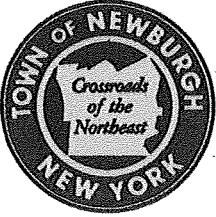


#130



TOWN OF NEWBURGH ANIMAL CONTROL & SHELTER

645 GIDNEY AVE. NEWBURGH, NY 12550

TEL: (845)561-3344

FAX: (845) 561-2220

To: Town Board

From: Tracey Carvell, Animal Control

Subject: Authorization to pay Vet Services Utilizing T-94 Account

Date: 12-8-24

I am requesting authorization to use the T-94 account to pay for Vet service:

F.A.A.

*Totaling: \$ 158.40

Canine: \$ 158.40

Feline: \$

Other: \$

TOWN OF NEWBURGH
 1496 ROUTE 300
 NEWBURGH, N.Y. 12550

VOUCHER

DEPARTMENT

Town of Newburgh Animal Control

CLAIMANT'S
 NAME
 AND
 ADDRESS

VCA Flannery Animal Hospital
 789 Little Britain Road
 New Windsor, NY 12553

TERMS

October 2022 Voucher

Order No.

DO NOT WRITE IN THIS BOX

Date Voucher Received		FUND - APPROPRIATION	AMOUNT		VOUCHER NO.	
						VOUCHER NO.
Abstract No.		TOTAL				

Vendor's Ref. No.

Date	Quantity	Description of Materials or Services	Unit Price	Amount
<i>10-9-22</i>	<i>FAU# 5356601.72</i>	<i>Blayne 112422</i>		<i>158.40</i>
TOTAL				<i>158.40</i>

(See Instructions on Reverse Side)

CLAIMANT'S CERTIFICATION

I, *Jean Tobin*, certify that the above account in the amount of \$ *158.40* is true and correct; that the items, services and disbursements charged were rendered to or for the municipality on the dates stated; that no part has been paid or satisfied; that taxes, from which the municipality is exempt, are not included; and that the amount claimed is actually due.

11-30-22
 DATE

Jean Tobin
 SIGNATURE

Accts Manager
 TITLE

(Space Below for Municipal Use)

DEPARTMENT APPROVAL

The above services or materials were rendered or furnished to the municipality on the dates stated and the charges are correct.

12-8-22
 DATE

[Signature]
 AUTHORIZED OFFICIAL

APPROVAL FOR PAYMENT

This claim is approved and ordered paid from the appropriations indicated above.



VCA Flannery Animal Hospital PC
 789 Little Britain Rd. | New Windsor, NY 12553 | (845) 565 - 7387

Flannery Animal Hospital | Date: **11/29/2022 at 09:18** | Invoice: **5356607172** | Cashier: **Jean T**

Client
Town Of Newburgh 2022 Animal Control (#65047)

 645 Gidney Ave
 Newburgh, NY 12550

Patient
Beagle 11-24-22 (#150268)
 Species: Canine (Beagle)
 Sex: Female Intact | Color: White And Brown
 Birth: | Age: | Weight:

Detailed Information

Date	Description	Qty	Price	Tax	Total Price
11/24/2022	Boarding Animal Control	1.00	\$39.60	\$0.00	\$39.60
11/25/2022	Boarding Animal Control	1.00	\$39.60	\$0.00	\$39.60
11/26/2022	Boarding Animal Control	1.00	\$39.60	\$0.00	\$39.60
11/27/2022	Boarding Animal Control	1.00	\$39.60	\$0.00	\$39.60
11/28/2022	Boarding Go Home Day	1.00	\$0.00	\$0.00	\$0.00

645 Gidney
 Newburgh

Subtotal: **\$158.40**

Message from VCA

myVCA app is your tailor-made guide to raising a healthy and happy pet.

Invoice Summary

Patient Name	Total Price	Total Tax	Total Due
Beagle 11-24-22	\$158.40	\$0.00	\$158.40

Prev Balance:	
Total Due:	\$158.40
Amount Paid:	\$0.00
Amount Due:	

Patient Name
 Beagle 11-

For information on how we collect and use information about you and your pet, and how you may opt-out of some uses, please see our Privacy Policy at vcahospitals.com/privacy-policy.

Thank you for trusting us with your pet's care. Your friends at VCA Flannery Animal Hospital PC.

Patient Name

TOWN OF NEWBURGH
TOWN ENGINEER

#15D

MEMORANDUM

TO: G. Piaquadio, Supervisor & Town Board
FROM: J. Osborne, Town Engineer *juo*
DATE: 6 December 2022
RE: Chadwick Lake Filter Plant & DAT Budget Transfer

Due to the Chadwick Lake Filter Plant Shutdown for the Resiliency Improvement Project, the Town shifted water production to the Delaware Aqueduct Tap. Because of this change, the Town purchased and processed approximately 200 MG of more NYC water. As a result, many anticipated operating expenses shifted from CLFP to DAT.

Except for NYC water purchase costs, the budget transfer for Consultant Fees, Utilities, and Sludge Hauling are simply from CLFP to DATWTP. For the additional costs to purchase NYC raw water, we were required to tap unused expenditures in a variety of budget line items including F.9902.5900 (Interfund Transfer).

The budget transfer outlined on the attached table were made projecting costs to the end of the year. Hopefully, additional budget transfers will not be necessary.

As this requires Town Board approval, I request it be put on the next available schedule.

Cc: R. Clum, Town Accountant

	FROM ACCOUNT		TO ACCOUNT		
	Account Description/ Account Name	Account Number/ Account Name	Account Number/ Account Name		Dollar Amount
1. SLUDGE HAULING	F.4001.5457 Sludge Hauling	F.4002.5457 Sludge Hauling-DAT			\$ 9,000.00
2. CONSULTANT FEES	F.4001.5472 Consultant Fees	F.4002.5472 Consultant Fees			\$ 95,000.00
3. UTILITIES	F.4001.5481 Utilities	F.4002.5481 Utilities			\$ 25,000.00
4. NYC WATER PURCHASES	F.4002.5466 Operating Supplies	F.4002.5430 Purchased Water			\$ 50,000.00
	F.4001.5457 Sludge Hauling	F.4002.5430 Purchased Water			\$ 41,000.00
	F.4001.5472 Consultant Fees	F.4002.5430 Purchased Water			\$ 20,000.00
	F.4002.5479 Telemetry	F.4002.5430 Purchased Water			\$ 17,000.00
	F.4002.5474 Repairs - Non-vehicle	F.4002.5430 Purchased Water			\$ 10,000.00
	F.4002.5499 Other	F.4002.5430 Purchased Water			\$ 10,000.00
	F.9902.5900 Interfund Transfer	F.4002.5430 Purchased Water			\$ 147,000.00
				TOTAL	\$ 424,000.00

#15E

EPG GRANT PROGRAM

TOWN OF NEWBURGH

and

**NEW YORK STATE
ENVIRONMENTAL FACILITIES CORPORATION**

GRANT AGREEMENT

(ENGINEERING PLANNING GRANT PROGRAM)

EPG PROJECT NO.: 110685

Dated as of December 12, 2022

EPG GRANT PROGRAM

TABLE OF CONTENTS

Article I.	GENERAL PROVISIONS	1
Section 1.01	Definitions.	1
Section 1.02	Effective Date and Term.	1
Section 1.03	Approvals and Consents.	2
Section 1.04	Interpretation.	2
Section 1.05	Exhibits and Appendices Incorporated.	2
Section 1.06	Amendments and Waiver.	2
Section 1.07	Assignment.	2
Section 1.08	Applicable Law; Venue.	2
Section 1.09	No Warranty Regarding Condition, Suitability or Cost of Project.	3
Section 1.10	Notices.	3
Section 1.11	Severability.	3
Section 1.12	Execution in Counterparts; .pdf Signatures.	3
Section 1.13	Grant Agreement Supersedes Prior Agreements.	3
Section 1.14	No Obligation of State.	4
Section 1.15	No Waiver.	4
Article II.	REPRESENTATIONS AND WARRANTIES OF RECIPIENT	4
Section 2.01	Legal Authority/Capacity/Binding Obligation.	4
Section 2.02	No Action.	4
Section 2.03	No Default.	4
Section 2.04	Project Approvals.	5
Section 2.05	Funds Available.	5
Section 2.06	Description of the Project.	5
Section 2.07	Estimate of Costs.	5
Section 2.08	Environmental Review.	5
Section 2.09	Intermunicipal and Other Agreements.	5
Section 2.10	Third-Party Funding.	5
Section 2.11	Procurement, Suspension and Debarment; Lobbying.	6
Section 2.12	No Material Adverse Change.	6
Section 2.13	Full Disclosure.	6
Section 2.14	Solvency.	6
Article III.	AGREEMENT TO PROVIDE FINANCIAL ASSISTANCE	6
Section 3.01	Agreement to Provide Financial Assistance for Project Costs.	6
Section 3.02	Source of Funding; Nature of Obligation.	6
Section 3.03	Requests for Disbursement of Grant Proceeds.	7
Section 3.04	Disapproval or Adjustment of Payment Request.	7
Section 3.05	Proof of Payment.	8
Section 3.06	Changes to Project.	8
Article IV.	COVENANTS	8
Section 4.01	Compliance with Laws and this Grant Agreement.	8
Section 4.02	Project Implementation.	10
Section 4.03	Performance.	11
Section 4.04	Accounting and Records.	11
Section 4.05	Application of Grant Proceeds.	11

Section 4.06	Payment of Additional Project Costs.	11
Section 4.07	Further Assurances.	12
Section 4.08	Non-Discrimination Requirements.	12
Section 4.09	Leases, Intermunicipal and Other Agreements.	12
Section 4.10	Third-Party Funding.	12
Section 4.11	Indemnification.	12
Section 4.12	Project Requirements.	13
Section 4.13	Recoupment of Grant Proceeds.	13
Article V.	EVENTS OF DEFAULT; REMEDIES	13
Section 5.01	Events of Default.	13
Section 5.02	Remedies.	14
EXHIBIT A	PROJECT DESCRIPTION AND SCHEDULE	
EXHIBIT B	DEFINITIONS	
EXHIBIT C	ESTIMATED PROJECT COSTS	
EXHIBIT D	SCHEDULE OF ADDITIONAL PROVISIONS	
EXHIBIT E	FORM OF GRANT DISBURSEMENT REQUEST	
EXHIBIT F	FORM OF PROJECT COMPLETION CERTIFICATE	
EXHIBIT G	REQUIRED CONTRACT LANGUAGE FOR PROJECT CONTRACTS AND SUBCONTRACTS FUNDED BY THE PROGRAM	
EXHIBIT H	LOBBYING CERTIFICATION	

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

WITNESSETH:

WHEREAS, the Corporation is empowered under the NYSEFC Act to provide financial assistance to eligible recipients for the planning, design, and construction of eligible projects; and

WHEREAS, the Corporation has determined that it is desirable and necessary to establish an Engineering Planning Grant Program in order to provide financial assistance to pay for the initial planning of eligible Revolving Fund water quality projects and to carry out the objectives set forth in the Clean Water Act and the NYSEFC Act; and

WHEREAS, the Recipient has submitted an application for financial assistance from the Corporation for the purpose of funding the Project, and the Project has been deemed by the Corporation to be eligible for assistance under the NYSEFC Act, and the Corporation has reviewed and approved the funding of the Project; and

WHEREAS, on the basis of Recipient's application and the representations, warranties and covenants set forth herein, the Corporation proposes to make financial assistance available to the Recipient, pursuant to Article III of this Grant Agreement, 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

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.
GENERAL PROVISIONS**

Section 1.01 Definitions.

Unless stated otherwise, each capitalized term used in this Grant Agreement has the meaning specified for it in EXHIBIT B.

Section 1.02 Effective Date and Term.

(a) This Grant Agreement is effective and shall become enforceable as of the date on the cover page following its execution by the Recipient and the Corporation.

(b) This Grant Agreement shall remain in full force and effect (i) for a period of three (3) years commencing upon the date set forth on the cover of this Grant Agreement if the Grant Award is in excess of \$50,000 or (ii) for a period of two (2) years commencing upon the date set forth on the cover of this Grant Agreement if the Grant Award is less than or equal to \$50,000, unless the Corporation agrees in writing to extend the term of this Grant Agreement.

(c) Article IV and Article V shall survive any termination of the Grant Agreement.

(d) Failure of Recipient to complete the Project within (i) three (3) years commencing

upon the date set forth on the cover of this Grant Agreement if the Grant Award is in excess of \$50,000 or (ii) two (2) years commencing upon the date set forth on the cover of this Grant Agreement if the Grant Award is less than or equal to \$50,000 may result in Recipient's forfeiture of undisbursed Grant proceeds.

Section 1.03 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.

Section 1.04 Interpretation.

The captions, headings and table of contents are solely for convenience of reference and shall not constitute part of this Grant Agreement. They do not affect its meaning, construction or effect. The parties acknowledge and agree that this Grant Agreement shall not be construed more favorably in favor of any party hereto based upon which party drafted the same.

Section 1.05 Exhibits and Appendices Incorporated.

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

Section 1.06 Amendments and Waiver.

Any provision of this Grant Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Recipient and the Corporation.

Section 1.07 Assignment.

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. Thereafter, such duties, covenants, obligations and agreements assigned and pledged shall be for the benefit of and enforceable by the Corporation and such assignee. The Recipient may not transfer or assign this Grant Agreement without the prior written consent of the Corporation. Any purported transfer in violation of this Section 1.07 shall be null and void. The provisions of this Grant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 1.08 Applicable Law; Venue.

This Grant Agreement and the rights and duties of the parties hereto, shall be construed and determined in accordance with the laws of the State of New York without regard to conflicts of law principles that would require application of the laws of another jurisdiction. Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any court of competent jurisdiction sitting in Albany County, in any action or proceeding arising out of or relating to this Grant Agreement and each party hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. The Recipient hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Grant Agreement, in any court referred to herein, and, if applicable, agrees not to assert the defense of sovereign immunity in any such proceedings. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the

maintenance of such action or proceeding in any such court.

Section 1.09 No Warranty Regarding Condition, Suitability or Cost of Project.

Neither the Corporation nor the Agency 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 or any inspection of the Project by the Agency or the Corporation, does not relieve the Recipient of its responsibility to plan the Project properly. The Recipient acknowledges and agrees that the Agency and the Corporation or their agents or 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 assurances, guarantees, indemnity, or other contractual requirements from any party performing Project work.

Section 1.10 Notices.

All notices 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 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.

If to the Corporation:

New York State Environmental Facilities Corporation
Attn.: Chief Financial Officer
625 Broadway
Albany, New York 12207-2997
Facsimile No.: (518) 486-9323
E-Mail Address: info@efc.ny.gov

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

If to Recipient:

At the address specified on the signature page of this Agreement.

Section 1.11 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 1.12 Execution in Counterparts; .pdf Signatures.

This Grant Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. The exchange of copies of signature pages by scanned portable document format (".pdf") e-mail attachment shall constitute effective execution of this Grant Agreement, and .pdf copies of this Grant Agreement shall have the same force and effect as an original.

Section 1.13 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. This Grant Agreement hereby supersedes any prior agreement between the Recipient and the Corporation with respect to Project Number 110685, if any, and any prior agreement between the Recipient and the Corporation with respect to Project Number 110685, if any, is hereby terminated, including any obligation of the Corporation to fund the Project or provide grant funds pursuant to the terms of the prior agreement; provided that the Corporation shall be permitted to exercise any remedies available to Corporation with respect to returning grant proceeds disbursed under the prior agreement.

Section 1.14 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 1.15 No Waiver.

No delay or failure on the part of the Corporation, in the exercise of any power or right under this Grant Agreement shall operate as a waiver thereof or as an acquiescence in any default or Event of Default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power or right. The rights and remedies hereunder of the Corporation are cumulative to, and not exclusive of, any rights or remedies which the Corporation would otherwise have.

Article II.
REPRESENTATIONS AND WARRANTIES OF RECIPIENT

As of the date set forth on the cover page of this Grant Agreement, the Recipient provides the representations and warranties set forth below. The Recipient shall notify the Corporation of any material changes in the status of these representations and/or warranties during the term of this Grant Agreement. In addition, the Recipient acknowledges that it shall be required to provide such representations and warranties again at the time of submission of each request for disbursement.

Section 2.01 Legal Authority/Capacity/Binding Obligation.

The Recipient is an entity duly organized and existing under the laws of the State and has full legal right, power and authority to conduct its business and own its properties, and enter into this Grant Agreement and comply with its terms. The Resolution has been duly adopted by the Recipient and remains in full force and effect; and any and all consents, authorizations and approvals of any third party required with respect thereto have been obtained. The Recipient certifies that it has the legal, institutional, managerial, contractual and financial capability to ensure adequate completion of the Project.

Section 2.02 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 or the Resolution, or the execution of this Grant Agreement, or any agreement or instrument relating thereto, (iv) affecting the ability of the Recipient to fulfill the terms and conditions of this Grant Agreement, (v) that would impair or delay the Project, or (vi) that would have a Material Adverse Effect.

Section 2.03 No Default.

The Recipient is not in default under (i) any loan agreement, note, bond, mortgage, or other

instrument evidencing or securing indebtedness; (ii) any agreement that would impair or delay the Project; or (iii) any agreement that would have a Material Adverse Effect. 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 federal or State regulation 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 federal or State regulation 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.

Section 2.04 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.

Section 2.05 Funds Available.

Recipient has funds available or will have funds available upon the consummation of the transactions contemplated hereby sufficient to pay all costs of the Project.

Section 2.06 Description of the Project.

The description of the Project as set forth in EXHIBIT A is an accurate description of the scope of activities to be funded in part pursuant to the terms of this Grant Agreement.

Section 2.07 Estimate of Costs.

The Estimated Project Costs as shown in EXHIBIT C represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Project.

Section 2.08 Environmental Review.

The Recipient, with respect to the Project, has complied with all requirements of the State Environmental Quality Review Act ("SEQRA") or a National Environmental Protection Act ("NEPA") environmental review, as the case may be, and has notified the Agency and the Corporation of all actions proposed for complying with the environmental review requirements imposed by SEQRA or NEPA environmental review, as the case may be.

Section 2.09 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 in connection with the Project and does not intend to enter into any other intermunicipal agreements in connection with the Project. If the Recipient has entered into a permitted intermunicipal agreement or any other contract in connection with the Grant, the term length of such agreement shall be at least as long as the term length of this Grant Agreement.

Section 2.10 Third-Party Funding.

The Recipient is eligible to receive the full amount of the Third-Party Funding specified in EXHIBIT C, if any, and knows of no existing fact, condition or circumstance that might act to vitiate such

eligibility.

Section 2.11 Procurement, Suspension and Debarment; Lobbying.

The Recipient has not been deemed ineligible to submit a bid or be awarded a public contract or subcontract pursuant to any applicable law or regulation, including but not limited to, Labor Law § 220-b, Executive Law § 316, 2 CFR Part 180, or 2 CFR Part 1532. Further, neither the Recipient nor any of its contractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under any applicable law or regulation, including but not limited to Labor Law § 220-b, Executive Law § 316, 2 CFR Part 180, or 2 CFR Part 1532. The Recipient represents that it has not expended any 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 which exceeds \$100,000 hereunder in accordance with the provisions of 40 CFR Part 34.

Section 2.12 No Material Adverse Change.

Since the date of Recipient's application for Grant, there has been no change in condition (financial or otherwise) of Recipient which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

Section 2.13 Full Disclosure.

The statements, documents, and information furnished to the Corporation in connection with the negotiation of this Grant Agreement and the commitment by the Corporation to provide the Grant are accurate, not misleading, and do not contain any untrue statements of a material fact or omit a material fact necessary to make the statements, documents, and information not misleading. Recipient acknowledges and agrees that the Corporation is only executing this Grant Agreement in reliance on such statements, documents, and information furnished to the Corporation being accurate and not misleading.

Section 2.14 Solvency.

The Recipient is solvent, able to pay its debts as they become due, and has sufficient capital to carry on its operations and complete the Project.

Article III.

AGREEMENT TO PROVIDE FINANCIAL ASSISTANCE

Section 3.01 Agreement to Provide Financial Assistance for Project Costs.

The Corporation agrees to provide financial assistance to the Recipient pursuant to this Grant Agreement, by making disbursements of funds in an amount not to exceed the Grant Award, as may be amended in accordance with the terms hereof. The Grant proceeds will be disbursed to the Recipient in accordance with the terms of this Article III.

Section 3.02 Source of Funding; Nature of Obligation.

The Corporation shall provide financial assistance to the Recipient pursuant to this Grant Agreement solely from moneys made available to it for purposes of the Program. The Corporation has no obligation to make any financial assistance payments and no obligation shall be incurred by the State or the Corporation beyond moneys made available to the Corporation for such purposes. Further, the Corporation has no obligation to make Grant payments to the Recipient beyond the term of this Agreement. In the event the Recipient shall, at any time, receive any Third-Party Funding from any entity other than the Corporation, the Recipient must

draw down, in full, such Third-Party Funding prior to requesting any disbursement of Grant proceeds hereunder. If the Recipient is unable to draw down in full such 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 such Third-Party Funding that the Corporation may accept or deny in its sole and absolute discretion.

Section 3.03 Requests for Disbursement of Grant Proceeds.

(a) *Disbursement of Grant Proceeds.* Grant proceeds shall remain in the custody and control of the Corporation and will only be made available to the Recipient upon the approval of the Recipient's Grant Disbursement Request Form by the Corporation. Subject to the Recipient complying with the terms of this Grant Agreement, the Corporation will advance 50% of the Grant Award to the Recipient within thirty (30) days of a properly completed Grant Disbursement Request Form as set forth in EXHIBIT E. The remaining 50% of the Grant Award will be disbursed within thirty (30) days of the Corporation's receipt of a properly completed Project Completion Certificate, subject to the requirements identified below.

