

**CLEAN WATER STATE REVOLVING FUND  
ENGINEERING PLANNING GRANT PROGRAM**

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**CITY OF SARATOGA SPRINGS**

and

**NEW YORK STATE ENVIRONMENTAL  
FACILITIES CORPORATION**

**GRANT AGREEMENT  
ENGINEERING PLANNING GRANT (EPG) PROJECT NO.: 32344**

**Dated as of July 09, 2014**

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**EXHIBITS**

<b>Exhibit A</b>	<b>Project Description and Contract Execution Schedule</b>
<b>Exhibit B</b>	<b>Estimated Project Cost</b>
<b>Exhibit C</b>	<b>Definitions</b>
<b>Exhibit D</b>	<b>Schedule of Additional Provisions</b>
<b>Exhibit E</b>	<b>Documentation Required in Connection With The Final Requisition</b>
<b>Exhibit F</b>	<b>Form of Requisition</b>
<b>Exhibit G</b>	<b>Required Terms for Contracts and Subcontracts That Exceed Twenty-Five Thousand Dollars (\$25,000.00)</b>

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

WITNESSETH:

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

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

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

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

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

ARTICLE I  
DEFINITIONS

Section 1.1 Definitions.

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

Section 1.2 Rules of Construction.

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

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

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

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

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

Section 1.3 Exhibits and Appendices Incorporated.

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Recipient.

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

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

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

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

(d) *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 or (iv) affecting the ability of the Recipient to fulfill the terms and conditions of this Grant Agreement.

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

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

(g) *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.

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

(i) *Estimate of Costs.* The Estimated Project Costs set forth in **Exhibit B** represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Project.

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

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

(l) *SEQRA.* The Recipient certifies with respect to the Project that it has complied with all requirements of the State Environmental Quality Review Act ("SEQRA").

(m) *General Representations.* The Recipient certifies that all documentation and information provided to the Corporation in connection with this Grant Agreement is accurate in all respects and acknowledges that the Corporation is executing and delivering this Grant Agreement and making this Grant in reliance upon the accuracy of said documentation and information.

### ARTICLE III

#### AGREEMENT TO PROVIDE FINANCIAL ASSISTANCE

##### Section 3.1 Agreement to Provide Financial Assistance for Project Costs.

(a) *Financial Assistance.* The Corporation agrees to provide financial assistance to the Recipient pursuant to this Grant Agreement, in an amount not greater than the Grant Amount identified in **Exhibit B** (as it may be amended in accordance with the terms hereof). The Grant proceeds will be

advanced to the Recipient in accordance with the terms of Article IV. The Corporation agrees to provide financial assistance to the Recipient for an amount not to exceed 80% of all Project Costs as set forth in **Exhibit B**. In no event will the Corporation provide financial assistance to the Recipient for Project Costs that exceed the Grant Amount.

(b) *Final Report*. The Project shall be deemed complete upon receipt and acceptance by the Corporation or DEC of copies of a final Engineering Report as described in **Exhibit A**. The Recipient agrees to provide the Corporation with an electronic copy of the final Engineering Report, which must carry the seal or stamp of a New York State licensed professional engineer and set forth the following: that the Project was developed in accordance with all applicable state and federal requirements, including that the Project is sufficiently complete in accordance with all Project contracts and that the Project can be utilized for its intended purposes. Two (2) hard copies and an electronic copy of the final Engineering Report shall be submitted by the Recipient to the Corporation.

(c) *Smart Growth Assessment Form*. The Recipient agrees to complete a Smart Growth Assessment Form as provided by the Corporation and submit the form with the final Engineering Report.

