

## 2020-2022 WATER CONSERVATION AND REUSE FUNDING AGREEMENT

This Funding Agreement ("Agreement") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between the City of New York (the "City"), acting through its Department of Environmental Protection ("DEP"), having offices at 59-17 Junction Boulevard, Flushing, NY 11373, and the [NAME OF GRANTEE] (the "Grantee") of the property located at [PROPERTY ADDRESS] ("Premises").

### WITNESSETH

WHEREAS, DEP established the New York City Water Conservation and Reuse Grant Pilot Program ("WCRGP") in order to allocate funding for qualified projects which offset potable water use by a minimum of one million gallons per year (1 MGY) on private property in New York City for the purpose of conserving water ("Program"); and

WHEREAS, the Grantee submitted a proposal to DEP to install and operate water efficient measures within privately owned property; and

WHEREAS, DEP has determined that the Grantee's proposal will meet the Program goals and provide significant benefit to the City and has chosen the Grantee's proposal for this purpose.

NOW THEREFORE, the parties, in consideration of the mutual agreements contained herein, agree as follows:

-----  
A. Term:

This Agreement shall be effective upon registration pursuant to City Charter § 328 and shall remain in effect for a period of twenty (20) years from the date of the Final Acceptance Letter, as defined in Section E below ("Term"). The Grantee shall complete all construction within three (3) years from the Notice to Proceed date. After completion of the Project, as defined below, the maintenance period ("Maintenance Period") shall begin. This Agreement may be extended in writing upon the mutual consent of the parties.

B. Scope of Work and General Obligations.

1. Grantee shall install and maintain [insert description of project] for the building(s) on its Premises (the "Project") in accordance with the final Project Design and as more fully described in the Scope of Work attached as Appendix A ("Scope of Work") and with the Maintenance Plan ("Maintenance Plan") attached as Appendix C. Grantee shall submit to DEP a Facility Water Use Survey, if applicable, and Project Design, if applicable, for approval in accordance with the instructions provided by DEP at the time of announcement of selected grantees. Said instructions, entitled "Grantee Guide" are hereby incorporated by reference.

2. Grantee shall adhere to the timeline to complete the Project set forth in Appendix A. Failure to render satisfactory progress or to complete the Project to the satisfaction of DEP may be deemed an abandonment of the Project. Such determination shall be in the sole discretion of DEP. Grantee shall complete all construction within three years from the Notice to Proceed. Should DEP determine that Grantee has failed to properly proceed with or complete the Project as required herein, DEP shall provide to Grantee such notice and an opportunity to cure. Grantee shall have a period of thirty (30) days to cure unless the parties agree in writing to extend Term. In the event Grantee fails to cure, DEP may proceed in accordance with Section K.
3. Grantee shall submit a Site Safety Plan to DEP prepared by a Certified Safety Professional (CSP) or a Certified Industrial Hygienist (CIH), if deemed necessary by DEP. Grantee is responsible for ensuring health and safety requirements during construction and for the life the project. Grantee and contractor employees shall comply with all safety regulations governing the Site Safety Plan.
4. Grantee shall obtain all necessary permits required for construction and operation of the Project.
5. Grantee acknowledges that all plans and specifications shall be certified by a Professional Engineer or Registered Architect currently licensed in New York State, if deemed necessary by DEP.
6. The Grantee shall commence construction of the Project within six (6) months of receiving the Notice to Proceed.
7. The Grantee shall allow inspections of the Project by DEP before, during, and at the completion of construction. The Grantee shall give DEP access after construction completion upon request.
8. The Project must offset potable water use for constructed buildings by at least 50% of the savings for which the Project is designed within a year of construction completion and at least 90% of savings within three years of construction completion.
9. Grantee agrees that during the Term of this Agreement and the Maintenance Period (as defined in Section D), it will maintain the Project and keep it in good repair with full functionality for its intended purpose. Moreover, Grantee shall ensure that the Project shall be kept free and clear of any and all obstructions that would impede the Project's proper functioning.

C. Declaration of Restrictive Covenant.

1. A Declaration of Restrictive Covenant in the form provided to the Grantee by DEP (the “Declaration”) shall be filed against the Premises with the Office of the City Register of the City of New York, County of [REDACTED]. It shall be a condition of disbursement of any funds pursuant hereto that such Declaration of Restrictive Covenant shall have been recorded against the Premises and evidence thereof shall have been provided to DEP.
2. The Declaration shall remain in effect for the term of this Agreement and shall ensure the maintenance and care of the Project. The provisions of Section F(6) and H(3) shall survive the termination or expiration of this Agreement.

D. Reporting Requirements.

1. Construction-Period Reporting Requirements. The Grantee shall submit quarterly and annual reports (templates attached hereto as Appendix G, “Quarterly and Annual Reporting Templates”) beginning on receipt of the Notice to Proceed and continuing through the Final Acceptance. Such reports, which shall be submitted no later than seven (7) calendar days from the agreed upon due dates, shall contain, but not be limited to, the status of Project construction during the previous time period. Construction records and photographs shall also be included.
2. If the Project is an on-site water reuse system:
  - a. Maintenance Plan. The Grantee shall submit a Maintenance Plan to DEP for approval. The maintenance period (“Maintenance Period”) shall be for a period of twenty (20) years beginning on the date of the Final Acceptance Letter. The Maintenance Plan shall include all maintenance requirements including labor, equipment, materials, and frequencies for the Maintenance Period. Quarterly and annual maintenance reports shall be submitted for a period of 36 months from the issuance of the Final Acceptance Letter. These reports shall be submitted to DEP in a previously agreed upon format and transmitted electronically in MS Word or MS Excel format.
  - b. Monitoring Plan. Grantee shall submit a monitoring plan (“Monitoring Plan”) for DEP approval. The Monitoring Plan shall include procedures for recording Project monitoring data on a monitoring database that is accessible by DEP as well as schedules and requirements for submitting monitoring reports. The monitoring period (“Monitoring Period”) shall be for a period of twenty (20) years beginning on the date of the Final Acceptance Letter. Grantee shall submit quarterly and annual reports for a period of 36 months from the issuance of the Final Acceptance Letter. Grantee shall record all Project monitoring data on DEP-approved

monitoring forms that will be developed in consultation with DEP. The input of data on the monitoring forms is the responsibility of the Grantee. The Grantee shall provide DEP with legible completed monitoring forms and spreadsheets in digital form (either in Microsoft Excel or Access formats).

3. DEP may, at its option monitor the Project with equipment purchased and installed by the City, beyond the expiration of this Agreement. Any and all equipment purchased for monitoring by the City shall be deemed the property of the City and shall remain installed within each Project Site location(s) for additional data collection and analyses. The parties agree that removal of monitoring devices will likely compromise the integrity and function of the Project Site. All monitoring equipment must remain in good working condition, as determined by DEP, throughout the monitoring period and shall be replaced by the Grantee if equipment is lost, stolen, or fails to perform due to Grantee's acts or omissions. Monitoring equipment turned over to the City at the end of this agreement must be in good working condition, normal wear and tear excepted. This provision shall survive expiration or termination of this Agreement.

E. Payment, Procedures and Project Close-Out.

1. DEP shall reimburse Grantee an amount not to exceed Appendix B "Budget" ("Grant Award").
2. Grantee shall submit invoices to DEP for review and acceptance in accordance with the instructions provided by DEP at the time of announcement of selected grantees. Said instructions, entitled "Grantee Guide," are hereby incorporated by reference.
3. The Grantee will not be reimbursed for the cost of labor.
4. All payments shall be made to the Grantee unless the Grantee provides to DEP a valid assignment which authorizes a third-party contractor to receive payment under this Agreement.
5. Within ten (10) days of issuance of the Notice to Proceed, and upon receipt of an invoice for all eligible expenses (the Facility Water Use Survey and/or design) paid to date, DEP will process such invoice for payment. This invoice must include eligible costs associated with the Facility Water Use Survey submitted with the grant application.
6. Funding provided pursuant to this Agreement shall be used only to pay third-party vendors for eligible expenses. Funds shall not be used to pay or reimburse Grantee for its internal costs, including but not limited to its employee salaries, overhead, or any form of administrative fee.

7. The costs of the Facility Water Use Survey and design may not exceed 20% of Equipment Costs, as shown in Appendix B.
8. At 50% Project completion, DEP will reimburse all costs paid to date, not to exceed 50% of project costs. The costs of the Facility Water Use Survey and design can also be invoiced at this time if not already submitted; such costs will not be included in calculating the aforementioned 50% reimbursement rate. The invoice may only include eligible costs and expenses per Appendix B where monies have been paid to third parties.
9. Grantee will submit to DEP approvable written documentation and invoices documenting quantity, specifications, date purchased, and cost, as well as verification that all purchased equipment was installed at the following address:

Water Conservation and Reuse Grant Pilot Program Manager  
NYC Department of Environmental Protection  
59-17 Junction Blvd., 11<sup>th</sup> Floor  
Flushing, New York 11373  
[waterconservation@dep.nyc.gov](mailto:waterconservation@dep.nyc.gov)

Grantee shall submit additional back-up documentation as requested by DEP.

10. Requests for advance payments shall not be approved.
11. If the final costs of the Project are less than the Grant Award, the difference will not be disbursed to the Grantee.
12. DEP shall only reimburse Grantee for payments that, in DEP's sole discretion, are for the construction of the Project.
13. If capital funds are used for reimbursement, then DEP shall only reimburse Grantee for payments in accordance with all laws, regulations and directives governing the payment of such funds.
14. Grantee shall provide a Certification of Construction Completion at the close of the Project stating that the Project was built in accordance with the final Project Design.
15. DEP shall issue a Final Acceptance Letter after the Project has been inspected and all punch-list items have been addressed.
16. Only after the Final Acceptance Letter has been issued will DEP process the remaining Grant Award based on invoices provided to and approved by DEP.

F. Ownership and Intellectual Property Rights.

1. Data and Reports. All scientific or technical monitoring data collected or reports created, developed, produced or generated in connection with the Project shall be jointly owned by the City and the Grantee.
2. Designs. If the City partially or fully funds the designs, Grantee agrees that the City shall have unrestricted rights to use the designs selected for participation in the WCRGP for any future projects or purposes at no additional cost. Any patentable discovery or innovation arising out of this Agreement, as well as all information, designs, specifications, knowledge, data or findings shall be made available to the City, at no cost to the City, for use by the City or its agents, representatives or licensees.
3. Copyrights, Trademarks, Patents and Inventions. Intellectual property rights associated with any photograph, deliverable, or other material in connection with or produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall remain the property of the party that created them, and said party shall retain all such rights therein including, but not limited to, copyright, trademark and patent rights. Notwithstanding the foregoing, the City shall, with regard to each such intellectual property right, be deemed to have been granted a non-exclusive, perpetual, irrevocable and royalty-free license ("License") to use, reproduce, publish, modify, and create derivative works for all reasonable purposes.
4. Reporting Requirements. The Grantee shall promptly and fully report to the DEP any discovery or invention arising out of or developed in the course of performance of this Agreement.
5. Pre-existing Rights. In no case shall Section F(3) apply to, or prevent the Grantee from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material that existed prior to or was developed or discovered independently from the activities directly related to this Agreement ("Grantee Property"), provided that Grantee Property incorporated in the Project shall be included in the aforementioned License.
6. Indemnification. To the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees may be subject to or which they may suffer or incur allegedly arising out of or in connection with any infringement, violation, or unauthorized use of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Grantee and/or its employees, agents, contractors, or subcontractors in the performance of this Agreement. To the fullest extent permitted by law, the Grantee shall defend, indemnify, and hold

harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or law relating to any claim would preclude the City and its officials and employees from being completely indemnified by the Grantee, the City and its officials and employees shall be partially indemnified by the Grantee to the fullest extent permitted by law.

#### G. Insurance

1. Agreement to Insure. The Grantee shall not commence performing work under this Agreement unless and until all insurance required by this Section is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.
2. Commercial General Liability Insurance.
  - a. The Grantee shall maintain Commercial General Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death) and property damage and at least One Million Dollars (\$1,000,000) for personal and advertising injury, and \$2,000,000 in the aggregate. Such insurance shall protect the City, including its officials and employees, and the Grantee and contractor from claims that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."
  - b. Such Commercial General Liability Insurance shall name the City, including its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 26.
  - c. The Grantee shall require any contractor retained by the Grantee to construct the Project to maintain Commercial General Liability Insurance in accordance with this Section, and such insurance shall include the City, including its officials and employees, as an Additional Insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event the Grantee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this Agreement and requires such entity to name the Grantee as an Additional Insured under such insurance, the Grantee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability Insurance at least as broad as ISO form CG 20 26).

3. Workers' Compensation, Disability Benefits, and Employer's Liability Insurance. The Grantee shall ensure that each contractor and subcontractor working on the Project maintains Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the laws of the State of New York on behalf of, or with regard to, all employees providing services under this Agreement.
4. General Requirements for Insurance Coverage and Policies
  - a. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City's Law Department.
  - b. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.
  - c. The Grantee shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.
  - d. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.
  - e. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Grantee as Named Insured under all primary, excess, and umbrella policies of that type of coverage.
  - f. All insurance policies required pursuant to Section G(2) shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner New York City Department of Environmental Protection, 59-17 Junction Boulevard, Flushing, NY 11373 and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New



York, NY 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

- g. No construction on the Project may commence until all insurance requirements are satisfied by the Grantee and its contractors, if any.

#### H. Protection of Persons and Property and Indemnification.

1. Reasonable Precautions. The Grantee shall, and shall cause its contractors and subcontractors to take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Grantee's and/or its contractors and subcontractors' operations under this Agreement.
2. Protection of City Property. The Grantee assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of law by the Grantee, its officers, employees, agents or subcontractors.
3. Indemnification. To the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials and employees may be subject to or which they may suffer or incur allegedly arising out of or in connection with the Project. This obligation to defend, indemnify and hold harmless shall survive completion of the construction of the Project and shall extend to the operation and maintenance of the Project for its full life and existence. Insofar as the facts or law relating to any claim would preclude the City or its officials or employees from being completely indemnified by the Grantee, the City and its officials and employees shall be partially indemnified by the Grantee to the fullest extent permitted by law. The Grantee's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Grantee's obligations to obtain and maintain insurance under this Contract, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

#### I. Labor.

1. Unlawful Discriminatory Practices: Admin. Code § 6-123. As required by Admin. Code § 6-123, the Grantee will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City

Administrative Code. The Grantee shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

2. Independent Entity Status. The Grantee and the DEP agree that the Grantee is an independent entity and not an employee of the DEP or the City. Accordingly, neither the Grantee nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.
3. Employees. All persons who are employed by the Grantee and all consultants or independent contractors who are retained by the Grantee to perform services under this Agreement are neither employees of the City nor under contract with the City. The Grantee, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Grantee, or any officer, employee, or agent of the Grantee, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.
4. Minimum Wage. Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Grantee in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach of this Section shall be deemed a material breach of this Agreement.
5. Non-Discrimination: Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Grantee agrees, as required by New York City Administrative Code § 6-108, that:
  - a. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or

highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

- b. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
  - c. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.
  - d. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.
6. Non-Discrimination: E.O. 50 -- Equal Employment Opportunity. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Grantee agrees that it will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment.

#### J. Investigations Clause

- 1. The Grantee agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
- 2. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the

award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State, or;

3. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;
4. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
5. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph 7 below without the City incurring any penalty or damages for delay or otherwise.
6. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:
  - a. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
  - b. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

7. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (c) and (d) below, in addition to any other information that may be relevant and appropriate:
  - a. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
  - b. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
  - c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
  - d. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph 6 above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (J) (4) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
8. Definitions.
  - a. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.
  - b. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
  - c. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

- d. The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.
9. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Grantee fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Grantee, or affecting the performance of this Agreement.

K. Events of Default.

Upon the occurrence of a failure to comply with any provision of this Agreement that is not cured within thirty (30) days following receipt of such notice from DEP, DEP may exercise any right, power or remedy permitted to it by law, in equity, or under this Agreement including, without limitation:

1. Terminating this Agreement, which shall, upon written notice, be effective upon the date stated in the notice, which date shall not be before the date of the notice, and in which event DEP shall not be required to make further disbursements of the Grant Award.
2. Demanding repayment of all or any portion of the Grant Award, whereupon the amount demanded together with interest thereon from the date of DEP’s disbursement thereof shall become immediately due and payable without any further notice or demand.
3. Enforcing Grantee’s obligations under this Agreement administratively or by equitable remedies of specific performance, declaratory judgment or injunction.

L. Miscellaneous.

1. Grantee shall require all its contractors hired pursuant to the Scope of Work to agree to the terms and conditions set forth in this Agreement. Promptly after tentative selection of a contractor, the Grantee shall provide to DEP a list of any proposed contractors and/or consultants. Within five business days of the Grantee providing such notice of proposed contract, DEP shall have the opportunity to provide notice to the Grantee that, in DEP’s opinion, the prospective contractor or consultant does not have a satisfactory record of business integrity, would otherwise be found to be a non-responsible bidder or proposer by DEP or that DEP has reason to believe such entity will be unable to complete the required

Work/Services in accordance with the requirements of this Agreement. If DEP does not provide notice of an objection to the Grantee within five business days, DEP shall waive its opportunity to object to award of a contract to the lowest responsive bidder or selected proposer, as applicable.

2. Where the Grantee assigns payment to a third-party contractor, Grantee shall submit to DEP the executed agreement between the Grantee and the contractor regarding work to be performed in connection with the Project (the “Assignment Agreement”). The Assignment Agreement is attached hereto as Appendix F.
3. Grantee shall remain primarily responsible for all work and services provided under this Agreement regardless of whether the Grantee has entered into a Contractor Agreement.
4. Grantee acknowledges that that there is no lease on the property with terms that would prevent the owner from making the commitments contained herein. If such a restrictive lease does exist, and the owner cannot, therefore, make the aforementioned affirmation, the lessor must be a co-applicant for the grant.
5. No Third Party Rights. The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Grantee or the City or their respective officers and employees.
6. Claims.
  - a. Choice of Law. This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Grantee, and shall be governed by and construed in accordance with the laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the laws of the United States, where applicable.
  - b. Jurisdiction and Venue. The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Grantee initiates any action in breach of this Section, the Grantee shall be responsible for and shall promptly reimburse the City for any attorneys’ fees incurred by the City in removing the action to a proper court consistent with this Section.
  - c. No Claim against Officers, Agents or Employees. No claim shall be made by the Grantee against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

- d. General Release. The acceptance by the Grantee or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Grantee, of which the Grantee was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.
  - e. No Waiver. Waiver by either DEP or the Grantee of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties.
  - f. Precedence. In the event of an express or implied conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any Appendix to this Agreement, the terms and conditions set forth above the signature page shall control. Thereafter the following order of priority shall govern: (1) Appendix D “Declaration of Restrictive Covenant,” (2) Appendix A “Scope of Work” (3) Appendix B “Budget”, (4) Appendix G “Quarterly and Annual Reporting Templates,” and if applicable (5) Appendix C “Maintenance”, (6) Appendix E “Monitoring” and (7) Appendix F “Assignment Agreement”. To the extent possible, all the terms of this Agreement should be read together as not conflicting.
7. Applicable Laws.
- a. All Legal Provisions Deemed Included. Each and every provision required by law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.
  - b. Severability / Unlawful Provisions Deemed Stricken. If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.
  - c. Compliance with Law. The Grantee shall perform all services under this Agreement in accordance with all applicable laws as are in effect at the time such services are performed.



8. Representatives. Water Conservation and Reuse Grant Pilot Program Manager, for the DEP Bureau of Environmental Planning and Analysis, and **[Grantee Name]**, **[Grantee Title]** of Grantee, are the authorized representatives and will be responsible for the administration of this Agreement.
9. Notices. All notices to be sent in accordance with this Agreement shall be sent to the following addresses:

If to DEP:

New York City Department of Environmental Protection  
Bureau of Environmental Planning and Analysis  
59-17 Junction Blvd., 11<sup>th</sup> Floor  
Flushing, NY 11373  
Attn: Deputy Commissioner, BEPA

New York City Department of Environmental Protection  
Bureau of Environmental Planning and Analysis  
59-17 Junction Blvd., 11<sup>th</sup> Floor  
Flushing, NY 11373  
Attn: Water Conservation and Reuse Grant Pilot Program Manager

New York City Department of Environmental Protection  
Bureau of Legal Affairs  
59-17 Junction Blvd., 19<sup>th</sup> Floor  
Flushing, NY 11373  
Attn: General Counsel

If to Grantee:

**[Grantee Name]**  
**[Grantee Title]**  
**[Grantee Address]**  
**[Grantee Phone]**  
**[Grantee Email]**

10. Press and Communications. The Grantee and its officers, employees, and agents shall indicate in any statements to the press or in any materials for publication in any media of communication (print, news, television, radio, Internet, etc.) that the Project was funded wholly or in part by DEP.
11. Entire Agreement. This Agreement, including Appendix A (Scope of Work), Appendix B (Budget), Appendix G (Quarterly and Annual Reporting Templates), and Appendix D (Restrictive Covenant), and if applicable Appendix C (Maintenance Plan), Appendix E (Monitoring), Appendix F (Assignment Agreement), constitute the entire agreement between DEP and Grantee

concerning the subject matter hereof, and supersedes all prior negotiations, representations, contracts and agreements concerning such subject matter. This Agreement may be amended only in writing signed by DEP and Grantee.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall be one document binding on all the parties.

In WITNESS WHEREOF, the individuals listed below are authorized to sign and execute this Agreement between their respective Agencies and Organizations, on the date appearing below their respective signatures.

The City of New York

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

Title: \_\_\_\_\_

**[Grantee]**

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

Title: \_\_\_\_\_

**ACKNOWLEDGEMENT BY DEP**

STATE OF NEW YORK

SS:

COUNTY OF QUEENS

On the \_\_\_\_ of \_\_\_\_\_ the year 20\_\_ before me, the undersigned, a Notary Public in

and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT BY GRANTEE**

STATE OF NEW YORK,

SS:

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ of \_\_\_\_\_ the year 20\_\_ before me, the undersigned, a Notary Public in

and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**APPENDIX A**  
**SCOPE OF WORK**

**APPENDIX B  
BUDGET**

<b>Equipment Costs</b>	<b>Description</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total Unit Cost</b>	<b>DEP</b>	<b>Matching</b>
<b>Subtotal</b>						
<b>Facility Water Use Survey Costs</b>	<b>Description</b>			<b>Total Cost</b>	<b>DEP</b>	<b>Matching</b>
<b>Subtotal</b>						
<b>Design Costs</b>	<b>Description</b>			<b>Total Cost</b>	<b>DEP</b>	<b>Matching</b>
<b>Subtotal</b>						
<b>Project Subtotal</b>						
<b>Total Project Costs</b>						

**APPENDIX C**  
**MAINTENANCE PLAN FOR ON-SITE WATER REUSE SYSTEMS**

*Grantees are required to maintain their projects for twenty (20) years. Quarterly and Annual maintenance summaries will be required beginning from the construction end date for three years. Answer the questions below in detail. When complete, upload the template into the Required Documents section of the application.*

**APPENDIX D**  
**DECLARATION OF RESTRICTIVE COVENANT**



**APPENDIX E**  
**MONITORING FOR ON-SITE WATER REUSE SYSTEMS (if applicable)**

**APPENDIX F**  
**ASSIGNMENT AGREEMENT (if applicable)**

## **APPENDIX G QUARTERLY AND ANNUAL REPORTING TEMPLATES**

During the Construction Period, Grantees shall submit quarterly and annual reports to DEP. Please refer to page 3 for additional detail, including submission dates.

### **Quarterly Reporting**

Quarterly Reports should detail the work performed in the preceding quarter and must contain, but is not limited to, the following information:

- Project Information
  - Grantee and Project Manager Name and Contact Information
  - Contract Number
  - Construction Start Date
  - Anticipated Construction Completion Date
  - Quarterly Submission Reporting Period (dates)
  
- Quarterly Budget Overview
  - Total Budget
  - Total Budget Spent to Date
  - Itemized Total Budget Spent in Reporting Period
  - Remaining Budget
  
- Quarterly Summary of Work Performed
  - Design
  - Construction
  - Monitoring (*if applicable*)
  - Other
  - Issues Encountered and Troubleshooting
  
- Quarterly Documentation
  - Construction Records
  - Quarterly Progress Photographs
  - Monitoring Data (*if applicable*)
  - Other
  
- Summary of Anticipated Work in Upcoming Quarter

### **Annual Reporting**

Annual Reports should detail the work performed in the preceding year and must contain, but is not limited to, the following information:

- Project Information
  - Grantee and Project Manager Name and Contact Information
  - Contract Number

- Construction Start Date
- Anticipated Construction Completion Date
- Annual Submission Reporting Period (dates)
  
- Annual Budget Overview
  - Total Budget
  - Total Budget Spent to Date
  - Itemized Total Budget Spent in Reporting Period
  - Remaining Budget
  
- Annual Summary of Work Performed
  - Design
  - Construction
  - Monitoring (*if applicable*)
  - Other
  - Issues Encountered and Troubleshooting
  - