

CONTRACT FOR STATE ASSISTANCE FOR
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)
PHASE II STORMWATER PERMIT IMPLEMENTATION
ENVIRONMENTAL PROTECTION FUND

CONTRACT NO. _____

THIS CONTRACT FOR STATE ASSISTANCE (hereinafter "Contract"), by and between the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, (the "Department") with offices at 625 Broadway, Albany, New York 12233-3500, and the _____ (the "Recipient") with offices at _____.

WHEREAS, pursuant to Article 17, Title 14 of the Environmental Conservation Law (ECL), the Legislature has authorized a matching grant program for up to 50 percent of the eligible costs of implementing nonpoint source abatement and control projects for nonpoint source pollution emanating from non-agricultural sources; and

WHEREAS, the Recipient has submitted an application to the Department for State Assistance in order to implement a Water Quality Improvement Project ("Project") meeting the requirements set forth in Article 17 of the ECL and as more particularly set forth in the Project Workplan, attached hereto as Appendix C; and

WHEREAS, the Recipient represents that it has the legal status necessary to enter into this Contract, and has filed with the Department a certified copy of a duly adopted resolution of its governing body which authorizes the Recipient to make such an application and authorizes an officer to enter into and execute this contract on behalf of the Recipient with the Department for the purpose of receiving State Assistance; and

WHEREAS, in accordance with Article 17 of the ECL, the Department has determined that the Project being proposed by the Recipient is eligible to receive State Assistance; and

WHEREAS, the Recipient has demonstrated its ability to finance its share of the Project and has agreed to fund its portion of the cost of the Project; and

WHEREAS, the Recipient has agreed to proceed expeditiously with the Project and to complete the Project in accordance with the timetable set forth in the Project Workplan as well as with the conditions of any applicable permits, administrative orders, or judicial orders and this Contract; and

WHEREAS, based upon the representations of the Recipient, the Department has approved the reasonable Eligible Costs of the Project, a schedule for progress and completion of the Project, the amount of State Assistance to be paid to the Recipient, and other documents specifically delineating the Project, all as described in the Project Workplan; and

WHEREAS, the Recipient is compliant with and commits to continue to comply with the requirements for State Assistance established under Article 17 of the ECL, as set forth in the Contract, and all applicable local, State and federal laws and regulations governing the construction and operation of the Project; and

WHEREAS, the Department's execution of this Contract is made in reliance upon the information provided by, and the representations of, the Recipient included in both its application and this Contract.

NOW THEREFORE, in consideration of the promises and the mutual covenants and conditions contained in this Contract, the Department and the Recipient agree as follows:

1. **Definitions.**

- a. Terms used in this Contract shall have the same meaning as set forth in Articles 17 of the ECL.
- b. In addition, the following terms in this Contract shall have the following meanings:
 - (i) "Comptroller" shall mean the New York State Office of the Comptroller.
 - (ii) "Contractor," as used in Appendices A and B, shall mean the Recipient.
 - (iii) "Eligible Costs" shall mean the costs of the Project which the Department has determined may be paid with State Assistance pursuant to ECL Article 17, Title 14, Section 17-1409(4), and as set forth in the Project Workplan. Cumulative transfers among direct cost categories are allowable in amounts up to ten percent (10%) of the eligible costs. Transfers greater than ten percent (10%) of the eligible costs or any changes which alter the nature of scope of the project regardless of the percentage must be approved in writing by the Department prior to commencement of said changes.
 - (iv) "Parties" shall mean the Department and the Recipient.
 - (v) "Project Workplan" shall mean the document attached hereto as Appendix C, which has been prepared by the Recipient and approved by the Department. The Project Workplan may be amended upon mutual agreement of the Parties, without amending this Contract, provided the total State Assistance to be provided to the Recipient does not exceed the "not to exceed" amount set forth in paragraph 3.a of this Contract.
 - (vi) "State" shall mean the State of New York.

- (vii) "State Assistance" shall mean money provided by the Department to the Recipient in accordance with this Contract, as reimbursement for the incurred Eligible Costs of the Project pursuant to Title 14 of Article 17 of the ECL, and include New York State Environmental Protection Fund monies as well as funds provided as reimbursement under Section 106, 319(h), 604(b) or 104(b)3 of the Clean Water Act.

2. **Term and Effective Date.** This Contract shall commence on the approved start date set forth in the project schedule section of the Project Workplan ("Commencement Date") and shall terminate upon the earlier of the following: (i) final payment of State Assistance to the Recipient or (ii) _____. In accordance with Section 16 of this Contract, certain provisions of this Contract shall survive the termination of this Contract. This Contract shall be effective upon the approval of the Comptroller.

3. **State Assistance.**

- a. *Amount of State Assistance.* The Department agrees to reimburse the Recipient periodically, as set forth in this Contract, for its approved Eligible Costs, as estimated in the attached Workplan, in an amount not to exceed _____ and 00/100 dollars (\$ _____ .00), provided however, that any obligation of the Department to make State Assistance available to the Recipient shall be subject to the provisions set forth in this Section. If the actual Eligible Costs for the Project are lower than the estimated Eligible Costs set forth in the Project Workplan, the Department shall reimburse the Recipient for either the not to exceed amount set forth above or fifty percent (50%) of the actual approved Eligible Costs, whichever is lower. No amendment of this Contract shall be necessary to effectuate this modification. However, where requested by the Department, the Recipient agrees to execute a formal amendment to this Contract setting forth the revised "not to exceed" amount and return it to the Department within ninety (90) days of its receipt of such Contract amendment. Any cost overruns in excess of the "not to exceed" amount will not be paid by the Department and the Department is not committed to seeking funds to pay for such cost overruns.
- b. *Conditions Precedent to Eligibility and Payment of State Assistance.* The Department's obligation to make State Assistance available to the Recipient is expressly conditioned upon the following:
 - (i) There are funds available for the Project; and
 - (ii) The Recipient has submitted to the Department properly documented reimbursement requests for costs incurred in accordance with the requirements established by the Department, and such requests and documentation have been approved by the Department; and

- (iii) The Recipient has filed all necessary reports, in accordance with the requirements set forth in this Contract; and
 - (iv) The Recipient is not in breach of any of the terms or conditions of this Contract, as determined by the Department in its sole discretion; and
 - (v) The implementation of the Project is fully in accordance with the Project Workplan; and
 - (vi) The State Assistance requested is in accordance with the Department's final computation and determination of Eligible Costs, as made by the Department upon completion of the Project, and as approved by the Department.
- c. *State Assistance Requests.* The Recipient agrees that in order to be eligible to receive State Assistance, it must make its requests for State Assistance in accordance with the following:
- (i) The Recipient must submit to the Department a request for State Assistance in the format as prescribed by the Department ("State Assistance Request"), which shall include, at a minimum, a "State of New York State Aid Voucher" ("Voucher"). The State Assistance Request and Voucher must be signed by the person authorized to sign the Contract for the Recipient, or another Department approved duly authorized person. The Recipient must have also fully complied with and be up to date on all reports and payment documentation requirements in order to be eligible to receive State Assistance.
 - (ii) The Recipient shall forward complete State Assistance Requests once every quarter for the time periods ending March 31, June 30, September 30 and December 31. Such requests are due no later than fifteen (15) days following the end of each quarter. All State Assistance Requests shall be provided by the Recipient to the Department in accordance with the direction and requirements of the Department.
 - (iii) The State Assistance Request shall be accompanied by documentation for all costs incurred to date, for which documentation has not previously been submitted. Documentation shall be in a form and manner acceptable to the Department and shall demonstrate that the costs for which State Assistance has been requested or received relate to the Project and that the costs relate to services or goods that have been provided. Satisfactory documentation may include, but is not limited to, signed copies of payment vouchers or invoices, canceled checks/or the latest cumulative work-in-place estimate for each construction contract, and any further documentation as may be required by the Department and/or the Comptroller. The Department reserves the right, in its sole discretion, to determine if the State Assistance Request and accompanying documentation submitted by the Recipient is in satisfactory form and substance.