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

## ARTICLE IV

### GRANT PROVISIONS

#### Section 4.1 Grant Clauses.

(a) *Advances*. Subject to the terms and conditions of this Grant Agreement (including but not limited to Section 4.2), the Corporation hereby agrees to provide the Grant by making advances of funds ("**Advances**") to the Recipient in an aggregate amount not to exceed 80% of all Project Costs, in no event to exceed the Grant Amount. Grant funds shall remain in the custody and control of the Corporation and will only be made available to the Recipient upon the approval thereof by the Corporation. Subject to the Recipient complying with the terms and provisions of this Grant Agreement, the Corporation will advance Fifteen Thousand Dollars (\$15,000.00) to the Recipient (the "Initial Advance") within thirty (30) days of a properly completed initial requisition form. The remaining portion of the Grant (the "Final Advance" and together with the Initial Advance, "Advances") will constitute eighty percent (80%) of the Project Costs minus the Initial Advance and will be disbursed within thirty (30) days of a properly completed final requisition form, said forms being set forth in **Exhibit F**. The final requisition form shall not be submitted by the Recipient to the Corporation until acceptance of the final Engineering Report as described in **Exhibit A** has been given by either the Corporation or DEC and a Smart Growth Assessment Form has been completed and submitted by the Recipient to the Corporation.

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

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

Section 4.2 Procedures for Advances of Grant Proceeds.

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

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

ARTICLE V

COVENANTS

Section 5.1 Compliance with Laws and Agreements.

(a) *Compliance.* The Recipient agrees that at all times during the Term of this Grant the Recipient shall cause the Project to be in compliance with all applicable Federal, State and local laws and regulations.

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

(c) *Affirmative Action, Equal Employment Opportunity, Minority and Women's Business Enterprises and Disadvantaged Business Enterprises.* The Recipient acknowledges that contracts for the Project that exceed Twenty-Five Thousand Dollars (\$25,000.00) that are paid for with funds provided pursuant to this Grant Agreement, including, but not limited to, engineering, architectural, legal and fiscal services thereto, shall be subject to the requirements and provisions of Article 15-A of the Executive Law (Article 15-A) and 5 NYCRR 140-145 (the Regulations) and, for such purposes, any such contract shall be considered a State Contract as defined therein. The Recipient agrees that it shall comply, and it shall require its authorized representatives, contractors, subcontractors and consultants paid with funds provided pursuant to this Grant Agreement for contracts that exceed Twenty-Five

Thousand Dollars (\$25,000.00) to comply, with all federal and State laws, regulations, and executive orders applicable to this Project, including but not limited to Article 15-A of the Executive Law (Article 15-A) and 5 NYCRR 140-145 (the "Regulations"), as well as MWBE participation goals. Recipient acknowledges, and agrees to advise all contractors, subcontractors and consultants with contracts for the project that are paid for with funds provided pursuant to this Grant Agreement for contracts that exceed Twenty-Five Thousand Dollars (\$25,000.00), that the MWBE goals in effect at the time of execution of each contract shall be applied to the Program Award. The Recipient agrees that it shall provide to the Corporation such documentation as it receives from contactors, subcontractors and consultants, including quarterly periodic reports, as may be required by law or requested by the Corporation regarding affirmative action, equal employment opportunity ("EEO"), minority and women's business enterprises ("MWBE") and disadvantaged business enterprises ("DBE"). The Recipient agrees that it will require all contractors, subcontractors and consultants to submit no later than execution of contracts that exceed Twenty-Five Thousand Dollars (\$25,000.00): (i) an MWBE Utilization Plan (prime contractors only); (ii) an EEO policy statement and (iii) an acceptable EEO workforce staffing plan for service provider (non-construction) contracts. Upon receipt, the Recipient shall submit to the Corporation all reports and documentation required pursuant to this paragraph. The Recipient's approval of a Utilization Plan or waiver request is subject to the prior consent of the Corporation. If required by the law, the Recipient shall document and submit to the Corporation information received from the Recipient's contractors, subcontractors and consultants regarding all good faith efforts made by them to comply with the MWBE participation goals as set forth in Article 15-A and the Regulations, including any waiver requests. The Recipient agrees to cause the provisions set forth in **Exhibit G** attached hereto to be included in all State Contracts entered into on and after October 13, 2010 which are to be paid with funds provided pursuant to this Grant Agreement. The requirements of this paragraph shall be limited to the laws and requirements in effect on the date of each respective contract.

