended.

"State Contract" shall have the meaning set forth in Article 15-A of the Executive Law.

"Term" means the period commencing on the date set forth on the cover of this Grant Agreement and continuing through the estimated useful life of the Project as set forth in **Exhibit D**.

"Third-Party Funding" means any grant, loan or other proceeds which are intended to be used to pay any costs of the Project which have been funded with the Grant made pursuant to this Grant Agreement, including, without limitation, the Third-Party Funding specified in **Exhibit D**.

"Third-Party Funding Entity" shall mean any entity, including, without limitation, the Corporation, the New York State Department of Environmental Conservation, the United States Department of Housing and Urban Development, the New York State Empire State Development Corporation, and/or Rural Development of the United States Department of Agriculture, or their agents, successors and assigns, which provides any Third-Party Funding for the Project; the term shall include, without limitation, any entity which is specified in **Exhibit D**.

"User Fees" means rates, rentals, fees and other charges of the Recipient in accordance with applicable provisions of law.

"Utilization Plan" shall have the meaning set forth in Article 15-A of the Executive Law.

"Water Quality Act" means the federal Water Quality Act of 1987, as amended.

**EXHIBIT D**

**SCHEDULE OF ADDITIONAL PROVISIONS**

**SRF Project No.: «project\_no»**  
**GIGP Application No.: «App\_ID»**  
**Recipient: «Recipient»**  
**County: «County»**

I. Definitions.

The "GIGP Award" shall be equal to «grant\_amount\_formatted»

Capitalized terms used but not otherwise defined in this **Exhibit D** or elsewhere in this Grant Agreement shall have the meanings set forth in the Regulations.

II. Additional Covenant Respecting Third-Party Funding (if applicable).

The Recipient hereby certifies that it expects to receive (Grant/Loan) no. (#) from (Lender) on or about (Date) in the amount of (\$).

III. Requests for Advances.

The Recipient hereby certifies that the person or persons from time to time holding the office listed below is the Authorized Person of the Recipient and is authorized to execute disbursement requests on behalf of the Recipient:

TITLE: «auth\_rep\_title»

IV. Estimated Useful Life of the Project.

The estimated useful life of the Project is «ppu» years, as determined by the Corporation, commencing on the date of construction completion.

V. Special Project Conditions.

This Grant Agreement shall be subject to the following special Project conditions, contained herein:

«specialConditions»

**EXHIBIT E**

**[FORM OF OPINION OF COUNSEL TO THE RECIPIENT]**

Insert Date of Agreement

«Recipient»  
«recip\_address1»  
«recip\_address2»  
«recip\_town», NY «recip\_zip»  
[auth rep email]

New York State Environmental  
Facilities Corporation  
625 Broadway  
Albany, New York 12207  
[GIGP@efc.ny.gov](mailto:GIGP@efc.ny.gov)

Re: «Recipient»  
«grant\_amount\_formatted» Grant Agreement  
SRF Project No.: «project\_no»  
GIGP Application No.: «App\_ID»

Ladies and Gentlemen:

I, the undersigned, hereby certify that:

I am counsel to the «Recipient» (the "Recipient"), am admitted to practice in the State of New York and have acted as counsel to the Recipient in connection with its entering into the Grant Agreement dated as of [insert date] (the "Grant Agreement") with the New York State Environmental Facilities Corporation (the "Corporation"). Any term used but not otherwise defined herein shall have the meaning set forth in such Grant Agreement.

I have reviewed certain resolutions of the Recipient, the Grant Agreement, in the form executed by the Recipient, the descriptions of the Project and other documents to be delivered pursuant to the Grant Agreement and such other documents as I have deemed necessary in the rendering of this opinion.

Based upon and subject to the foregoing and to the qualifications hereinafter set forth, I am of the opinion as of the date of this letter that:

1. The Recipient is a «Applicant\_Type» entity duly organized and existing under the laws of the State of New York and has the power and authority to own its own property and assets and transact the business in which it is engaged.

2. The Recipient has the power and authority to execute, deliver and perform its obligations under the Grant Agreement and certain other documents executed and delivered in connection with the Grant Agreement (together the "Grant Documents") and the Grant documents have been duly authorized, executed and delivered by the Recipient and are legal, valid and binding obligations of the Recipient enforceable against the Recipient in accordance with their respective terms.

3. The execution, delivery and performance by the Recipient of each Grant Document, nor compliance by it with the terms and provisions thereof and the making of Advances hereunder, will not (i) conflict with any provision of the Recipient's organizational documents; (ii) to my knowledge after due inquiry, conflict with, violate or constitute a breach of or a default under any existing applicable law, rule, order, regulation, Federal or State Executive Order or any judgment, or decree to which the Recipient is a party or otherwise subject; (iii) to my knowledge after due inquiry, conflict with any other agreements to which Recipient is a party or by which it or any of its properties are bound.

4. No authorization, approval or other action by, and no notice to, consent of, order of or filing with any governmental authority or regulatory body of the State of New York or the United States of America, other than such as have been duly obtained, taken, given or made and are of full force and effect, is required, as of the date hereof, for the execution and delivery by the Recipient of, or performance by the Recipient under, any Grant Document and I have no reason to believe that any further authorization, approval or other action by, notice to, consent of, order of or filing with any governmental authority or regulatory body of the State of New York or the United States of America is necessary with respect to the Project.

5. There is no litigation of any nature pending or threatened to restrain or enjoin the construction, completion or operation of the Project or to restrain or enjoin the execution or delivery of the Grant Agreement, which purports to affect the legality, validity, binding effect or enforceability of any Grant Document or in any manner questioning the proceedings or authority under which the Grant Agreement was authorized or the title of officials of the Recipient who have acted with respect to the proceedings for the execution of the Grant Agreement for their respective offices.

6. The Grant Agreement and each of the Grant Documents have been duly authorized, executed and delivered by the Recipient. Assuming the due authorization, execution and delivery thereof by the Corporation, such agreements and documents constitute the legal, valid and binding agreements of the Recipient, enforceable in accordance with its terms.

FORM / DO NOT SIGN

«Local\_Counsel»

## **EXHIBIT F**

### **DOCUMENTATION REQUIRED IN CONNECTION WITH EACH REQUISITION**

With each request for an Advance, the Recipient must submit documentation to the Corporation in support of such request in a form and manner which is acceptable to the Corporation.

Such documentation shall demonstrate that the costs for which financial assistance is requested are for the Project, and that the goods and services for which the costs were incurred have been provided.

Satisfactory documentation may include, but is not limited to, signed copies of payment vouchers or invoices, cancelled checks, details of current indirect cost and fringe benefits rates, copies of all sub-agreements, executed change orders, payroll records tabulations of allowable costs incurred to date; and

- (1) for construction, the latest cumulative work-in-place estimate and a summary of executed change orders for each construction contract;
- (2) for professional services, a description of the nature of the service and documentation that the service was provided according to the terms of a professional services agreement;
- (3) for purchase of equipment not included in a construction contract, a detailed list of equipment purchased, price of each item and the method and details of the procurement of each item; and
- (4) for project services to be provided by employees of the Recipient pursuant to a force account proposal which has been approved by the Corporation, employee time records, signed by the employee and the employee's supervisor, which account for all hours worked in the period covered and describe in detail the work claimed as approvable

All documentation for the Project shall be incorporated and referenced in Project accounts maintained by the Recipient in accordance with generally accepted government accounting standards.

**EXHIBIT G**

**[FORM OF REQUISITION]**

**«RECIPIENT\_CAPS»**

**SRF Project No.: «project\_no»**

**GIGP Application No.: «App\_ID»**

**REQUISITION NO. \_\_\_\_\_**

Dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

I, the undersigned and Authorized Person of the «Recipient» (the "Recipient"), hereby certify and agree as follows:

1. All representations and warranties of the Recipient as set forth in section 2.1 of this Grant Agreement (the "Grant Agreement") dated as of [closing date] between the New York State Environmental Facilities Corporation (the "Corporation") and the Recipient are still valid and effective as of today's date.

2. This requisition is being delivered pursuant to the Grant Agreement and the Recipient. All capitalized terms used but not defined herein shall have the respective meanings set forth in the Grant Agreement.

3. The Corporation is hereby requested to make an Advance under the Grant Agreement in the amount of \$\_\_\_\_\_ for Project Costs.

4. The above Project Costs have not been paid with the proceeds of any Third-Party Funding, except as specifically described herein: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. The Recipient has determined that such Project Costs are reasonable, necessary, and allocable to the Funded Project under generally accepted governmental accounting standards.

6. This is Advance number \_\_\_\_\_ requested under the Grant Agreement and this Advance, if made, together with the prior Advances requested, will not exceed the Maximum Sum.

7. The Recipient hereby represents and warrants that it is not in default under the Grant Agreement, that no event has occurred which, with the passage of time or the giving of notice or both, would become a default thereunder, that it has performed all of the covenants and agreements that it is required to perform under the Grant Agreement, that the making of the Advance requested by this requisition has been duly authorized by the Recipient, and that no change in circumstances has occurred, or will occur upon the making of the Advance hereby requested, which would constitute a breach or a default under the Grant Agreement.

8. Payments aggregating \$\_\_\_\_\_ have been incurred by the Recipient for Project Costs which, based upon information provided me by the Recipient's engineer for this project, constitute an "eligible project" under the State Act as shown on the Cost Summary attached hereto as Attachment 1.

9. Based upon information provided me by the Recipient's engineer for this project, all amounts requisitioned hereunder are for eligible Project Costs which have not been included in any previous disbursement

from Grant proceeds.

10. **(If requesting payment for costs of construction):** As of the date hereof, the Recipient holds, and will retain, a legal and valid fee simple title or other estate or interest in the site(s) of the Project, including all necessary easements and/or rights-of-way, as are or will be necessary for the Recipient's continued undisturbed use and possession of the site(s) of the Project during the construction, operation and maintenance of the Project.

11. **(If requesting payment for costs of construction):** The Recipient has obtained all licenses, permits or other approvals required as of the date hereof to undertake the Project.

12. **(If requesting payment for costs of construction):** The Advance requested does not include any costs of construction (other than costs of planning and design) associated with plans and specifications which have not been accepted by DEC or the Corporation.

13. **(If requesting payment for costs of construction):** The Recipient has complied with all applicable public bidding requirements in connection with the Project including, but not limited to, the requirements of General Municipal Law Section 101.

14. **(If requesting payment for costs associated with professional services agreement):** The Advance requested does not include any costs incurred pursuant to any professional services agreements which have not been furnished to the Corporation.

15. **(If requesting payment for costs for engineering services associated with inspection and services during construction):** The Advance requested does not include any costs incurred pursuant to any professional services agreement pertaining to inspection and engineering services during construction of the Project which has not been reviewed and so accepted by the Corporation.

16. **(If requesting payment for costs associated with technical force account work):** The Advance requested does not include any costs of construction (other than costs of planning and design) associated with the Technical Force Account Proposal which has not been approved by the Corporation.

17. **(If requesting payment for costs for equipment):** The Advance requested does not include any costs for equipment which have not been accepted and approved by DEC or the Corporation.

18. The amount requested does not include any project costs associated with a Utilization Plan, EEO policy statement or staffing plan, as applicable, which has not been approved by the Corporation, If a Utilization Plan, EEO policy statement or staffing plan, as applicable, has been approved by the Corporation, documentation as may be required by the Corporation to verify compliance with the EEO, Affirmative Action and S/M/WBE/DBE requirements has been provided; or (ii) the Recipient is in compliance with all S/M/WBE/DBE requirements.

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

20. The Recipient hereby represents and warrants that it is has obtained a certification in the form of **Exhibit H** to the Grant Agreement from each contractor and subcontractor which has a contract funded hereunder which exceeds \$100,000 and that the Recipient has submitted to the Corporation each such contractor and subcontractor certification as required under 40 CFR Part 34.

21. If applicable with respect to Davis-Bacon compliance, the Recipient confirms that for each payroll copy received since the last certification made on any payroll that the project is in compliance with the requirements of 29 CRF 5.5(a)(1) based on the applicable weekly payroll copies.

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

«RECIPIENT\_CAPS»

By: \_\_\_\_\_ FORM / DO NOT SIGN

Name (Please Print): \_\_\_\_\_

Title: «auth\_rep\_title»



## Green Innovation Grant Program Cost Summary Form

**Applicant Name:** {Applicant Name}

**GIGP Application No.** {App No.}

**SRF Project No.** {SRF No.}

**Project Name:** {Project Name}

**Request No.:** {Req No.}

Description of Costs	Costs as of xx/xx/xx			Cost Documented / Requested
	Approved Contract Amount	Net Requested	Remaining Costs to Document	
<b>Construction:</b>				
<b>Engineering:</b>				
<b>Administrative Consulting Svc.:</b>				
<b>Equipment:</b>				
<b>Legal:</b>				
<b>Administrative Force Account:</b>				
<b>Technical Force Account:</b>				
<b>Miscellaneous:</b>				
<b>Contingency:</b>				
<b>TOTAL:</b>				

### Summary of Cost (For EFC Use Only)

	Prev. Request #.		Cumulative	
Total Cost Requested for this Disbursement:	\$0.00		\$0.00	
Cost approved for payment	\$0.00		\$0.00	
Less 10% Local Match:	\$0.00		\$0.00	
Net Eligible (90% of Costs)	\$0.00		\$0.00	
Less 5% Retainage	\$0.00		\$0.00	
Disbursement Amount to be Released :	\$0.00		\$0.00	
<b>Total Remaining Balance Available:</b>				

**GIGP Award Amount:** \_\_\_\_\_

**GIGP Award Available:** \_\_\_\_\_

Comments:

**EXHIBIT H**

**[FORM OF CERTIFICATION REGARDING LOBBYING]**

**CERTIFICATION  
FOR  
CONTRACTS, GRANTS, LOANS, AND  
COOPERATIVE AGREEMENTS  
40 CFR 34**

**«RECIPIENT\_CAPS»**

**SRF Project No.: «project\_no»**

**GIGP Application No.: «App\_ID»**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grant, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

By:           FORM / DO NOT SIGN            
Name: **«auth\_rep»**  
Title: **«auth\_rep\_title»**  
Date: \_\_\_\_\_

## EXHIBIT I

### DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS FOR SRF RECIPIENTS

The Recipient acknowledges and hereby agrees to comply with the Wage Rate Requirements under the Davis-Bacon Act, which are hereby restated in pertinent part as follows:

#### Preamble

The Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) require that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the SRF shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon (DB) and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard DB contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the SRF shall ensure that the standard DB contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

With respect to the Clean Water and Safe Drinking Water State revolving Funds, EPA provides capitalization grants to the State which in turn, through the Corporation, provides subgrants or loans to eligible entities within the State (Recipient(s)). Typically, the Recipients are municipal or other local governmental entities. For these types of Recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring Recipients' compliance with the wage rate requirements set forth herein, those Recipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

#### **I. Requirements under the Davis-Bacon Act For Recipients That Are Governmental Entities**

The following terms and conditions specify how the Corporation and governmental Recipients will meet its DB responsibilities under. If a Recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the Corporation. The Corporation or Recipient may also obtain additional guidance from the web site of the Department of Labor (DOL) at <http://www.dol.gov/whd/programs/dbra/>.

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

Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair activity of infrastructure, including all construction, alteration and repair activity involving waste water or drinking water treatment plants as subject to DB. If a Recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Recipient must discuss the situation with the Corporation before authorizing work on that site.

##### **2. Obtaining Wage Determinations.**

(a). Recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into

solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the Recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipients may request a finding from the Corporation that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The Corporation will provide a report of its findings to the Recipient.
- (ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the Corporation, at the request of the Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b). If the Recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c). Recipient shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d). As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

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

#### **(1) Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof)

due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.wdol.gov](http://www.wdol.gov).

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

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

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

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

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

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

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

## (2) Withholding.

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

## (3) Payrolls and basic records.

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

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Recipient, that is, the entity that receives the sub-grant or loan from the Corporation.

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

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

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

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

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

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

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

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

#### (4) Apprentices and trainees--

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such

laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

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

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

## **5. Compliance Verification**

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

(b). The Recipient shall establish and follow an interview schedule based on its assessment of the risks of

noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

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

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

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

## EXHIBIT J

### REQUIRED TERMS FOR PROJECT CONTRACTS AND SUBCONTRACTS

In accordance with the terms and conditions set forth in Section 5.1 of the Grant Agreement, Recipient agrees that the following language will be included in all contracts and subcontracts regarding the Project including but not limited to those relating to construction, engineering, architectural, legal and fiscal services, as required by federal and State laws, regulations, and executive orders applicable to this Project:

#### **DEFINED TERMS:**

The term “Bid Packets” means the New York State Revolving Fund (SRF) Bid Packet for Construction Contracts and Bid Packet for Non-Construction Contracts and Service Providers, available at [www.efc.ny.gov/mwbe](http://www.efc.ny.gov/mwbe).

The term “contractor”, as used in this contract or subcontract, means, and applies to, all prime contractors, consultants and service providers as hereinafter defined, unless specifically referred to otherwise.

The term “subcontractor”, as used in this contract or subcontract, means, and applies to, any individual or business enterprise that has an agreement with a contractor.

The term “EEO policy statement” means a statement of the contractor and subcontractor setting forth at least the following:

- (i) A statement that the contractor will provide for and promote equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on contracts relating to the Project.
- (ii) An agreement that all of contractor’s solicitations or advertisements for employees will state that, in the performance of the contract relating to this Project, all qualified applicants will be provided with equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law.
- (iii) An agreement to request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate or harass on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law and that such union or representative will affirmatively cooperate in the implementation of the contractor’s obligations herein.

(iv) An agreement to comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory constitutional non-discrimination provisions.

The term “EFC” means the New York State Environmental Facilities Corporation.

The term “EPA” means the United States Environmental Protection Agency.

The term “ESD” means the Empire State Development Corporation - Division of Minority and Women’s Business Development.

The term “Recipient” means the party, other than EFC, to a grant agreement with EFC through which funds for the payment of amounts due hereunder are being paid in whole or in part.

The term “Service Providers” means professional services, such as legal, engineering, financial advisory or other professional services, supplies, commodities, equipment, materials, and travel.

The term “State” means the State of New York.

**INTERPRETATION:**

This contract is subject to Article 15-A of the Executive Law (Article 15-A) and 5 NYCRR 140-145 (the Regulations) and shall be considered a State Contract as defined therein. If any of the terms herein conflict with Article 15-A or the Regulations, such law and regulations shall supersede these requirements.

**REPRESENTATIONS AND ACKNOWLEDGMENTS OF CONTRACTOR & SUBCONTRACTOR:**

The contractor acknowledges that funds for the payment of amounts due under this contract are being provided in whole or in part subject to the terms and conditions of a grant agreement with EFC.

The contractor represents that it has submitted an EEO policy statement, an EEO Workforce Staffing Plan for Service Provider (Non-construction) Contracts (if applicable), and an MWBE Utilization Plan (prime contractors only), **prior to the execution of this contract.**

**Suspension/Debarment** - The contractor is not a debarred or suspended party under 2 CFR Part 180, 2 CFR Part 1532 and 40 CFR Part 32. Further, neither the contractor nor any of its subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations or with any party that has been determined to be ineligible to bid under Section 316 of the Executive Law.

**EQUAL EMPLOYMENT OPPORTUNITY (EEO), AFFIRMATIVE ACTION, MWBE AND OTHER COVENANTS:**

Contractor and subcontractor shall comply with all federal and State laws, regulations, and executive orders applicable to this Project, and shall provide such documentation, including periodic reports, as may be requested from time to time and as set forth in guidance documentation available at [www.efc.ny.gov/mwbe](http://www.efc.ny.gov/mwbe), including but not limited to the Bid Packets.

With respect to this contract, the contractor and subcontractor shall undertake or continue existing programs of affirmative action and equal employment opportunity to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, color, national origin,

age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

### **MWBE**

**MWBE Goals** – The contractor agrees to pursue MWBE goals in effect at the time of execution of this contract. The MWBE goals shall be applied to the total amount being funded pursuant to the grant agreement with EFC.

Contractors shall solicit participation of MWBE contractors (including subcontractors, consultants and service providers) for SRF-funded projects in accordance with the aforementioned goals. The contractor must submit sufficient documentation to demonstrate good faith efforts to provide opportunities for MWBE participation for work related to the SRF-funded project in the event respective goals are not achieved. Guidance pertaining to documentation of good faith efforts is set forth in the Bid Packet.

The contractor agrees that for purposes of providing meaningful participation by MWBEs on the contract and achieving the goals, contractor will reference the directory of New York State Certified MWBEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>.

Subcontractors who in turn subcontract work shall also comply with MWBE requirements for that contract.

**MWBE Utilization Plan** (MWBE Utilization Plan requirements apply to contractors and are submitted prior to execution of a contract.) – Each contractor shall prepare and submit to the Recipient for approval an MWBE Utilization Plan, and any revision or amendment thereto, that provides information describing MBEs and WBEs to be utilized at various times during the performance of this contract. The MWBE Utilization Plan shall identify the contractor’s proposed MBE and WBE utilization for this contract and the MWBE participation goals for this contract as established by EFC. The MBEs and WBEs identified in the MWBE Utilization Plan must be certified by, or have applied for certification from ESD.

In the event that contractor’s approved MWBE Utilization Plan does not propose achievement of the MWBE participation goals for this contract, contractor shall complete a waiver request as hereinafter referenced.

**Submission** – Within 30 days of execution of this contract, contractor shall submit to the Recipient copies of all signed subcontracts, agreements, and/or purchase orders referred to in the MWBE Utilization Plan.

**Compliance** – Contractor agrees to adhere to its approved MWBE Utilization Plan for the participation of MWBEs on this contract pursuant to their respective MWBE goals.

**Waivers** – If contractor’s application of good faith efforts does not result in the utilization of MBE and/or WBE firms to achieve the aforementioned goals, prior to execution of a contract, the contractor shall complete the waiver request portion of the MWBE Utilization Plan and submit it to the Recipient. Contractor is entitled to receive a written notice of acceptance or denial within 20 days of receipt. Upon receipt of a notice of deficiency from Recipient, Contractor shall respond to such notice within 7 days. Such response may include a request for a total or partial waiver of the aforementioned goals.

Contractor shall comply with the requirements set forth in the Bid Packets regarding waivers.

**Required Reports - MWBE Monthly Report** –Contractor agrees to submit a report to the Recipient by the 3<sup>rd</sup> business day following each end of month over the term of this contract documenting the progress made towards achievement of the MWBE goals of this contract.

## **EEO**

**EEO Workforce Staffing Plan** – All Service Provider (non-construction) contractors and subcontractors shall submit an acceptable EEO Workforce Staffing Plan setting forth the anticipated work force to be utilized on such contract or, where required, information on the service provider’s total work force, including apprentices, broken down by specific ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Recipient. The EEO Workforce Staffing Plan is submitted prior to execution of a contract.

### **Required Reports - EEO Workforce Utilization Reports – Applies to Service Provider (Non-Construction) Contracts and Subcontracts**

During the term of this contract, the contractor and subcontractor shall update and provide notice to the Recipient of any changes to the previously submitted Staffing Plan in the form of an EEO Workforce Utilization Report. Contractor shall submit this information on a quarterly basis during the term of this contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The EEO Workforce Utilization Report must be submitted to report this information. In the event a Contractor and Subcontractor’s workforce does not change within the Quarterly period, the Contractor shall notify the Recipient in writing.

### **Required Reports – EEO Workforce Utilization Reports – Applies to Construction Contracts and Subcontracts**

During the term of this contract, the contractor and subcontractor shall submit to the Recipient EEO Workforce Utilization Reports. Contractor and subcontractor shall submit this information on a monthly basis to report the actual labor hours utilized in the performance of this contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The EEO Workforce Utilization Report must be submitted to report this information.

All EEO Workforce Utilization Reports submitted by the contractor and subcontractor shall reflect a separation of the workforce utilized in the performance of this contract from contractor or subcontractor's total workforce. Contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided relates to the actual workforce utilized on this contract. If contractor or subcontractor fails to separate the workforce to be utilized on this contract from the total workforce as determined by Recipient contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided is contractor’s or subcontractor's total workforce during the subject time frame, not limited to work specifically under this contract.

**Disadvantaged Business Enterprises** – The contractor and subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor and subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor and subcontractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies. Contractors and subcontractors shall comply with the requirements set forth in the Bid Packets regarding Disadvantaged Business Enterprises.

**REMEDIES:**

Upon a determination by the Recipient of contractor's non-responsiveness, non-responsibility or breach as a result of a failure to comply with the requirements of Article 15-A and the Regulations, Recipient may withhold funds under this contract or take such other actions, impose liquidated damages or commence enforcement proceedings as set forth herein or as otherwise allowed by law or in equity.

If contractor or subcontractor fails to submit to Recipient an EEO policy statement consistent with the provisions set forth in clauses (i), (ii), (iii) and (iv) of the definition thereof and within the timeframe required therefor, Recipient may declare this contract to be null and void.

Contractor and subcontractor agree that a failure to submit and/or adhere to its EEO policy statement, EEO Workforce Staffing Plan for Service Provider (Non-construction) Contracts (if applicable), and an MWBE Utilization Plan (contractors only), and any other required periodic reports, shall constitute a material breach of the terms of this contract, entitling Recipient to any remedy provided herein, including but not limited to, a finding of contractor non-responsiveness.

**Liquidated or Other Damages** – If it has been determined by the Recipient or NYSEFC that the contractor is not in compliance with the requirements herein or refuses to comply with such requirements, or if contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, in accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under this contract.

In the event a determination has been made by the Recipient or EFC which requires the payment of liquidated damages and such identified sums have not been withheld, contractor shall pay such liquidated damages to Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, contractor has filed a complaint with ESD pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director of ESD renders a decision in favor of Recipient.

«closing\_dt»

«Recipient»  
«recip\_address1»  
«recip\_address2»  
«recip\_town», NY «recip\_zip»  
[auth rep email]

New York State Environmental  
Facilities Corporation  
625 Broadway  
Albany, New York 12207  
[GIGP@efc.ny.gov](mailto:GIGP@efc.ny.gov)

Re: «Recipient»  
«grant\_amount\_formatted» Grant Agreement  
SRF Project No.: «project\_no»  
GIGP Application No.: «App\_ID»

Ladies and Gentlemen:

I, the undersigned, hereby certify that:

I am counsel to the «Recipient» (the "Recipient"), am admitted to practice in the State of New York and have acted as counsel to the Recipient in connection with its entering into the Grant Agreement dated as of [insert date]0 (the "Grant Agreement") with the New York State Environmental Facilities Corporation (the "Corporation"). Any term used but not otherwise defined herein shall have the meaning set forth in such Grant Agreement.

I have reviewed certain resolutions of the Recipient, the Grant Agreement, in the form executed by the Recipient, the descriptions of the Project and other documents to be delivered pursuant to the Grant Agreement and such other documents as I have deemed necessary in the rendering of this opinion.

Based upon and subject to the foregoing and to the qualifications hereinafter set forth, I am of the opinion as of the date of this letter that:

1. The Recipient is a «Applicant\_Type» entity duly organized and existing under the laws of the State of New York and has the power and authority to own its own property and assets and transact the business in which it is engaged.

2. The Recipient has the power and authority to execute, deliver and perform its obligations under the Grant Agreement and certain other documents executed and delivered in connection with the Grant Agreement (together the "Grant Documents") and the Grant documents have been duly authorized, executed and delivered by the Recipient and are legal, valid and binding obligations of the Recipient enforceable against the Recipient in accordance with their respective terms.

3. The execution, delivery and performance by the Recipient of each Grant Document, nor compliance by it with the terms and provisions thereof and the making of Advances hereunder, will not (i) conflict with any provision of the Recipient's organizational documents; (ii) to my knowledge after due

inquiry, conflict with, violate or constitute a breach of or a default under any existing applicable law, rule, order, regulation, Federal or State Executive Order or any judgment, or decree to which the Recipient is a party or otherwise subject; (iii) to my knowledge after due inquiry, conflict with any other agreements to which Recipient is a party or by which it or any of its properties are bound.

4. No authorization, approval or other action by, and no notice to, consent of, order of or filing with any governmental authority or regulatory body of the State of New York or the United States of America, other than such as have been duly obtained, taken, given or made and are of full force and effect, is required, as of the date hereof, for the execution and delivery by the Recipient of, or performance by the Recipient under, any Grant Document and I have no reason to believe that any further authorization, approval or other action by, notice to, consent of, order of or filing with any governmental authority or regulatory body of the State of New York or the United States of America is necessary with respect to the Project.

5. There is no litigation of any nature pending or threatened to restrain or enjoin the construction, completion or operation of the Project or to restrain and enjoin the execution or delivery of the Grant Agreement, which purports to affect the legality, validity, binding effect or enforceability of any Grant Document or in any manner questioning the proceedings or authority under which the Grant Agreement was authorized or the title of officials of the Recipient who have acted with respect to the proceedings for the execution of the Grant Agreement for their respective offices.

6. The Grant Agreement and each of the Grant Documents have been duly authorized, executed and delivered by the Recipient. Assuming the due authorization, execution and delivery thereof by the Corporation, such agreements and documents constitute the legal, valid and binding agreements of the Recipient, enforceable in accordance with its terms.

**IN WITNESS WHEREOF**, I have hereunto set my hand as of the date first set forth above.

---

«Local\_Counsel»

**«RECIPIENT\_CAPS»**  
**SRF Project No.: «project\_no»**  
**GIGP Application No.: «App\_ID»**

**REQUISITION NO. \_\_\_\_\_**

Dated as of the      day of                      , 20

I, the undersigned Authorized Person of the «Recipient» (the "Recipient"), hereby certify and agree as follows:

1. All representations and warranties of the Recipient as set forth in section 2.1 of this Grant Agreement (the "Grant Agreement") dated as of [closing date] between the New York State Environmental Facilities Corporation (the "Corporation") and the Recipient are still valid and effective as of today's date.

2. This requisition is being delivered pursuant to the Grant Agreement. All capitalized terms used but not defined herein shall have the respective meanings set forth in the Grant Agreement.

3. The Corporation is hereby requested to make an Advance under the Grant Agreement in the amount of \$ \_\_\_\_\_ for Project Costs.

4. The above Project Costs have not been paid with the proceeds of any Third-Party Funding, except as specifically described herein: \_\_\_\_\_

5. The Recipient has determined that such Project Costs are reasonable, necessary, and allocable to the Funded Project under generally accepted governmental accounting standards.

6. This is Advance number \_\_\_\_\_ requested under the Grant Agreement and this Advance, if made, together with the prior Advances requested, will not exceed the Maximum Sum.

7. The Recipient hereby represents and warrants that it is not in default under the Grant Agreement, that no event has occurred which, with the passage of time or the giving of notice or both, would become a default thereunder, that it has performed all of the covenants and agreements that it is required to perform under the Grant Agreement, that the making of the Advance requested by this Certificate has been duly authorized by the Recipient, and that no change in circumstances has occurred, or will occur upon the making of the Advance hereby requested, which would constitute a breach or default under the Grant Agreement..

8. Payments aggregating \$ \_\_\_\_\_ have been incurred by the Recipient for Project Costs which, based upon information provided me by the Recipient's engineer for this project, constitute an "eligible project" under the State Act as shown on the Cost Summary attached hereto as Attachment 1.

9. Based upon information provided me by the Recipient's engineer for this project, all amounts requisitioned hereunder are for eligible Project Costs which have not been included in any previous disbursement from Grant proceeds.

10. **(If requesting payment for costs of construction):** As of the date hereof, the Recipient holds,

and will retain, a legal and valid fee simple title or other estate or interest in the site(s) of the Project, including all necessary easements and/or rights-of-way, as are or will be necessary for the Recipient's continued undisturbed use and possession of the site(s) of the Project during the construction, operation and maintenance of the Project.

11. **(If requesting payment for costs of construction):** The Recipient has obtained all licenses, permits or other approvals required as of the date hereof to undertake the Project.

12. **(If requesting payment for costs of construction):** The Advance requested does not include any costs of construction (other than costs of planning and design) associated with plans and specifications which have not been accepted by DEC or the Corporation.

13. **(If requesting payment for costs of construction):** The Recipient has complied with all applicable public bidding requirements in connection with the Project including, but not limited to, the requirements of General Municipal Law Section 101.

14. **(If requesting payment for costs associated with professional services agreement):** The Advance requested does not include any costs incurred pursuant to any professional services agreements which have not been furnished to the Corporation.

15. **(If requesting payment for costs for engineering services associated with inspection and services during construction):** The Advance requested does not include any costs incurred pursuant to any professional services agreement pertaining to inspection and engineering services during construction of the Project which has not been reviewed and so accepted by the Corporation.

16. **(If requesting payment for costs associated with technical force account work):** The Advance requested does not include any costs of construction (other than costs of planning and design) associated with the Technical Force Account Proposal which has not been approved by the Corporation.

17. **(If requesting payment for costs for equipment):** The Advance requested does not include any costs for equipment which have not been accepted and approved by DEC or the Corporation.

18. The amount requested does not include any project costs associated with a Utilization Plan, EEO policy statement or staffing plan, as applicable, which has not been approved by the Corporation, If a Utilization Plan, EEO policy statement or staffing plan, as applicable, has been approved by the Corporation, documentation as may be required by the Corporation to verify compliance with the EEO, Affirmative Action and S/M/WBE/DBE requirements has been provided; or (ii) the Recipient is in compliance with all S/M/WBE/DBE requirements.

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

20. The Recipient hereby represents and warrants that it is has obtained a certification in the form of **Exhibit H** to the Grant Agreement from each contractor and subcontractor which has a contract funded hereunder which exceeds \$100,000 and that the Recipient has submitted to the Corporation each such contractor and subcontractor certification as required under 40 CFR Part 34.

21. If applicable with respect to Davis-Bacon compliance, the Recipient confirms that for each payroll copy received since the last certification made on any payroll that the project is in compliance with the requirements of 29 CRF 5.5(a)(1) based on the applicable weekly payroll copies.

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

«RECIPIENT\_CAPS»

By: \_\_\_\_\_  
Name (Please Print): \_\_\_\_\_  
Title: «auth\_rep\_title»

**CERTIFICATION  
FOR  
CONTRACTS, GRANTS, LOANS, AND  
COOPERATIVE AGREEMENTS  
40 CFR 34**

**«RECIPIENT\_CAPS»  
SRF Project No.: «project\_no»  
GIGP Application No.: «App\_ID»**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grant, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

By: \_\_\_\_\_  
Name: «auth\_rep»  
Title: «auth\_rep\_title»  
Date: \_\_\_\_\_

**CERTIFICATION  
FOR  
CONTRACTS, GRANTS, LOANS, AND  
COOPERATIVE AGREEMENTS  
40 CFR 34**

**«RECIPIENT\_CAPS»  
SRF Project No.: «project\_no»  
GIGP Application No.: «App\_ID»**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grant, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

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