- d. *Payment of State Assistance.* The Recipient acknowledges and agrees that its receipt of State Assistance is subject to the following:
- (i) Upon approval of this Contract by the Office of the State Comptroller, a payment of up to twenty-five percent (25%) of the total State Assistance to be provided under this Contract may be made to the Recipient for project start-up funding. The Recipient must submit a Voucher, signed by the person authorized to sign the Contract for the Recipient, or another Department approved duly authorized person, in order to receive such start-up funding.
 - (ii) The Department will retain up to ten percent (10%) of each payment made to the Recipient, except that there shall be no retainage of the start-up funding described in paragraph 3.d.(i) of this Contract. The total accumulated retainage shall be paid to the Recipient as part of a final payment to the Recipient, within a reasonable time after the Department conducts a final review of the Project and finds the Project to be acceptable.
 - (iii) The Recipient acknowledges that requests for payment of a particular cost must be submitted within six months after that cost has been incurred by the Recipient. Failure to comply with this request may, in the discretion of the Department, operate as a waiver by the Recipient for reimbursement of such cost by the Department.
 - (iv) Payment shall be made to the Recipient within a reasonable time of the audit and approval by the Comptroller of the Voucher executed by an authorized officer of the Recipient.
 - (v) The final payment of State Assistance to the Recipient, which includes retainage, may be paid to the Recipient by the Department only upon the satisfactory Department determination of the final incurred Eligible Costs of the Project, as well as a satisfactory final review of the Project. Determination of the final Eligible Costs will be based upon the Department's review of items such as the Recipient's final State Assistance Request and Voucher, as well as the final report required by the Project Workplan.
- e. *Disapproval of State Assistance Requests.* The Recipient agrees that the Department may reject, correct, adjust or withhold State Assistance from the Recipient where the Department, in its sole discretion, determines that the incurred costs requested for reimbursement are not Eligible Costs, the Recipient has not properly documented costs or submitted its reports or is in breach of this Contract. Such rejection, correction, adjustment or withholding may be accomplished by taking such action with respect to present or future requests or through any other rights or remedies available to the Department.

f. *Refund of State Assistance.*

- (i) Recipient acknowledges and agrees that State Assistance received is subject to refund where:
 - (a) The Department has reimbursed the Recipient in an amount which exceeds Eligible Costs incurred or for costs not deemed by the Department to be eligible or satisfactorily documented; or
 - (b) The Recipient receives payments, or payments are committed to the Recipient for the Project from other sources which were not included in the calculation of State Assistance, and the Department has recalculated the State share.
- (ii) After the Department has recalculated the amount of State Assistance or has determined the amount of State Assistance to be refunded by the Recipient, the Department shall so notify the Recipient in writing of the amount that must be refunded to the State. If the Recipient fails to repay the State Assistance within 365 days of notification, the Recipient agrees that the Department may take any lawful measures relating to the recovery of unrepaid State Assistance including, but not limited to, the deduction of monies from other State or Federal Financial aid to the Recipient.

4. **Cost Recovery of Other Project Funding Sources.**

- a. The Recipient represents that the estimated Eligible Costs of the Project upon which State Assistance is calculated does not include any costs which are paid or committed to the Recipient for the Project from Federal or other State sources.
- b. The Recipient agrees to continue to provide the Department with timely notice of any costs paid or committed to the Recipient for the Project from such other sources.
- c. The Recipient acknowledges the right of the Department to recalculate the State Assistance provided to the Recipient and to require the Recipient to refund State Assistance received, in accordance with paragraph 3.f of this Contract.

5. **Representations of the Recipient.** The Recipient certifies, represents and agrees as follows:

- a. *Use of State Assistance.* The Recipient agrees to use the State Assistance for the payment of Eligible Costs of the Project in accordance with the Project Workplan and for no other purpose. The Recipient also agrees to expend these funds in total accord with the terms and conditions of this Contract, as well as with all applicable laws, including, but not limited to the provisions and rules and regulations of the New York State Finance Law. A Recipient who is a municipality also agrees to expend these funds in total accord with the provisions and rules and regulations of the General Municipal Law.
- b. *Authorized Representatives.* The Recipient represents that the individual executing this Contract has the legal authority to execute this Contract on behalf of the Recipient and that all other representatives implementing this Project on behalf of the Recipient have the legal authority to represent the Recipient in its dealings with the Department.
- c. *SEQRA.* With respect to the Project, the Recipient certifies that it has complied, and shall continue to comply, with all requirements of the State Environmental Quality Review Act (“SEQRA”). The Recipient agrees to provide all environmental documents as may be required by the Department. The Recipient has notified, and shall continue to notify, the Department of all actions proposed for complying with the environmental review requirements imposed by SEQRA.
- d. *Compliance with this Contract and all Applicable Laws.* The Recipient agrees that it shall plan, design, construct, operate and maintain the Project (or cause the Project to be constructed and operated) in compliance at all times with this Contract, including the Project Workplan, and with all applicable federal, State and local laws, ordinances, rules, regulations, Executive Orders, and in compliance with all other applicable laws and regulations to the extent necessary to ensure the availability of the Project for its intended purpose and to ensure the safety of the public. The Recipient agrees to ensure that the Project will effectively protect water quality, employ good management practices and fulfill all federal and State requirements, all requirements of this Contract and all applicable instructions issued by the Department to ensure that these requirements are met. The Recipient further agrees that it will ensure that at all times the Project and the work performed in relation to the Project by the Recipient or its agents, representatives, or contractors shall be in compliance with applicable federal, State and local laws, ordinances, rules, regulations and standards and this Contract. The Recipient shall incorporate the terms of this Contract in its contracts with such agents, representatives and contractors.
- e. *M/WBE and EEO.* The Recipient shall comply with the M/WBE and Equal Employment Opportunity requirements set forth in Clause VII of Appendix B to this Contract.

- f. *Title.* The Recipient represents that it has or will obtain title to or sufficient interest in the Project site, including rights-of-way and necessary easements, before the start of the Project to ensure undisturbed use and possession for purposes of construction and completion of the Project, as well as operation of the Project throughout its useful life. Proof of title or sufficient interest in the project site shall be provided to and approved by the Department prior to the commencement of the project. The Department may require, solely in its discretion, an affirmation from the Recipient's attorney as proof of title or sufficient interest in the Project site.
- g. *Capacity.* The Recipient represents that it has the legal, institutional, managerial, contractual and financial capability to ensure adequate construction, operation, and maintenance of the Project.
- h. *Record keeping.* The Recipient agrees that it shall keep accurate and separate accounting and fiscal records and maintain an efficient and accurate cost keeping system for all receipts and disbursement of all funds attributable to this Contract, in accordance with generally accepted government accounting practices. The Recipient also agrees to produce such records for examination at such reasonable time or times as may be requested by the Department and/or the Comptroller or their duly authorized representatives. The Recipient agrees to permit extracts therefrom and copies thereof to be made by the Department or the Comptroller or their duly authorized representatives.
- i. *Required Approvals and Permits.* The Recipient represents that it has obtained or shall timely obtain all necessary approvals from any and all governmental agencies requisite to the completion of the Project and compliance with all federal, State and local laws, ordinances and regulations applicable thereto. Upon completion of the Project, the Recipient agrees that it shall obtain from appropriate authorities all permits and authorizations, if any, required for operation and use of the Project.
- j. *No Waiver of Enforcement.* The Recipient acknowledges and agrees that acceptance by the Department of a certification by the Recipient that a Project requirement has been met shall not prevent the Department from performing any actions necessary to ensure the accuracy of such certification.
- k. *Alienation of Project.* Without the express written approval of the Department, the Recipient agrees that it shall not, for thirty (30) years, sell, assign, convey or otherwise dispose of any property, interest in property or facility developed pursuant to this Contract nor shall it convert the property, interest in property or facility funded by this Contract to some other use.