(b) *Requirements for Final Disbursement.* Prior to or with the final Grant Disbursement Request Form, the Recipient must submit supporting documentation in a form and manner acceptable to the Corporation demonstrating that the incurred costs are Project Costs, including the Project Completion Certificate. Supporting documentation shall consist of allowable cost invoices and proof of payment of such invoices for the Project Costs. Such documentation shall also consist of a final Engineering Report and a completed Smart Growth Assessment Form.

(c) *Final Engineering Report.* The Project shall be deemed complete upon receipt and acceptance by the Corporation of copies of a final Engineering Report for the Project described in EXHIBIT A. The final Grant Disbursement Request Form will not be reviewed by the Corporation until the Corporation has accepted the final Engineering Report for the Project described in EXHIBIT A. The Recipient agrees to provide the Corporation with an electronic copy of the final Engineering Report, which must carry the seal or stamp of a New York State licensed professional engineer and set forth the following: that the Project was developed in accordance with all applicable State and federal requirements, including that the Project is sufficiently complete in accordance with all Project contracts and that the Project can be utilized for its intended purposes. An electronic copy of the final Engineering Report shall be submitted by the Recipient to the Corporation no later than: (i) April 11, 2024 if the Grant Award is in excess of \$50,000 or (ii) October 11, 2023 if the Grant Award is less than or equal to \$50,000. Failure to submit the final Engineering Report by the dates indicated in the preceding sentence may, at the Corporation's sole discretion, result in a loss of Grant proceeds.

(d) *Smart Growth Assessment Form.* The Recipient agrees to complete a Smart Growth Assessment Form as provided by the Corporation and submit the form with the final Engineering Report. The final Grant Disbursement Request Form shall not be submitted by the Recipient to the Corporation until the Recipient has completed and submitted a Smart Growth Assessment Form to the Corporation.

(e) *Amendments to Engineering Report.* Disbursements of Grant proceeds shall not be made for costs related to any amendments to the Engineering Report for the Project described in EXHIBIT A unless and until such amendment has been approved and accepted by the Corporation.

Section 3.04 Disapproval or Adjustment of Payment Request.

In addition to the remedies set forth in Section 5.02, the Corporation may take any action permitted hereunder or under applicable law, including, but not limited to, rejecting, correcting, or withholding any or all payments to the Recipient, if the Corporation, in its sole discretion: (i) determines that the incurred costs

requested for reimbursement are not eligible Project Costs, (ii) the Recipient has not properly documented the costs, or (iii) the Recipient has not complied with any term or condition of this Grant Agreement, including, but not limited to, its failure to timely file quarterly MWBE reports.

Section 3.05 Proof of Payment.

Proof of payment submitted by the Recipient shall be sufficient to allow the Corporation to document that billings and invoices were paid. 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

(a) 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;

(b) for project services to be provided by employees of the Recipient pursuant to a force account proposal which has been approved and accepted 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.

Section 3.06 Changes to Project.

Grant payments will not be made for costs related to any changes in the Project unless and until such change has been reviewed, approved, and accepted by the Agency or the Corporation. The Recipient shall certify, in each Grant Disbursement Request Form submitted, that the disbursement requested does not include payment for any costs for changes to the Project which have not been so reviewed, approved, and accepted.

Article IV.
COVENANTS

Section 4.01 Compliance with Laws and this Grant Agreement.

(a) *Project Compliance.* The Recipient shall comply, and it shall require its authorized representatives, contractors, subcontractors and consultants paid with funds provided pursuant to this Grant Agreement to comply, at all times with all applicable federal, State and local laws, statutes, regulations, ordinances, rules, Executive Orders applicable to it and them (including, without limitation if applicable, the Davis-Bacon Act, Executive Order 11246, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Federal Funding Accountability and Transparency Act, Section 504 of the Rehabilitation Act of 1973, and Section 608 of the Clean Water Act), and, if the Project is determined by the Corporation to be funded using funds directly made available by a State Revolving Fund capitalization grant, all subaward or equivalency requirements that are applicable. 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. Upon request by the Corporation, the Recipient shall promptly provide the Corporation, with evidence of its, and its authorized representatives, contractors, subcontractors and consultants paid with funds provided pursuant to this Grant Agreement, compliance with all applicable federal, State and local laws, statutes, regulations, ordinances, rules, Executive Orders applicable to it and them.

(b) *Enforcement.* Regardless of acceptance by the Agency or the Corporation of a certification by the Recipient that a Project requirement has been met, the Recipient shall permit the Agency

or the Corporation to take any actions necessary to confirm the accuracy of such certification. The making of Grant payments by the Corporation does 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) *Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises ("MWBE") and Equal Employment Opportunities ("EEO") for Minority Group Members and Women.* The Recipient acknowledges that contracts and subcontracts 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 contracts and subcontracts, shall be subject to the requirements and provisions of Article 15-A of the Executive Law ("Article 15-A") and 5 NYCRR Parts 140-145 (the "MWBE Regulations") and, for such purposes, any such contract or subcontract shall be considered a State Contract as defined therein. The Recipient shall require the provisions set forth in EXHIBIT G attached hereto to be included in all State Contracts which are to be paid for with funds provided pursuant to this Grant Agreement. The Recipient shall comply, and shall require its contractors and subcontractors paid with funds provided pursuant to this Grant Agreement to comply, with Article 15-A and the MWBE Regulations. Recipient acknowledges, and shall advise all contractors and subcontractors paid with funds provided pursuant to this Grant Agreement, that the MWBE goals in effect at the time of execution of each contract/subcontract shall be applied to the Grant Award. The Recipient shall provide the Corporation with documentation it receives from contractors and subcontractors, as required by law or requested by the Corporation regarding EEO and MWBE. The Recipient's approval of a Utilization Plan or waiver request is subject to the prior consent of the Corporation. If required by Article 15-A or the MWBE Regulations, the Recipient shall submit to the Corporation information received from the Recipient's contractors or subcontractors regarding all good faith efforts made by them to comply with the applicable MWBE participation goals. If Recipient fails to file timely quarterly MWBE reports, the Corporation may withhold Grant payments until the Recipient files all overdue reports.

(d) *Business Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses ("SDVOB").* The Recipient acknowledges that contracts and subcontracts 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 contracts and subcontracts, shall be subject to the requirements and provisions of Article 17-B of the Executive Law ("Article 17-B") and 9 NYCRR Part 252 (the "SDVOB Regulations") and, for such purposes, any such contract or subcontract shall be considered a State Contract as defined therein. The Recipient shall require the provisions set forth in Exhibit G attached hereto to be included in all State Contracts which are to be paid for with funds provided pursuant to this Grant Agreement. The Recipient shall comply, and shall require its contractors and subcontractors paid with funds provided pursuant to this Grant Agreement to comply, with Article 17-B and the SDVOB Regulations. Recipient acknowledges, and shall advise all contractors and subcontractors paid with funds provided pursuant to this Grant Agreement, that the SDVOB goals in effect at the time of execution of each contract/subcontract shall be applied to the Grant Amount. The Recipient shall provide the Corporation with documentation it receives from contractors and subcontractors, as required by law or requested by the Corporation regarding SDVOB. The Recipient's approval of a Utilization Plan or waiver request is subject to the prior consent of the Corporation. If required by Article 17-B or the SDVOB Regulations, the Recipient shall submit to the Corporation information received from the Recipient's contractors or subcontractors regarding all good faith efforts made by them to comply with the applicable SDVOB participation goals. If Recipient fails to file timely quarterly SDVOB reports, the Corporation may withhold Grant payments until the Recipient files all overdue reports.

(e) *Special Project Conditions.* The Recipient shall comply with any and all special Project conditions set forth in EXHIBIT D.

(f) *Project Approvals.* The Recipient shall obtain all necessary approvals from any and all governmental agencies requisite to the completion of the Project and comply with all federal, State

and local laws, ordinances and regulations applicable to the Project.

(g) *Environmental Review.* The Recipient certifies that it shall continue to notify the Agency and the Corporation of all actions proposed for complying with the environmental review requirements imposed by SEQRA and approved by EPA for Revolving Fund projects, as the case may be. If the Commissioner determines that, in addition to all such requirements of SEQRA, there are additional requirements associated with a 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 the Agency and the Corporation.

(h) *Required Certifications; Restriction on Lobbying and Procurement.* Intentionally Omitted.

(i) *Recipient Contribution.* The Recipient agrees to provide at least 20% of the Grant Award as its recipient contribution requirement under the Program as set forth in EXHIBIT C. The Corporation agrees that the 20% recipient contribution requirement may be met with local funds or In-Kind Services performed by the Recipient and as approved by the Corporation.

(j) *Maintenance of Legal Status.* Recipient shall notify the Corporation of the Recipient's intent to change its form of legal existence or dissolve at least 120 days before such change or dissolution. Recipient shall preserve and keep in force and effect all licenses, permits, and approvals related to the Project.

(k) *Liens.* Recipient shall not create, incur or permit to exist any mortgage, lien, security interest, pledge, charge, mechanics' or supplier's lien, or encumbrance of any kind on any Project property.

(l) *No Consequential Damages.* To the fullest extent permitted by applicable law, the Recipient shall not assert, and hereby waives, any claim against the Corporation, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Grant Agreement, any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, or the use of the proceeds hereof or thereof. The Corporation shall not be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Grant Agreement or the transactions contemplated hereby.

(m) *No Advisory or Fiduciary Responsibility.* Recipient acknowledges and agrees that in connection with all aspects of each transaction contemplated hereby: (i) no fiduciary, advisory, or agency relationship between the Recipient and the Corporation is intended to be or has been created, (ii) Recipient has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate, and (iii) the Corporation has not been, is not, and will not be acting as an advisor, agent or fiduciary for Recipient. To the fullest extent permitted by law, Recipient hereby waives and releases any claims that it may have against the Corporation with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 4.02 Project Implementation.

The Recipient shall undertake this Project in accordance with the application materials submitted to the Corporation. The Recipient shall proceed with the planning 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 such application materials as may be approved by the Agency as necessary or advisable to effectuate the purposes of the NYSEFC Act.

Section 4.03 Performance.

(a) *Engineering Report Contents.* All Engineering Reports must follow the format of the then-current Engineering Report Outline found at <https://www.efc.ny.gov/>, as may be updated from time to time or whose website address could change upon notice provided by the Corporation. The following minimum alternatives need to be considered for projects with no existing wastewater infrastructure: decentralized systems; new sewers and connection to a regional wastewater facility; and new sewers and a wastewater treatment facility. The following minimum alternatives need to be considered for projects with existing wastewater infrastructure: rebuilding existing wastewater infrastructure; and connection to a regional wastewater collection system. Smart growth and green infrastructure alternatives must also be considered and documented in the Engineering Report. In addition, the Engineering Report must contain a concise summary of any additional pertinent information specific to the project proposal as requested by the Corporation. The Engineering Report shall be incorporated into any future application for financial assistance through the Revolving Fund by the Recipient.

(b) *Contracts.* The Recipient agrees that the Agency and the Corporation have the right to review all contracts for services 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.

Section 4.04 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, the Agency, 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 the foregoing entities or their authorized representatives; (iii) permit extracts and copies of Project records to be made by any of the foregoing entities or their authorized representatives; and (iv) promptly fulfill information requests by any of the foregoing entities or their authorized representatives.

(c) *Access to Project and Work.* The Recipient shall permit agents, consultants and representatives of the Agency, the State Comptroller and the Corporation to have access to the Project and its components at all reasonable times. All contracts of the Recipient related to any portion of the Project must contain provisions that permit such access to the Project, and require the contractor to 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 Project for at least six (6) years after the term of this Grant Agreement. The Recipient shall make available to agents, consultants and representatives of the Corporation, the Agency and the State Comptroller any files or records necessary to determine compliance with applicable laws.

Section 4.05 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 Corporation in the event that it fails so to apply such proceeds.

Section 4.06 Payment of Additional Project Costs.

The Recipient shall complete the Project and pay such portion of the Project Costs in excess of available Grant proceeds, and the Recipient shall not be entitled to any reimbursement or funding therefor from the Corporation.

Section 4.07 Further Assurances.

The Recipient, at the request of the Corporation, shall execute and deliver such documents and do such acts and things as necessary or desirable, in the sole discretion of the Corporation, for better assuring, assigning, and confirming the rights, representations and agreements granted in this Grant Agreement. The Recipient shall also furnish the Corporation with such additional information concerning the planning of the Project as the Corporation may request from time to time.

Section 4.08 Non-Discrimination Requirements.

Pursuant to New York State Human Rights Law, Article 15-A of the Executive Law, and all other State and federal statutory and constitutional non-discrimination provisions, the Recipient and any contractors/subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if the Project is the construction, alteration or repair of any public building or public work, the Recipient and its contractors/subcontractors shall not, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Grant Agreement.

Section 4.09 Intermunicipal and Other Agreements.

If Recipient has entered into one or more intermunicipal agreements or other contracts relating to the Project, Recipient shall not renew, extend or amend such intermunicipal agreement or other contract, and shall not enter into any new contract relating to the Project, without notifying the Corporation in writing and receiving written consent from the Corporation.

Section 4.10 Third-Party Funding.

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

(c) 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, (ii) be qualified to receive any Third-Party Funding proceeds in an amount at least equal to such Third-Party Funding commitment, or (iii) receive the proceeds of such Third-Party Funding.

Section 4.11 Indemnification.

To the fullest extent permitted by law, the Recipient shall indemnify and defend the Corporation, its directors, employees, and agents against, and hold each harmless from, any and all losses, claims, damages, liabilities and costs of any nature arising out of the execution or delivery of this Grant Agreement or any

agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Corporation, the administration and enforcement of this Grant Agreement and any agreement or instrument contemplated hereby (including all such costs and expenses incurred in connection with any proceeding under the United States Bankruptcy Code involving Recipient as a debtor thereunder; provided that such indemnity shall not be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of the Corporation, its directors, employees, or agents.

Section 4.12 Project Requirements.

(a) *Timely Completion.* The Recipient shall complete the Project within (i) three (3) years if the Grant Award is in excess of \$50,000 or (ii) two (2) years if the Grant Award is less than or equal to \$50,000 from the effective date of this Grant Agreement unless the Recipient requests an extension in writing and the Corporation approves in writing such extension. Failure of Recipient to complete the Project within the time prescribed herein may result in Recipient's forfeiture of undisbursed Grant proceeds.

(b) *Project Completion Certificate.* The Recipient shall file within thirty (30) days of completion of the Project a certificate, in the form provided in EXHIBIT F or as may be updated by the Corporation from time to time, certifying the final Project Costs and that the Project has been completed in accordance with this Grant Agreement.

Section 4.13 Recoupment of Grant Proceeds.

The Corporation at any time may seek to recoup Grant proceeds from the Recipient if the Corporation determines that the Recipient was overpaid Grant proceeds. The Recipient's Grant Award was determined based on the Recipient's Estimated Project Costs as set forth in EXHIBIT C. If, at the time of Project completion, the actual Project Costs are less than the Estimated Project Costs or the Recipient has received additional Third-Party Funding not disclosed in EXHIBIT C, the amount of the Grant available to the Recipient pursuant to this Grant Agreement shall be adjusted downward as determined by the Corporation. If, at the time of Project completion, the actual Project Costs are more than the Estimated Project Costs or the Recipient has not received and will not receive Third-Party Funding disclosed in EXHIBIT C, the amount of the Grant available to the Recipient pursuant to this Grant Agreement may be adjusted upward as determined by the Corporation but in no event shall the Grant Award be more than that awarded to the Recipient in the Recipient's grant award letter.

Article V.

EVENTS OF DEFAULT; REMEDIES

Section 5.01 Events of Default.

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

(a) default in the observance or performance of any covenant set forth in Article IV or of any provision hereunder dealing with the use, disposition or remittance of the proceeds of the Grant;

(b) default in the observance or performance of any other provision hereof or of any other document contemplated hereby which is not remedied within five (5) Business Days after the earlier of (i) the date on which such failure shall first become known to Recipient or (ii) written notice thereof is given to the Recipient by the Corporation;

(c) any representation or warranty made herein or in any other document contemplated hereby or in any certificate furnished to the Corporation pursuant hereto or thereto or in connection with any transaction contemplated hereby or thereby proves untrue in any material respect as of the date of the issuance or making or deemed making thereof;

(d) default shall occur under any indebtedness issued, assumed or guaranteed by the Recipient, or under any indenture, agreement or other instrument under which the same may be issued, and such default shall continue for a period of time sufficient to permit the acceleration of the maturity of any such indebtedness (whether or not such maturity is in fact accelerated), or any such indebtedness shall not be paid when due (whether by demand, lapse of time, acceleration or otherwise);

(e) a default or breach shall occur under any agreement or contract related to the design, construction, or operation and maintenance of the Project by any party thereto;

(f) the Recipient shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property or the Project, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (vi) take any action in furtherance of any matter described in parts (i) through (v) above;

(g) this Grant Agreement or any document contemplated hereby ceases to be in full force and effect at any time or for any reason;

(h) prior to the completion of the Project, work on the Project is abandoned or work thereon ceases for a period of more than three (3) months for any reason.

Section 5.02 Remedies.

Upon the occurrence of an Event of Default, 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 V shall not operate as a waiver of such right or remedy.

(a) *Reimbursement of Program.* Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default, the Corporation may at its election, upon written notice to the Recipient, require the Recipient to immediately repay to the Corporation all Grant proceeds paid to the Recipient. Upon such notification, notwithstanding anything in this Grant Agreement to the contrary, such Grant proceeds shall become immediately due and repayable.

(b) *Rejection or Adjustment of Grant Payments.* The Corporation is under no obligation to make any payment of Grant proceeds upon the occurrence and during the continuance of an Event of Default and the Corporation may adjust, reject, or withhold disbursements to the Recipient.

(c) *Nonexclusive Remedy.* If the Corporation or the Agency 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 the Agency 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 the Agency 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.

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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.

TOWN OF NEWBURGH

I certify that I am authorized to sign this Grant Agreement and that I have been duly and formally delegated or designated as the authorized signatory and have the authority to agree to all of the terms and conditions of this Grant Agreement.

By: _____
Scott Manley
Deputy Supervisor

Notice Address:

Town of Newburgh
Attn: Deputy Supervisor
1496 State Route 30
Newburgh, NY 12550
councilmanmanley@townofnewburgh.org

**NEW YORK STATE
ENVIRONMENTAL FACILITIES CORPORATION**

By: _____

EXHIBIT A PROJECT DESCRIPTION AND SCHEDULE

EPG PROJECT NO.: 110685
Recipient: Town of Newburgh
County: Orange

PROJECT DESCRIPTION

The Engineering Planning Grant (EPG) program will fund the development of an engineering report to evaluate the feasibility of constructing a new central wastewater collection system to serve the Orange Lake area in the Town of Newburgh. The engineering report will evaluate both collection and treatment alternatives and make a recommendation to the Town.

EXHIBIT B DEFINITIONS

EPG PROJECT NO.: 110685
Recipient: Town of Newburgh
County: Orange

The capitalized terms below, to the extent used in this Grant Agreement and unless otherwise defined herein, have the meanings set forth in this EXHIBIT B.

“Agency” means the New York State Department of Environmental Conservation and any entity which may succeed to its rights and duties respecting the Program.

“Authorized Person” means the person so authorized to act on behalf of the Recipient in connection with the submittal of Grant Disbursement Request Forms and/or the Project Completion Certificate.

“Clean Water Act” means the federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq., as amended.

“Commissioner” means the Commissioner of the Agency.

“Corporation” means the New York State Environmental Facilities Corporation established under 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., and any entity which may succeed to its rights and duties respecting the Program.

“Engineering Report” means the document or documents which determines the technical and economic feasibility of a Revolving Fund project.

“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 financial assistance under the Program; that are reasonable, necessary and allocable by the Recipient to the Project under generally accepted government accounting standards, and as set forth in the application of the Recipient, which projections are set forth in EXHIBIT C.

“Event of Default” means an event described in Article V.

“Grant” means the financial assistance provided by the Corporation to the Recipient under this Grant Agreement.

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

“Grant Award” means the amount of Grant, as set forth in EXHIBIT D.

“Grant Disbursement Request Form” means a document, in substantially the form of EXHIBIT E, executed by an Authorized Person and submitted to the Corporation in order to obtain a Grant payment.

“In-Kind Services” means services performed by capable and qualified employees of the Recipient for technical and administrative force account as set forth in EXHIBIT C that are directly related to and in support of the Project and are deemed reasonable by the Corporation.

“Material Adverse Effect” means (a) a material adverse change in, or material adverse effect in the condition (financial or otherwise) of Recipient, (b) a material impairment of the ability of Recipient to perform its obligations under this Grant Agreement, or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against Recipient of this Grant Agreement or the rights and remedies of the Corporation.

“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.

“Program” means the Corporation’s Engineering Planning Grant Program.

“Project” means the project described in EXHIBIT A.

“Project Completion Certificate” means the certificate in the form attached hereto as EXHIBIT F (or as may be updated by the Corporation from time to time), certifying that the Project has been completed in accordance with this Grant Agreement.

“Project Costs” means the incurred project costs of the Recipient which are eligible for financial assistance from the Program pursuant to the Program, which are reasonable, necessary and allocable by the Recipient to the Project under generally accepted governmental accounting standards.

“Recipient” means the Grant recipient named on the cover page of this Grant Agreement.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing or previously containing any Hazardous Material.

“Resolution” means the ordinances, resolutions or other appropriate documentation of the Recipient authorizing the undertaking of the Project, any local match, the execution and delivery of this Grant Agreement, and the receipt of the Grant proceeds.

“Revolving Fund” means the New York State Water Pollution Control Revolving Fund established pursuant to the NYSEFC Act.

“Safe Drinking Water Act” means Article XIV of the Federal Public Health Services Act, 42 U.S.C. §§300f et seq. as amended.

“Smart Growth Assessment Form” means a form provided by the Corporation to the Recipient to assess any activities described in the Engineering Report for compliance with the Smart Growth Infrastructure Policy Act.

“State” means the State of New York.

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

“Third-Party Funding” means any grant, loan or other non-Recipient proceeds which are intended to be used to pay any costs of the Project.

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

EXHIBIT C ESTIMATED PROJECT COSTS

**EPG PROJECT NO.: 110685
 Recipient: Town of Newburgh
 County: Orange**

	<u>COST (GIGP)</u>	<u>COST (EPG)</u>
CONSTRUCTION		N/A
ENGINEERING		\$24,000.00
EQUIPMENT		
LEGAL		
ADMINISTRATIVE FORCE ACCOUNT		
TECHNICAL FORCE ACCOUNT		
OTHER (Please Specify)		
Total Project Costs:	\$0.00	\$24,000.00
Eligible Project Costs:		\$24,000.00
Grant Amount:		\$20,000.00
Minimum Required Local Share:	\$0.00	\$4,000.00
Total Local Share:	\$0.00	\$4,000.00
Other Sources of Funding (Please Specify):		

EXHIBIT D SCHEDULE OF ADDITIONAL PROVISIONS

EPG PROJECT NO.: 110685
Recipient: Town of Newburgh
County: Orange

I. Definitions.

The "Grant Award" shall be equal to \$20,000.00 (TWENTY THOUSAND AND 00/100 DOLLARS).

II. Requests for Payment.

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 Grant disbursement requests on behalf of the Recipient:

TITLE: DEPUTY SUPERVISOR

III. Special Conditions.

This Grant Agreement shall include the following special conditions:

Section 1. Special Condition Regarding the Recipient's Acquisition of Title to Project Site.

Intentionally Omitted.

Section 2. Special Condition Regarding Federal/State Permits.

Intentionally Omitted.

Section 2A. Special Condition Regarding Final Approval of New York State Office of Parks, Recreation and Historic Preservation.

Intentionally Omitted.

Section 2B. Special Condition Regarding Obligations under New York State Agriculture and Markets Law.

Intentionally Omitted.

Section 3. Special Condition Regarding Construction Contract Expenses.

Intentionally Omitted.

Section 4. Special Condition Regarding Professional Services Agreements to be furnished after the Date Hereof in Connection with the Project.

Intentionally Omitted.

Section 5. Special Condition Regarding Engineering Services During Project Planning, Design, and/or

Construction.

Intentionally Omitted.

Section 6A. Special Condition Regarding the Technical Force Account Proposal to be Approved after the Date Hereof in Connection with the Project.

Intentionally Omitted.

Section 6B. Special Condition Regarding the Administrative Force Account Proposal to be Approved after the Date Hereof in Connection with the Project.

Intentionally Omitted.

Section 7. Special Condition Regarding Certain Equipment Cost to be Approved or Accepted after the Date Hereof in Connection with the Project.

Intentionally Omitted.

Section 8. Special Condition Regarding Change Orders to be Approved or Accepted after the Date Hereof in Connection with the Project.

Intentionally Omitted.

Section 9. Special Condition Regarding MWBE and EEO Requirements to be Approved or Accepted after the Date Hereof in Connection with the Project.

Intentionally Omitted.

Section 10. Special Condition Regarding BAN Documentation/First Disbursement.

Intentionally Omitted.

Section 11. Special Condition Regarding Intermunicipal Agreement.

Intentionally Omitted.

EXHIBIT E FORM OF GRANT DISBURSEMENT REQUEST

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GRANT DISBURSEMENT REQUEST FORM

Town of Newburgh
EPG PROJECT NO.: 110685
REQUEST NO.: _____

Dated as of the ____ day of _____, 20

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

1. All representations and warranties of the Recipient as set forth in Article II of the Grant Agreement (the "Grant Agreement") dated as of December 12, 2022 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 request 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 a disbursement 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 here: _____

5. The Recipient has determined that such Project Costs are reasonable, necessary, and allocable to the Project under generally accepted governmental accounting standards. Monies requested for disbursement herein reflect actual costs for materials and services that are to be used for the sole purpose of completing the approved Project stated above and none of these monies are to be expended, in part or in full, for any other purpose.

6. This disbursement, if it is the initial disbursement of funds, will not exceed 50% of the Grant Award. The amount requested hereunder has not been included in any previous disbursement of Grant proceeds.

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 payment requested has been duly authorized by the Recipient, and that no change in circumstances has occurred, or will occur upon the making of the payment hereby requested, which would constitute a breach or a default under the Grant Agreement.

8. Based upon information provided by the Recipient's engineer for the Project, as applicable, all amounts requested hereunder are for eligible Project Costs which have not been included in any previous disbursement of Grant proceeds. If this is the final Grant Disbursement Request Form being submitted by the Recipient, the Recipient has submitted a final Engineering Report and Smart Growth Assessment Form for the Project..

9. **(If applicable):** A description of any and all In-Kind Services to be used in connection with the Project is attached hereto.

10. **(If requesting payment for costs of construction):**

(a) 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.

(b) The Recipient has obtained all licenses, permits or other approvals required as of the date hereof to undertake the Project.

(c) The payment 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 the Agency or the Corporation.

(d) 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.

11. **(If requesting payment for costs associated with professional services agreement):**

The payment requested does not include any costs incurred pursuant to any professional services agreements which have not been furnished to the Corporation.

12. **(If requesting payment for costs for engineering services associated with inspection and services during construction):** The payment 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.

13. **(If requesting payment for costs associated with technical force account work):** The payment 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.

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

15. The Recipient is in compliance with all minority- and women-owned business enterprise ("MWBE") and equal employment opportunity ("EEO") requirements applicable to the amount requested; specifically, the Recipient has provided the Corporation with a Utilization Plan or documentation of good faith efforts for MWBE participation for the amount requested, an EEO policy statement, and an EEO staffing plan, as applicable, which has been approved by the Corporation.

Date: _____

TOWN OF NEWBURGH

By: _____

Name (Please Print): _____

Title:

INSERT COST SUMMARY HERE

EXHIBIT F FORM OF PROJECT COMPLETION CERTIFICATE

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PROJECT COMPLETION CERTIFICATE

**Town of Newburgh
EPG PROJECT NO.: 110685**

I, the undersigned and Authorized Person of the Town of Newburgh (the "Recipient"), hereby certify as follows:

1. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Grant Agreement between the Corporation and the Town of Newburgh dated as of December 12, 2022.
2. The Recipient received no Third-Party Funding that was not already disclosed to the Corporation and included in EXHIBIT C.
3. The Recipient received no moneys from another source for the same costs for which it submitted a Grant Disbursement Request Form to the Corporation.
4. All equipment and facilities paid for in whole or in part with Grant proceeds were and are being used solely for Project purposes.
5. The project has been fully completed in accordance with the requirements set forth in the Grant Agreement dated as of December 12, 2022 between Town of Newburgh and the Corporation.
6. Recipient met the MWBE participation goals of the approved Utilization Plan for each contract or otherwise received a valid waiver.

I hereby affirm under penalty of perjury that I am an Authorized Person of Town of Newburgh, authorized to make the above certifications and that information provided on this Project Completion Certificate and all attachments, if any is true to the best of my knowledge and belief. I am aware false statements made in this Certificate are punishable pursuant to Section 210.45 of the Penal Law.

TOWN OF NEWBURGH

By: _____

Authorized Person

Printed Name: _____

Title: Deputy Supervisor

EXHIBIT G REQUIRED CONTRACT LANGUAGE FOR PROJECT CONTRACTS AND
SUBCONTRACTS FUNDED BY THE PROGRAM

The Recipient agrees to include the following provisions in all contracts and subcontracts which are to be paid with funds provided pursuant to this Grant Agreement.

SECTION 1 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

For purposes of this section:

“Non-Construction” shall mean Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing.

The Minority- and Women- Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities requirements of this section apply to the Contracts or Subcontracts meeting the thresholds under New York State Executive Law Article 15-A as follows:

- (a) Non-Construction Contracts greater than \$25,000;
- (b) Non-Construction Contracts, that are initially under \$25,000 but subsequent change orders or contract amendments increase the Contract value to above \$25,000;
- (c) Construction Contracts greater than \$100,000; and,
- (d) Construction Contracts that are initially under \$100,000 but subsequent change orders or contract amendments increase the Contract value to above \$100,000.

I. General Provisions

A. Contractors and Subcontractors are required to comply with New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

B. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(F) of this section, or enforcement proceedings as allowed by the Contract.

C. If any terms or provisions herein conflict with Executive Law Article 15-A or the MWBE Regulations, such law and regulations shall supersede these requirements.

D. Upon request from the Recipient’s Minority Business Officer (“MBO”) and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time. For purposes of this section, MBO means the duly authorized representative of the State financial assistance Recipient for MWBE and EEO purposes.

II. Equal Employment Opportunities (EEO)

A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO 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.

B. Contractor represents that it has submitted an EEO policy statement to Recipient prior to the execution of this Contract.

C. Contractor represents that its EEO policy statement includes the following language:

1. The contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, 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 State financial assistance projects.

2. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this State financial assistance project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

3. The Contractor shall 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 on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

D. The Contractor will include the provisions of Subdivisions II(A), II(C), and II(E) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

E. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

F. Required EEO Forms

1. EEO Staffing Plan

Non-Construction Contracts and Subcontracts only

To ensure compliance with this section, the Contractor represents that it has submitted prior to execution of this Contract an EEO Staffing Plan to the Recipient's MBO to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

2. EEO Workforce Employment Utilization Report ("Workforce Report")

a. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report to the Recipient, in such format as shall be required by EFC during the term of the Contract. For construction Contracts, Workforce Reports must be submitted on a monthly basis; for non-construction Contracts, Workforce Reports must be submitted on a quarterly basis.

b. Separate forms shall be completed by Contractor and any Subcontractor.

c. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance

of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

III. Business Participation Opportunities for MWBEs

A. Contract Goals

1. For purposes of this Contract, EFC establishes the following goals for New York State certified MWBE participation ("MWBE Combined Goals") based on the current availability of qualified MBEs and WBEs.

Program	MWBE Combined Goal*
NYS financial assistance only	30%
Engineering Planning Grant	30%

*May be any combination of MBE and/or WBE participation

2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com>.

3. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals.

a. For construction and construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

b. For non-construction Contracts or Subcontracts, the portion of a Contract or Subcontract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

4. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract.

5. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

B. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan to the Recipient prior to the execution of this Contract.

2. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.

3. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.

4. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE-SDVOB Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the Monthly MWBE-SDVOB Contractor Compliance Report or revised Utilization Plan.

5. The Contractor shall submit copies of all fully executed Subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

C. Requests for Waiver

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the Recipient documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.

2. If the Recipient, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

D. Monthly MWBE Contractor Compliance Report ("Monthly MWBE-SDVOB Report")

The Contractor agrees to submit a report to the Recipient by the third business day following the end of each month over the term of this Contract documenting the payments made and the progress towards achievement of the MWBE goals of the Contract. The Monthly MWBE-SDVOB Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid within 30 days of receipt of payment from the Recipient. The final Monthly MWBE-SDVOB Report must reflect all Utilization Plan revisions and change orders.

E. Liquidated Damages - MWBE Participation

In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by the Recipient or EFC that the Contractor has willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages, as specified herein and 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 approved MWBE participation goals; and,
2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

The Recipient and EFC reserve the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Contractor's non-compliance.

In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women's Business Development ("ESD") pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

SECTION 2 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

For purposes of this section:

"Non-Construction" shall mean Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing.

The requirements of this section apply to Contracts or Subcontracts meeting the thresholds under New York State Executive Law, Article 17-B as follows:

- (a) Non-Construction Contracts greater than \$25,000;
- (b) Non-Construction Contracts, that are initially under \$25,000 but subsequent change orders or contract amendments increase the Contract value to above \$25,000;
- (c) Construction Contracts greater than \$100,000; and,
- (d) Construction Contracts that are initially under \$100,000 but subsequent change orders or contract amendments increase the Contract value to above \$100,000.

I. General Provisions

Contractors and Subcontractors are required to comply with New York State Executive Law Article 17-B and 9 NYCRR Part 252 for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation or real property and improvements thereon.

II. Contract Goals

A. A. EFC hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>.

B. Pursuant to 9 NYCRR § 252.2(n), Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

III. SDVOB Utilization Plan

A. In accordance with 9 NYCRR § 252.2(i), Contractor represents and warrants that it has submitted a completed SDVOB Utilization Plan to Recipient prior to the execution of this Contract.

B. Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goal set forth above.

C. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

D. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE-SDVOB Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated SDVOB Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the revised Utilization Plan.

E. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the SDVOB Utilization Plan to the MBO within 30 days of their execution.

IV. Request for Waiver

A. If Contractor, after making good faith efforts, is unable to comply with the SDVOB Contract goal, Contractor may submit a request for a partial or total waiver to the Recipient, documenting good faith efforts by Contractor to meet such goal. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.

B. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Recipient, but must be made no later than prior to the submission of a request for final payment on the Contract. If the Recipient, upon review of the SDVOB Utilization Plan and Monthly SDVOB Contractor Compliance Report determines that Contractor is failing or refusing to comply with the SDVOB Contract goal and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to Contractor. Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB Contract goals.

V. Monthly SDVOB Contractor Compliance Report ("Monthly MWBE-SDVOB Report")

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report monthly SDVOB contractor compliance to the Recipient during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. The Contractor agrees to submit a report on to the Recipient by the third business day following the end of each month over the term of this Contract. The Monthly MWBE-SDVOB Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check). The final Monthly MWBE-SDVOB Report must reflect all Utilization Plan revisions and change orders.

VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

SECTION 3 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

The requirements of this section apply to all Contracts and Subcontracts.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.

EXHIBIT H REQUIRED CERTIFICATIONS

Intentionally Omitted.