



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

December 10, 2021

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Executive Engineer *LFK*

Subject: Contract NC-040
Transmission Main
Van de Water Raw Water Pump Station to Van de Water Treatment Plant
ECWA Project No. 201900104

ECWA was awarded a Water Infrastructure Improvement Act (WIIA) Grant for the above referenced project in the not to exceed amount of \$2,519,272.00. The grant is administered by the Environmental Facilities Corporation (EFC).

The execution of the agreement is one of the final steps required for closing the WIIA Grant. EFC has requested that the agreement be properly executed and returned via email to Connor Murphy, Paralegal (Connor.Murphy@efc.ny.gov) no later than January 6, 2022. Once received, EFC will countersign and email back a fully executed agreement.

Contract NC-040 scope involves the design and construction of approximately 5,000 linear feet of new raw water transmission main from Van de Water Raw Water Pump Station to the Van de Water Treatment Plant. The route for the new raw water transmission main will follow either the existing raw water transmission main route via National Grid rights-of-way and the NRG Huntley site per an existing easement agreement or it will be installed along River Road. The second transmission main will increase hydraulic capacity and improve system redundancy and resiliency. This project will also involve the design of a conduit duct bank, handholes, and appurtenances between the Raw Water Pump Station and Van de Water Treatment Plant for communication cabling.

The following material is attached:

- Blue Authorization Form. The Blue Authorization Form is requesting Board Authorization for the Chairman to execute the agreement.
- A copy of the WIIA Grant Program Grant Agreement for WIIA Project No. 18775 dated as of January 13, 2022.

LFK:jmf

Attachments

cc: R.Stoll

L.Lester

CONT-NC-040-1901-011

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: NC-040 **Project No.:** 201900104
Project Description: Transmission Main Van de Water Raw Water Pump Station to
Van de Water Treatment Plant.

Item Description:







- | | | | |
|---|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input type="checkbox"/> Other _____ | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input checked="" type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input checked="" type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input type="checkbox"/> Other _____ | |

Approvals Needed:

APPROVED AS TO CONTENT:

<input checked="" type="checkbox"/> Sr. Distribution Engineer	<u></u>	Date: <u>12/13/2021</u>
<input checked="" type="checkbox"/> Chief Operating Officer	<u></u>	Date: <u>12/13/2021</u>
<input checked="" type="checkbox"/> Executive Engineer	<u></u>	Date: <u>12/10/2021</u>
<input checked="" type="checkbox"/> Director of Administration	<u></u>	Date: <u>12/10/2021</u>
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer	<u></u>	Date: <u>12/13/2021</u>
<input checked="" type="checkbox"/> Legal	<u></u>	Date: <u>12/13/2021</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority	<u></u>	Date: <u>12/14/21</u>
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Remarks: EFC Grant Agreement Execution.

Resolution Date: _____

Item No: _____

WIIA GRANT PROGRAM

DRINKING WATER

ERIE COUNTY WATER AUTHORITY

and

**NEW YORK STATE
ENVIRONMENTAL FACILITIES CORPORATION**

GRANT AGREEMENT

(NEW YORK STATE WATER INFRASTRUCTURE IMPROVEMENT ACT GRANT PROGRAM)

WIIA PROJECT NO.: 18775

Dated as of January 13, 2022

WIHA GRANT PROGRAM

DRINKING WATER

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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 New York State Water Infrastructure Improvement Act of 2015, being Part G of Chapter 60 of the Laws of 2015, and the New York State Water Infrastructure Improvement Act of 2017, being Part T of Chapter 57 of the Laws of 2017 (both chapters together, the “Water Infrastructure Improvement Act” or “WIIA”), authorized and direct the Corporation to provide financial assistance payments, from funds appropriated for such purpose to municipalities in support of water quality infrastructure projects; 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 Water Infrastructure Improvement 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 until the date of the Corporation’s acceptance of Recipient’s Project Completion Certificate, but in no case later than January 13, 2027, 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 five years 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, facilities plans, design drawings and specifications or other documents, or any inspection of the Project by the Agency or the Corporation, does not relieve the Recipient of its responsibility to plan, design, and build the Project properly, and to operate and maintain the Project effectively, as required by laws, regulations, permits and good management practices. The Recipient acknowledges and agrees that 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 18775, if any, and any prior agreement between the Recipient and the Corporation with respect to Project Number 18775, 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, and Recipient has obtained approval of engineering or facilities plans or reports with respect to the Project from the Agency and the Corporation.

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.

(a) *Grant Award.* Subject to the conditions and in accordance with the terms of this Grant Agreement, the Corporation will provide financial assistance to the Recipient for a period not to exceed five (5) years by making payments of Grant proceeds in an aggregate amount not to exceed the lesser of the Grant Award or 60% of Project Costs. The Corporation shall have no obligation to make payments more frequently than once every month. The Corporation will retain custody and control over Grant funds which will only be made available to the Recipient upon submission to the Corporation of documentation of incurred Project Costs and approval thereof by the Corporation. Subject to the Recipient's compliance with the terms and provisions of this Grant Agreement, the Corporation will make payment to the Recipient within thirty (30) days of the Corporation's receipt of a properly completed Grant Disbursement Request Form in the form of EXHIBIT E.

(b) *Retainage of Grant Proceeds.* The Corporation will retain the last twenty-five percent (25%) of Grant proceeds until the Recipient has submitted a Project Completion Certificate satisfactory to the Corporation. The Corporation shall disburse to the Recipient the retained proceeds within thirty (30) days after the Corporation accepts the Project Completion Certificate.

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) Recipient shall request payment of Grant proceeds by submitting to the Corporation a Grant Disbursement Request Form in the form set forth in EXHIBIT E.

(b) With each request, the Recipient must submit documentation to the Corporation in support of such request in a form and manner acceptable to the Corporation. The documentation shall demonstrate that the costs for which a disbursement is requested are for the Project, and that the goods and services for which the costs were incurred have been provided. Satisfactory documentation may include, but is not limited to, signed copies of payment vouchers or invoices, cancelled checks, details of current indirect cost and fringe benefits rates, copies of all sub-agreements, executed change orders, and payroll records tabulations of allowable costs incurred to date.

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.

The Recipient shall provide the Corporation with proof of payment of costs within forty-five (45) days of each payment of Grant proceeds to the Recipient. Proof of payment submitted by the Recipient shall be sufficient to allow the Corporation to document that billings and invoices were paid, such as cancelled checks, payroll and machinery use records certified by the Recipient, and such other forms of cost documentation as may reasonably be requested by the Corporation. If the Corporation determines that the Recipient has provided inadequate documentation or has used prior grant payments for ineligible costs, the Corporation may take any action permitted hereunder or under applicable law, including making adjustments by deducting an appropriate amount from subsequent grant payments to the Recipient.

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). 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 40% of the Project Costs as its recipient contribution requirement under the Program as set forth in EXHIBIT C.

(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.

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

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

Section 4.03 Performance.

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

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

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

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

(e) *Project Insurance.* The Recipient agrees that it will require each Project consultant, Project contractor and Project subcontractor to secure and deliver to the Recipient appropriate policies of

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

(f) *Operation and Maintenance.* Within thirty (30) days following the completion of the Project, the Recipient agrees to so notify the Agency and the Corporation in writing. The Recipient shall ensure proper and efficient operation and maintenance of this Project satisfactory to the Agency and the Corporation and shall retain a sufficient number of qualified staff to perform required tests and comply with all other requirements. After completion of the Project, the Recipient shall at all times operate the Project, or otherwise cause the Project to be operated, properly and in a sound and economical manner and shall maintain, preserve and keep the Project, or cause the Project to be maintained, preserved and kept, in good repair, working order and condition and shall make, or cause to be made, all necessary and proper repairs, replacements and renewals from time to time, so that at all times, the Project is operated properly in a manner consistent with the project performance standards contained in the engineering report or facilities plan for the Project, with this Grant Agreement and with the requirements of any related State permit.