- l. *No Warranty Regarding Conditions, Suitability or Cost of Project.* The Recipient acknowledges and agrees that the Department does not make 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 State Assistance will be sufficient to pay the costs of the Project. Review or approval of engineering reports, facilities plans, design drawings and specifications or other documents, or the inspection of the Project by the Department, does not relieve the Recipient of its responsibility to plan, design, and build the Project properly, and to operate and maintain the Project effectively, as required by laws, regulations, permits and good management practices. The Department is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other Project documents. Nothing in this Section prohibits a Recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.
 - m. *Correction of Work.* The Recipient agrees to take any corrective action necessary to bring the Project into compliance with the performance standards for the Project, as well as the Project Workplan or the directions of the Department.
 - n. *Access by those with disabilities.* If monies paid to the Recipient under this Contract are to be used for the development of public buildings, the Recipient agrees to comply with all requirements for providing barrier free access for those with disabilities as established by Article 4A of the New York State Public Buildings Law, relevant sections of the New York State Uniform Fire Prevention and Building Code, and the Americans with Disabilities Act.
 - o. *Copyrights.* Title to and the right to determine the disposition of any copyrights, or copyrightable materials, first produced or created in the performance of this Project remains with the Recipient provided that the Recipient agrees to grant to the Department an irrevocable, royalty-free, non-exclusive right to reproduce, translate, and use all such material for its own purposes.
 - p. *Record Retention.* The Recipient agrees to retain all files and records relating to the construction of the Project for at least six (6) years after Project completion. As-built plans and specifications for the Project shall be retained for the useful life of the Project.
6. **Project Management.** The Recipient certifies, represents and agrees to manage the Project as follows:
- a. *Supervision.* The Recipient agrees that it must at all times provide and maintain competent and adequate supervision and inspection of all Project work.
 - b. *Establishment of Project Accounts.* The Recipient agrees to maintain Project accounts in accordance with generally accepted government accounting standards and any instructions issued by the Department.

- c. *Force Account.* The Recipient represents that any use of the Recipient's employees or equipment to perform Project related activities is in accordance with the approval given by the Department of the Project Workplan. The Department's approval is based upon the Recipient's representations that the Recipient's employees possess the necessary competence to perform the work in question and that the work can be more cost effectively performed and done on a timely basis by the use of the Recipient's employees. The cost of any work performed by the Recipient's employees or use of equipment which is not in accordance with the Project Workplan will not be eligible for reimbursement unless the proposed modifications are approved by the Department in writing in accordance with the requirements set forth in the Project Workplan. The Department reserves the right, in its sole discretion, to reject any force account work which was not contemplated by the Department in its approval of the Project Workplan or which is beyond the scope of the work approved in the Project Workplan. The Recipient must maintain such records as the Department will require to document these costs with respect to the use of the Recipient's employees for a specified task or activity. Accordingly, regardless of its approval of force account work in the Project workplan, the Department reserves the right to review documentation of costs and to accept or reject such costs in accordance with Section 3 of this Contract.
- d. *Contracts.* The Recipient acknowledges and agrees that the Department has the right to review all Contracts for services and construction funded pursuant to this Contract in order to determine eligibility for financing hereunder and to determine compliance with all relevant plans and terms of this Contract.
- e. *Participation in Meetings.* The Recipient agrees that it shall permit the Department to participate in all its meetings and conferences with respect to the Project. Upon request from the Department, the Recipient must submit to the Department reports, documents, data, contractual documents, administrative records and other information pertinent to the Project.
- f. *Access to Records.* The Recipient agrees: (i) to permit the Comptroller, or the Department, or their authorized representatives to review or audit all records relative to the Project; (ii) to produce or cause to be produced all records relating to any work performed under the terms of this Contract for examination at such times as may be designated by any of them or their authorized representatives; (iii) to permit extracts and copies of Project records to be made by them or their authorized representatives; and (iv) to promptly fulfill information requests by them or their authorized representatives.