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

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

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

(g) *SEQRA.* The Recipient certifies that it shall notify DEC and the Corporation of all actions proposed for complying with the environmental review requirements imposed by SEQRA.

(h) *20% Local Match.* The Recipient agrees to provide at least 20% of all Project Costs as its local match requirement under the Program as set forth in **Exhibit B**. The Corporation agrees that the 20% local match requirement may be met with local funds or In-Kind Services performed by the Recipient and as approved by the Corporation.

**Section 5.2 Project Implementation.**

(a) *Planning.* The Recipient shall undertake this Project in accordance with the application materials submitted to the Corporation. The Recipient shall proceed with the planning of the Project in conformity with law, with this Grant Agreement and with all applicable requirements of governmental authorities having jurisdiction with respect thereto, subject to such modifications of such application materials as may be approved by DEC as necessary or advisable to effectuate the purposes of the Act.

**Section 5.3 Planning of Project.**

(a) *Engineering Report Contents.* All Engineering Reports must include the following sections: Problem Defined; Flow and Organic Load; Impact on Existing Wastewater Facilities; Project Description; Drawings/Site Plan; Engineering Criteria; Site Information; Alternative Selection; and Environmental Review. The following minimum alternatives need to be considered for projects with no existing wastewater infrastructure: decentralized systems; new sewers and connection to a regional wastewater facility; and new sewers and a wastewater treatment facility. The following minimum alternatives need to be considered for projects with existing wastewater infrastructure: rebuilding existing wastewater infrastructure; and connection to a regional wastewater collection system. Smart growth and green infrastructure alternatives must also be considered and documented in the Engineering Report. In addition, the Engineering Report must contain a concise summary of any additional pertinent information specific to the project proposal as requested by the Corporation. The Engineering Report shall be incorporated into any future application for financial assistance through the Revolving Fund by the Recipient.

(b) *Contracts.* The Recipient agrees that DEC and the Corporation have the right to review all contracts for services funded pursuant to this Grant Agreement in order to determine eligibility for funding hereunder and to determine compliance with all relevant plans and terms of this Grant Agreement.

**Section 5.4 Accounting and Records.**

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

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

**Section 5.5 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 immediately reimburse the Revolving Fund in the event that it fails to apply such proceeds.

Section 5.6 Payment of Additional Project Costs.

In the event that Grant proceeds and the Recipient's local match are not sufficient to pay the costs of the Project in full, the Recipient shall nonetheless complete the Project and pay such portion of the remaining costs of the project in excess of available Grant proceeds and such local match, and the Recipient shall not be entitled to any reimbursement or funding therefor from the Corporation.

Section 5.7 Third-Party Funding.

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

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

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

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

Section 5.8 Further Assurances.

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

Section 5.9 Covenant Against Discrimination.

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

Section 5.10 Indemnification.

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

ARTICLE VI

EVENTS OF DEFAULT

Section 6.1 Events of Default.

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

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

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

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

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

## ARTICLE VII

### REMEDIES

#### Section 7.1 Remedies.

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

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

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

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

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

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

## ARTICLE VIII

### MISCELLANEOUS

#### Section 8.1 No Obligation of State.

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

**Section 8.2      Term.**

The Term of this Grant Agreement shall be two (2) years, commencing upon the date set forth on the cover of this Grant Agreement. This Grant Agreement shall remain in full force and effect during the Term of this Grant Agreement; provided, however that the terms of Article V and Article VII shall survive any termination of this Grant Agreement.

**Section 8.3      Severability.**

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

**Section 8.4      Amendment of Grant Agreement.**

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

**Section 8.5      Execution in Counterparts.**

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

**Section 8.6      Applicable Law.**

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

**Section 8.7      Benefit of Grant Agreement.**

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

**Section 8.8      Consent to Jurisdiction.**

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

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

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

increased costs resulting from defects in the plans, design drawings and specifications or other Project documents. Nothing in this section prohibits a Recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

**Section 8.10 Grant Agreement Supersedes Prior Agreements.**

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

**Section 8.11 Notices.**

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

- (a) *Corporation:*  
New York State Environmental Facilities Corporation  
625 Broadway  
Albany, New York 12207-2997  
Attn.: Jimmy Ng, Engineering Planning Grant Program Manager  
Facsimile No.: (518) 402-7456  
E-Mail Address: Jimmy.Ng@efc.ny.gov

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

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

- (c) *Recipient:*

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

**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.

**CITY OF SARATOGA SPRINGS**

By: \_\_\_\_\_  
Joanne D. Yepsen  
Mayor

Notice Address:  
City of Saratoga Springs  
474 Broadway  
Saratoga Springs, NY 12866  
Joanne.Yepsen@saratoga-springs.org

**NEW YORK STATE ENVIRONMENTAL  
FACILITIES CORPORATION**

By: \_\_\_\_\_  
Matthew J. Driscoll  
President and CEO

**EXHIBIT A**

**PROJECT DESCRIPTION AND SCHEDULE**

**EPG Project No.: 32344**  
**Recipient: City of Saratoga Springs**  
**County: Saratoga**

**PROJECT DESCRIPTION AND SCHEDULE**

The Engineering Planning Grant (EPG) Program will fund the development of an engineering report to evaluate and recommend improvements to the City of Saratoga Springs' sanitary sewer system.

**PLANNING SCHEDULE**

Planning Commencement	April 07, 2014
Planning Completion	May 01, 2015

**EXHIBIT B**

**ESTIMATED PROJECT COSTS**

**EPG Project No.: 32344  
 Recipient: City of Saratoga Springs  
 County: Saratoga**

	<u>COST</u>	<u>SUBTOTAL</u>
<b>ENGINEERING</b>		
Planning	\$35.650	\$35.650
Design		
Administrative		
Other		
<b>LEGAL</b>		
<b>ADMINISTRATIVE FORCE ACCOUNT</b>		
<b>TECHNICAL FORCE ACCOUNT</b>		
City Engineer: 40 hrs. x \$46.22/ h	\$1.850	\$1.850
<b>CONTINGENCY</b>		
<b>Project Costs</b>		<b>\$37.500</b>
<b>Grant Amount</b>		<b>\$30.000</b>
<b>Local Share (minimum 20%)</b>		<b>\$7.500</b>
<b>Other Sources of Funding (please specify)</b>		

## **EXHIBIT C**

### **DEFINITIONS**

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

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

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

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

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

"Commissioner" means the Commissioner of DEC.

"Constructed Project" means a project built as a result of the activities set forth in **Exhibit A**.

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

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

"Engineering Report" means the document or documents which determines the technical and economic feasibility of the 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 funding by the Corporation; that are allowable costs and that are reasonable, necessary and allocable by the Recipient to the Project under generally accepted government accounting standards, as set forth in the application of the Recipient, which projections are set forth in **Exhibit B**.

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

"Grant" or "Grant Amount" means financial assistance provided by the Corporation to a Recipient, as set forth in Exhibit D.

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

"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 B** that are directly related to and in support of the development of the Engineering Report and are deemed reasonable by 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 Clean Water State Revolving Fund Engineering Planning Grant Program.

"Project" means the Engineering Report, certified as eligible by DEC and the Corporation and subject to the approval of the Corporation, described in Exhibit A, as such exhibit may be amended and supplemented in accordance with the terms hereof.

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

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

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

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

"Resolution" means the ordinances, resolutions or other appropriate documentation of the Recipient authorizing the undertaking of the Project, the 20% local match, the execution and delivery of this Grant Agreement and the receipt of the Grant proceeds.

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

"Smart Growth Act" means the State Smart Growth Infrastructure Policy Act.

"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 Act.

"State" means the State of New York.

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

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

"Term" means the period as set forth in Section 8.2 of this Grant Agreement.

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

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

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

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

**EXHIBIT D**

**SCHEDULE OF ADDITIONAL PROVISIONS**

**EPG Project No.: 32344**  
**Recipient: City of Saratoga Springs**  
**County: Saratoga**

I. Definitions.

The "Grant Amount" shall be equal to \$30,000.00

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

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

Not applicable.

III. Requests for Advances.

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

TITLE: Mayor

IV. Special Project Conditions.

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

Not applicable.

## **EXHIBIT E**

### **DOCUMENTATION REQUIRED IN CONNECTION WITH THE FINAL REQUISITION**

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

Such documentation shall demonstrate that the costs for which financial assistance is requested are for the Project, and that the goods and services for which the costs were incurred have been provided. Such documentation shall also consist of a final Engineering Report and a completed Smart Growth Assessment Form.

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

- (1) for professional services, a description of the nature of the service and documentation that the service was provided according to the terms of a professional services agreement;
- (2) for project services to be provided by employees of the Recipient pursuant to a force account proposal which has been approved by the Corporation, employee time records, signed by the employee and the employee's supervisor, which account for all hours worked in the period covered and describe in detail the work claimed as approvable

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

**EXHIBIT F**

**FORM OF REQUISITION AND WIRE INSTRUCTIONS  
(INITIAL REQUISITION)**

**EPG Project No.: 32344  
Applicant: City of Saratoga Springs  
County: Saratoga**

Pursuant to a Clean Water State Revolving Fund Engineering Planning Grant Program ("EPG") Agreement dated as of July 09, 2014, between the New York State Environmental Facilities Corporation and City of Saratoga Springs we hereby request disbursement in the amount of Fifteen Thousand Dollars (\$15,000.00) for project costs.

I hereby certify that expenses represented in this Advance reflect actual costs for materials and services that are to be used for the sole purpose of completing the approved EPG project stated above and none of these claims are to be expended, in part or in full, for any other purpose.

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

In order to disburse funds for the EPG project, EFC needs instructions so that our Trustee can wire transfer directly to your account.

Please fill in the appropriate information below and return this form to EFC by email at [angela.petrone@efc.ny.gov](mailto:angela.petrone@efc.ny.gov). If you have any questions regarding this request, please contact Jimmy Ng at 800-882-9721 or (518) 402-7396. Thank you for your assistance.

Name of Bank: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Bank Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Bank ABA #: \_\_\_\_\_

Account Name: \_\_\_\_\_

Account #: \_\_\_\_\_

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

\_\_\_\_\_  
Authorized Representative  
Title

**EXHIBIT F**

**FORM OF REQUISITION AND WIRE INSTRUCTIONS  
(FINAL REQUISITION)**

**EPG Project No.: 32344  
Applicant: City of Saratoga Springs  
County: Saratoga**

Pursuant to a Clean Water State Revolving Fund Engineering Planning Grant Program ("EPG") Agreement dated as of **July 09, 2014**, between the New York State Environmental Facilities Corporation and **City of Saratoga Springs** we hereby request disbursement in the amount of \$\_\_\_\_\_ for project costs.

I hereby certify that expenses represented in this reimbursement request reflect actual costs for materials and services that were used for the sole purpose of completing the approved EPG project stated above and none of these claims were expended, in part or in full, for any other purpose.

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

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

The Recipient hereby consents to the Corporation listing the Project on the Corporation's Intended Use Plan ("IUP")

In order to disburse funds for the EPG project, EFC needs instructions so that our Trustee can wire transfer directly to your account.

Please fill in the appropriate information below and return this form to EFC by email at [angela.petrone@efc.ny.gov](mailto:angela.petrone@efc.ny.gov). If you have any questions regarding this request, please contact Jimmy Ng at 800-882-9721 or (518) 402-7396. Thank you for your assistance.

Name of Bank: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Bank Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Bank ABA #: \_\_\_\_\_

Account Name: \_\_\_\_\_

Account #: \_\_\_\_\_

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

\_\_\_\_\_  
Authorized Representative  
Title

## **EXHIBIT G**

### **REQUIRED TERMS FOR PROJECT CONTRACTS AND SUBCONTRACTS THAT EXCEED TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)**

In accordance with the terms and conditions set forth in Section 5.1 of the Grant Agreement, Recipient agrees that the following language will be included in all contracts and subcontracts regarding the Project that exceed Twenty-Five Thousand Dollars (\$25,000.00) including but not limited to those relating to, engineering, architectural, legal and fiscal services, as required by federal and State laws, regulations, and executive orders applicable to this Project:

#### **DEFINED TERMS:**

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

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

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

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

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

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

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

The term "EPA" means the United States Environmental Protection Agency.

The term "ESD" means the Empire State Development Corporation - Division of Minority and Women's Business Development.

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

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

The term "State" means the State of New York.

**INTERPRETATION:**

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

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

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

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

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

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

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

With respect to this contract, the contractor and subcontractor shall undertake or continue existing programs of affirmative action and equal employment opportunity to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

### **MWBE**

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

Contractors shall solicit participation of MWBE contractors (including subcontractors, consultants and service providers) for SRF-funded projects in accordance with the aforementioned goals.

The contractor must submit sufficient documentation to demonstrate good faith efforts to provide opportunities for MWBE participation for work related to the SRF-funded project in the event respective goals are not achieved. Guidance pertaining to documentation of good faith efforts is set forth in the Bid Packet.

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

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

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

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

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

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

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

receipt of a notice of deficiency from Recipient, Contractor shall respond to such notice within 7 days. Such response may include a request for a total or partial waiver of the aforementioned goals.

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

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

### **EEO**

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

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

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

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

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

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

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

**REMEDIES:**

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

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

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

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

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

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

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

**REQUISITION AND WIRE INSTRUCTIONS  
(INITIAL REQUISITION)**

**EPG Project No.: 32344  
Applicant: City of Saratoga Springs  
County: Saratoga**

Pursuant to a Clean Water State Revolving Fund Engineering Planning Grant Program ("EPG") Agreement dated as of **July 09, 2014**, between the New York State Environmental Facilities Corporation and **City of Saratoga Springs** we hereby request disbursement in the amount of Fifteen Thousand Dollars (\$15,000.00) for project costs.

I hereby certify that expenses represented in this Advance reflect actual costs for materials and services that are to be used for the sole purpose of completing the approved EPG project stated above and none of these claims are to be expended, in part or in full, for any other purpose.

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

In order to disburse funds for the EPG project, EFC needs instructions so that our Trustee can wire transfer directly to your account.

Please fill in the appropriate information below and return this form to EFC by email at [angela.petrone@efc.ny.gov](mailto:angela.petrone@efc.ny.gov). If you have any questions regarding this request, please contact Jimmy Ng at 800-882-9721 or (518) 402-7396. Thank you for your assistance.

Name of Bank: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Bank Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Bank ABA #: \_\_\_\_\_

Account Name: \_\_\_\_\_

Account #: \_\_\_\_\_

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

Joanne D. Yepsen  
Mayor

**REQUISITION AND WIRE INSTRUCTIONS  
(FINAL REQUISITION)**

**EPG Project No.: 32344  
Applicant: City of Saratoga Springs  
County: Saratoga**

Pursuant to a Clean Water State Revolving Fund Engineering Planning Grant Program (“EPG”) Agreement dated as of **July 09, 2014**, between the New York State Environmental Facilities Corporation and **City of Saratoga Springs** we hereby request disbursement in the amount of \$ \_\_\_\_\_ for project costs.

I hereby certify that expenses represented in this reimbursement request reflect actual costs for materials and services that were used for the sole purpose of completing the approved EPG project stated above and none of these claims were expended, in part or in full, for any other purpose.

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

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

The Recipient hereby consents to the Corporation listing the Project on the Corporation's Intended Use Plan (“IUP”).

In order to disburse funds for the EPG project, EFC needs instructions so that our Trustee can wire transfer directly to your account.

Please fill in the appropriate information below and return this form to EFC by email at [angela.petrone@efc.ny.gov](mailto:angela.petrone@efc.ny.gov). If you have any questions regarding this request, please contact Jimmy Ng at 800-882-9721 or (518) 402-7396. Thank you for your assistance.

Name of Bank: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Bank Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Bank ABA #: \_\_\_\_\_

Account Name: \_\_\_\_\_

Account #: \_\_\_\_\_

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

\_\_\_\_\_  
Joanne D. Yepsen  
Mayor