(g) *Continued Ownership and Operation.* Unless authorized by the Commissioner or the Corporation to cease operations or dispose of the Project, the Recipient shall own, operate and maintain the Project during the term of this Grant Agreement. Without the approval of the Corporation, the Recipient shall not discontinue operation of, or sell or otherwise dispose of, the Project, except for portions of the Project sold, or otherwise disposed of, in the course of ordinary repair and replacement of obsolete or worn out parts. Except as authorized in writing by the Corporation and the Commissioner, there shall be no alterations to the Project which would materially affect the Project in any manner. In addition, no improvements, structures or appurtenances shall be placed, constructed or developed on the site of the Project (the "Project Site") in such a way as to interfere with the express purpose of the Project.

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

Section 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 five years 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; and

(i) the Project is not constructed in accordance with the plans and specifications that have been approved or accepted by the Agency or the Corporation on behalf of the Agency.

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.

[Space Intentionally Left Blank/Signature Page Follows]

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.

ERIE COUNTY WATER AUTHORITY

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: _____
Jerome D. Schad, Esq.
Chairman

Notice Address:

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

**NEW YORK STATE
ENVIRONMENTAL FACILITIES CORPORATION**

By: _____

EXHIBIT A PROJECT DESCRIPTION AND SCHEDULE

WIIA PROJECT NO.: 18775
Recipient: Erie County Water Authority
County: Erie

PROJECT DESCRIPTION

This project consists of the installation of approximately 5,000 LF of 48" redundant raw water transmission main from the raw water pumping station to the Van de Water Treatment Plant. The project is defined by the engineering report entitled "48-inch Transmission Main from Raw Water Intake to Van de Water Pump Station" dated September 2019 by the engineering firm Nussbaumer & Clarke, Inc., as may be updated, amended, supplemented, and approved by the Agency.

EXHIBIT B DEFINITIONS

WIIA PROJECT NO.: 18775 **Recipient: Erie County Water Authority** **County: Erie**

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 Health 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 Water Infrastructure Improvement Act 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 Drinking Water 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

Project No.: 18775
 Recipient: Erie County Water Authority
 County: Erie

ESTIMATED PROJECT COSTS

<u>Engineering - Nussbaumer & Clarke, Inc. (Agreement dated May 28, 2019) [1] [Non-SRF]</u>	
Design Report (Lump Sum)	\$ 25,000.00
Survey (Lump Sum)	10,300.00
Design (Lump Sum)	52,300.00
General Services (Lump Sum)	51,100.00
Estimated Resident Inspection (Estimate)	175,500.00
Record Drawings (Lump Sum)	6,000.00
Special Services (Not To Exceed)	25,000.00
Direct Non-Salary Costs (Not To Exceed)	6,000.00

Other Costs

Technical Force Account (Estimate) [1] [Non-SRF]	937,548.00
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DISBURSEMENT SUBJECT TO PENDING APPROVAL(S)

<u>Construction Costs - 48" Transmission Main (Raw Water Pump Station To Van de Water Treatment Plant) [2]</u>	
General Construction (Estimate) - (Pending receipt and approval of Plans & Specs. including Utilization, Executed Contract, Permits, Title)	<u>12,578,300.00</u>

<u>TOTAL PROJECT COSTS</u>	\$ 13,867,048.00
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<u>Less: Municipal Contribution</u>	<u>(11,347,776.00)</u>
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<u>2019 WIIA GRANT [3]</u>	\$ <u>2,519,272.00</u>
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[1] Costs to be paid entirely with a municipal contribution.

[2] EFC may require other contract-specific documents that may need to be submitted prior to the disbursement of construction funds. Please refer to the DOH plan and specification approval/eligibility letter, once available, or contact the assigned DOH Engineer for detailed information. After further review of the submittals, we may require additional information, but will assist you in identifying these items.

[3] Maximum 2019 WIIA Grant not to exceed the lesser of 60% of eligible project costs or \$2,519,272.

EXHIBIT D SCHEDULE OF ADDITIONAL PROVISIONS

WIIA PROJECT NO.: 18775
Recipient: Erie County Water Authority
County: Erie

I. Definitions.

The "Grant Award" shall be equal to \$2,519,272.00 (TWO MILLION FIVE HUNDRED NINETEEN THOUSAND TWO HUNDRED SEVENTY-TWO 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: CHAIRMAN

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.

The Corporation and the Recipient acknowledge that as of the date hereof the Recipient has not provided the required certification as to title certifying that it has acquired a legal and valid fee simple title or such other estate or interest in the site(s) of the Project, including all the necessary easements and rights-of-way, as is necessary to the Recipient's undisturbed use and possession for the construction, operation and maintenance of the Project.

Notwithstanding anything herein to the contrary, proceeds will not be disbursed to Recipient for any cost of construction, other than planning and design, unless and until (1) the Recipient has acquired such title, estate or interest in the Project site(s); and (2) the Recipient has executed and delivered to the Corporation a "Certificate as to Title to Project Site" in a form acceptable to the Corporation. In each requisition submitted for any cost of construction, other than planning and design, the Recipient shall certify that, as of the date thereof, the Recipient holds, and will retain, a legal and valid fee simple title or such other estate or interest in the site(s) of the Project, including all necessary easements and/or rights-of-way, as is 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.

Section 2. Special Condition Regarding Federal/State Permits.

The Recipient hereby represents and warrants that it has all necessary licenses, permits or other approvals required as of the date hereof to undertake the Project. The Corporation and the Recipient acknowledge that additional licenses, permits and/or other approvals may be required for completion of the Project. Notwithstanding anything herein to the contrary, proceeds shall not be disbursed to Recipient unless and until the Recipient demonstrates to the satisfaction of the Corporation that all licenses, permits or other approvals required as of the date of any such requested disbursement have been duly obtained. The Recipient shall certify, in each requisition submitted, that the Recipient has obtained all licenses, permits or other approvals required as of the date thereof

to undertake the Project.

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.

The Corporation and the Recipient acknowledge that the Recipient has not, as of the date hereof, received Agency or Corporation approval or acceptance of certain plans and specifications, relating to certain element(s) of the Project.

Notwithstanding anything herein to the contrary, proceeds will not be disbursed to the Recipient for costs of construction of the Project, other than planning and design, unless and until the plans and specifications have been approved or accepted by the Agency or the Corporation on behalf of the Agency and the Recipient has submitted to the Corporation all items requested in such approval and complied with any other conditions of such approval. The Recipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs of construction (other than costs of planning and design) associated with plans and specifications which have not been approved and accepted by the Agency or the Corporation on its behalf.

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.

The Corporation and the Recipient acknowledge that as of the date hereof the Recipient has not received approval or acceptance by the Corporation, of a completed Utilization Plan for one or more contracts relating to the Project, or has not furnished to the Corporation sufficient documentation to comply with the MWBE and EEO requirements in connection with the Project.

Notwithstanding anything herein to the contrary, that the Corporation is not obligated to disburse proceeds for costs of construction or for costs of services, unless and until the Utilization Plan and EEO policy statement, and staffing plan as appropriate, concerning such work has been approved by the Corporation. Following such approval, the Corporation may withhold a disbursement for costs of the Project unless such documentation as may be required by the Corporation to verify compliance with EEO and/or MWBE requirements is provided to the Corporation.

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

Erie County Water Authority

WIIA PROJECT NO.: 18775

REQUEST NO.: _____

Dated as of the ____ day of _____, 20

I, the undersigned and Authorized Person of the Erie County Water Authority (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 January 13, 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 made, together with the prior disbursements made under the Grant Agreement, will not exceed the lesser of the amount of the Grant Award or 60% of Project Costs.

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..