- g. *Access to Project.* The Recipient agrees to permit representatives of the Department to have unrestricted access to the Project at all reasonable times, and all contracts of the Recipient for construction or operation of all or a portion of the Project shall contain provisions that permit such access to the Project or work relating to the Project, wherever it is in preparation or progress, and that contractors or subcontractors shall provide proper facilities for such access and inspection and shall permit extracts and copies of Project records to be made by the representatives of the Department.
- h. *Project Construction.* The Recipient agrees to proceed expeditiously with the Project, and shall complete the Project in accordance with the schedule set forth in the Project Workplan (“Project Schedule”), or any amendments to such Project Schedule which are approved by the Department in writing. The Recipient further agrees to undertake and complete the Project in accordance with the Project Workplan, as well as the conditions of all applicable permits, administrative orders, judicial orders, and any other applicable governmental approvals.
- i. *Project Bids.* The Recipient agrees to follow the requirements of General Municipal Law §103 if it decides to enter into any contracts for public work involving this Project. The Recipient agrees to advertise for and solicit bids for any such contracts within a reasonable time after receipt of this executed Contract. The Recipient further agrees to award Project contracts within a reasonable time after the due date of bids and proposals and after having determined the lowest responsive/responsible bidder. The Recipient agrees to resolve all protests and to notify the Department of each bid protest and how it was resolved.
- j. *Reports.* The Recipient agrees to submit to the Department, two (2) copies of all quarterly reports prepared in accordance with the requirements set forth in the Project Workplan, commencing with the effective date of this Contract until completion of the Project. The Recipient shall submit such reports for every quarter (each time period ending March 31, June 30, September 30 and December 31) during the term of this Contract. Such reports shall be due no later than fifteen (15) days following the end of each quarter. Such reports shall be submitted to the Department’s representative as set forth in Section 8 of this Contract. Failure to file quarterly reports when due will result in the Department withholding any payment due or which becomes due to the Recipient until receipt of the outstanding quarterly report.
- k. *Notice of Beginning Operation.* The Recipient agrees that it shall notify the Department in writing thirty (30) calendar days following the actual date of initiation of operation of the Project.

- l. *Completion Certificate.* Within forty-five (45) calendar days following completion of the Project, the Recipient agrees that it will deliver to the Department the following: (i) a certification by the Recipient's authorized representative stating that the Project has been completed in accordance with this Contract, and constructed per the approved plans and specifications, if any, and the approved Project Workplan, and any approved amendments thereto and (ii) the certified "as built" plans and specifications for the Project, if applicable. Any work not in accordance with the approved plans and specifications, if any, and the approved Project Workplan, shall be remedied, unless such non-compliance is agreed to be waived by the Department.

- m. *Operation and Maintenance.* The Recipient agrees that it is fully responsible for ensuring the proper and efficient monitoring, operation and maintenance of the Project satisfactory to the Department, including, but not limited to retaining a sufficient number of qualified staff and ensuring performance of required tests and requirements. After completion of the Project, the Recipient shall, for the useful life of the project operate the Project or otherwise cause the Project to be operated properly and in a sound and economical manner and shall maintain, preserve and keep the Project, or cause the Project to be maintained, preserved and kept, in good repair, working order and condition and shall make, or cause to be made, all necessary and proper repairs, replacements and renewals from time to time, so that at all times the Project may be operated properly in a manner consistent with the performance standards for the Project, with this Contract and with the requirements of any related permit or other governmental approval of the Project.

- n. *Final Report and Review.* No later than sixty (60) calendar days from completion of the Project, the Recipient agrees to file with the Department an original and three (3) copies of the final report described in the Project Workplan ("Final Report"). Within forty-five (45) calendar days of receiving a satisfactory Final Report, the Department will conduct a final review of the Project, which may include an on-site inspection. The Recipient shall not be eligible to receive a final payment under this Contract until the Department has conducted its final review of the Project and finds the Project to be acceptable.

- o. *Continued Ownership and Operation.* Unless authorized to cease operations or dispose of the Project, the Recipient agrees that it shall own, operate and maintain the Project in accordance with the provisions of applicable law. The Recipient also agrees that it shall not discontinue operation of or sell or otherwise dispose of the Project, except for portions of the Project sold or otherwise disposed of in the course of ordinary repair and replacement of obsolete or worn out parts, without the approval of the Department. Except as disclosed to the Department in connection with the Recipient's application of the State Assistance, the Recipient represents that it does not intend to lease the Project or enter into a long-term Contract for operation of the Project.

7. **Project Insurance.** The Recipient certifies, represents and agrees to provide insurance and bonding with respect to the Project as follows:
- a. *Liability and Other Insurance.* The Recipient agrees that it will require each Project consultant, Project contractor and Project subcontractor to secure and deliver to the Recipient appropriate policies of insurance issued by an insurance company licensed to do business in the State. These policies must name the Recipient as an additional insured, with appropriate limits, covering contractor's public liability and property damage insurance, contractor's contingency liability insurance, "all-risk" insurance and worker's compensation for the Project. The Recipient agrees that it will require that copies of the applicable insurance policies be made available to the Department for review upon request. The Recipient must participate in the Flood Insurance Program if any permanent construction is located in a flood hazard area delineated by the Department of Housing and Urban Development.
 - b. *Performance and Payment Bonds.* For Project construction contracts greater than \$50,000, the Recipient agrees to require each Project construction contractor and Project construction subcontractor to provide specific performance and payment bonds each in amounts not less than the contractor's or subcontractor's contract price. These bonds must remain in effect for one year beyond the date of final inspection and acceptance by the Recipient of any work under such contract.
8. **Authorized Representatives and Notice.** The Department's authorized representative for the implementation of this Contract and for approval, direction and receipt of all Project reports called for in this Contract is _____, Regional Project Manager. Whenever it is provided in this Contract that notice must be given or other communications sent to the Department, the notices or communications must be in writing and delivered or sent to the Department's authorized representative at:

New York State Department of Environmental Conservation
 Region _____

Tel. No.: _____

A copy of all legal notices shall be sent to:

Ms. Alison Crocker, Acting General Counsel
 New York State Department of Environmental Conservation
 625 Broadway, Albany, New York 12233 - 1500

The Recipient's authorized representative for the implementation of this Contract is _____ . Notices or communications regarding this Contract should be in writing and delivered or sent to the Recipient's authorized representative at:

Tel. No.: _____

With a copies to: _____

Tel. No.: _____

Notices delivered or sent shall be deemed for all purposes as notice to all persons who are Parties to this Contract as Department or Recipient. Notice shall be deemed to be delivered when sent.

9. **Default, Suspension, Termination.**

- a. *Compliance with conditions of contract.* The Recipient agrees to meet all conditions of this Contract, including particularly:
 - (i) To proceed expeditiously with the Project in accordance with the Project Schedule; and
 - (ii) To complete the Project in accordance with all applicable federal, State or local laws, ordinances, rules and regulations; the Project Workplan; this Contract, including all attachments to the Contract; and the conditions of any applicable permits, administrative orders, or judicial orders; and
 - (iii) To not change the Project in any way which, in the judgment of the Department, substantially alters the nature or scope of the Project; and
 - (iv) To not sell or make other disposition of any or all of the Project within the useful life of the Project without advance written approval from the Department.
- b. *Material breach.* A failure of the Recipient to meet any of the foregoing conditions shall constitute a material breach of this Contract.

- c. *Notification.* When a material breach of this Contract has occurred, the Department shall notify the Recipient in writing and provide the Recipient with a thirty (30) day period (or such longer time period as determined by the Department and stated in the notice) to correct such breach. The Department shall have the right to withhold all future State Assistance under this Contract pending resolution of the breach.
- d. *Failure to cure.* If such breach is not corrected within the above time period, then the Department may, in its sole discretion, find that such a breach constitutes cause for the suspension or termination of any obligation of the Department hereunder, including but not limited to the continued withholding, in whole or in part, of State Assistance payments to the Recipient, pending compliance.
- e. *Repayment.* In addition, and if such failure is attributable to any reason or cause other than a national emergency or Act of God, the Department may, in its sole discretion, require that the Recipient repay to the State, some or all of the monies paid to the recipient by the State. In accordance with direction from the Department, the Recipient agrees to immediately repay to the Department the required amount of State Assistance, plus appropriate interest as provided by law. If the Recipient fails to repay the State Assistance within 365 days of such notification, the Recipient agrees that the Department may, in its sole discretion, take any lawful means to recover unrepaid State Assistance, including, but not limited to, requesting the Comptroller to cause an amount equal to the monies required to be repaid, to be deducted from any other State or Federal Financial Aid to which the Recipient would otherwise be entitled.
- f. *Remedies.* If the Department determines that the breach of this Contract by the Recipient or any authorized representative involves noncompliance with federal, State or local laws, regulations or requirements, the instructions of the Department relating to the Project, or the terms of this Contract, the Department may, in addition to exercising any or all other remedies described herein, exercise any or all the remedies at law or in equity, including but not limited to rights to seek injunctive relief or specific performance with respect to the obligations hereunder.
- g. *Remedial action.* Nothing in this Contract shall affect the right of the Department to take remedial action including but not limited to actions for breach of contract if the Recipient fails to carry out its obligations under this Contract.

10. **Signage.** In recognition of the State Assistance provided under this Contract, the Recipient shall erect a project sign, noting the assistance to the Project. The project sign (“Project Sign”) shall be in accordance with the specifications attached to and made a part of this Contract as Attachment 1. The Recipient agrees to maintain the Project Sign for the time period specified in Attachment 1. Additionally, in recognition of the provision of State Assistance for the Project, the Recipient also agrees to give the Department appropriate credit for its support in documents or publications resulting from this Project. The Department may, in its discretion, waive this requirement if the sign cannot be reasonably maintained, the sign is not consistent with other law, or the location of the sign would not provide a public purpose.
11. **Amendments.** This Contract may only be amended by a written instrument signed by both parties and approved by the Comptroller.
12. **Contract Attachments; Order of Precedence.** The Parties to this Contract acknowledge and agree that the attachments hereto, including Appendix A “Standard Clauses for All State Contracts” and Appendix B “Standard Clauses For All New York State Department of Environmental Conservation Contracts”, are incorporated herein and made a part of this Contract. These attachments shall control the obligations of the Parties in the following order of precedence:
 - a. Appendix A, Standard Clauses for All New York State Contracts;
 - b. Appendix B, Standard Clauses for All New York State Department of Environmental Conservation Contracts;
 - c. Appendix C, Project Workplan; and
 - d. Attachment 1, Project Sign Specifications.
13. **No Waiver of Remedies.** The Recipient shall not be required to make any demand upon, pursue or exhaust any of its rights or remedies against the Department. The Department shall not be required to make any demand upon, pursue or exhaust any of its rights or remedies against the Recipient. A delay or omission by the Department or the Recipient in exercising any right under this Contract shall not operate as a waiver of that right or any other right under this Contract. A waiver on any occasion shall not be construed as a bar to or a waiver of any right and/or remedy on any other occasion. No waiver or consent is binding unless it is in writing and executed by the Department and the Recipient.
14. **Totality of Contract; Severability.** This Contract contains the provisions, conditions, and promises agreed to between the Parties. This Contract constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements with respect to such subject matter whether written or oral. If any part of this Contract is held to be invalid or unenforceable, the invalidity or unenforceability of such will not affect the remainder of this Contract. This Contract will remain valid as if the invalid or unenforceable part had not been contained.

15. **Construction of Contract.** This Contract may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. The titles of sections and paragraphs of this Contract have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or constructions of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The Parties agree that this Contract is the result of negotiation by the Parties, and thus, this Contract shall not be interpreted against the maker thereof.
16. **Continuation of Obligations.** All representations, warranties and guarantees made in, required by or given by the Recipient in accordance with this Contract, as well as all continuing obligations of the Recipient indicated in the Contract, will survive final payment to the Recipient, completion of the Project and termination of this Contract.

CONTRACT SIGNATURE PAGE

Recipient: _____

Contract No.: _____

RECIPIENT SIGNATURE:

Authorized Representative _____

(typed name)

(Signature) _____ Dated: _____

(Title) _____

RECIPIENT ACKNOWLEDGMENT:

STATE OF NEW YORK)

) SS.:

COUNTY OF _____)

On this _____ day of _____, 2007, before me personally came _____ (insert name and title) of the

_____ (insert political subdivision or agency of the political subdivision) the political subdivision or agency thereof described in and which executed the above instrument: by authority of _____

_____ (attached certified copy of order, resolution, or the ordinance authorizing the execution of this contract) of said political subdivision, and that (s)he signed his/her name by that authority.

NOTARY PUBLIC

NYSDEC CERTIFICATION: "In addition to the acceptance of this contract, I also certify that original signature pages will be attached to other exact copies of this contract."

NYSDEC SIGNATURE: _____ Dated: _____

ATTORNEY GENERAL'S SIGNATURE:

COMPTROLLER'S SIGNATURE:

DATE: _____

DATE: _____