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: _____

ERIE COUNTY WATER AUTHORITY

By: _____
Name (Please Print): _____
Title: _____

Cost Summary
Erie County Water Authority AU, D0-18775

Request No. _____

Contractor Name / Cost Description	Contract Date	Contract Amt	Eligible Amt	Disbursed To Date	Project Cost To Date	Elig. Contract Amt. Remaining	Costs Requested
< To Be Determined >		\$12,578,300.00	\$0.00	\$0.00	\$0.00	\$0.00	
Construction General Construction - 48" Trans. Main (Raw Water Pump Station To Van de Water Treatment Plant)	Estimate	\$12,578,300.00	\$0.00	\$0.00	\$0.00	\$0.00	(conditioned)
Nussbaumer & Clarke, Inc.	05/28/2019	\$351,200.00	\$0.00	\$0.00	\$0.00	\$0.00	
Engineering	Design	\$52,300.00	\$0.00	\$0.00	\$0.00	\$0.00	(non-SRF)
	Design Report	\$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00	(non-SRF)
	Direct Non-Salary Costs	\$6,000.00	\$0.00	\$0.00	\$0.00	\$0.00	(non-SRF)
	Estimated Resident Inspection	\$175,500.00	\$0.00	\$0.00	\$0.00	\$0.00	(non-SRF)
	General Services	\$51,100.00	\$0.00	\$0.00	\$0.00	\$0.00	(non-SRF)
	Record Drawings	\$6,000.00	\$0.00	\$0.00	\$0.00	\$0.00	(non-SRF)
	Special Services	\$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00	(non-SRF)
	Survey	\$10,300.00	\$0.00	\$0.00	\$0.00	\$0.00	(non-SRF)

Cost Summary
Erie County Water Authority AU, D0-18775

Request No. _____

Contractor Name / Cost Description	Contract Date	Contract Amt	Eligible Amt	Disbursed To Date	Project Cost To Date	Elig. Contract Amt. Remaining	Costs Requested
Technical Force Account		\$937,548.00	\$0.00	\$0.00	\$0.00	\$0.00	
Technical FA	Technical Force Account	\$937,548.00	\$0.00	\$0.00	\$0.00	\$0.00	(non-SRF)
New contracts (include copy of contract with request):							
PROJECT TOTALS FOR D0-18775:		\$13,867,048.00	\$0.00	\$0.00	\$0.00		
LESS OFFSETS:							
TOTAL NET REQUESTED FOR THIS DISBURSEMENT:							

EXHIBIT F FORM OF PROJECT COMPLETION CERTIFICATE

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PROJECT COMPLETION CERTIFICATE

Erie County Water Authority

WIA PROJECT NO.: 18775

I, the undersigned and Authorized Person of the Erie County Water Authority (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 Erie County Water Authority dated as of January 13, 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 January 13, 2022 between Erie County Water Authority and the Corporation.
6. Recipient met the MWBE participation goals of the approved Utilization Plan for each contract or otherwise received a valid waiver.
7. The final Project Costs are \$_____.

I hereby affirm under penalty of perjury that I am an Authorized Person of Erie County Water Authority, 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.

ERIE COUNTY WATER AUTHORITY

By:_____

Authorized Person

Printed Name: _____

Title: Chairman

NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION (EFC)
CERTIFICATION OF PROJECT COMPLETION

Recipient: _____
Project No.: _____
County: _____
Location: _____
Name of Project: _____
Project Description: _____

Construction of the above project must be under the supervision of a person or firm licensed to practice professional engineering in the State of New York, as required under the Education Law. The person or firm supervising the above project must file a Certification of Project Completion within 30 days after completion of construction with the New York State Environmental Facilities Corporation, 625 Broadway, Albany, New York 12207-2997.

Construction Contract Title:	Construction Start Date:	Construction Substantial Completion Date:	Construction Final Completion Date:
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I certify that the construction of the above project including environmental mitigating measures, if any, was completed in accordance with the approved plans and specifications or approved amendments thereto and was under the supervision of a professional engineer licensed in New York State.

Engineer Name:	_____
Engineer Title:	_____
Engineering Firm:	_____
Eng. Firm Address:	_____
Signature	Date

--

**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 it's 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.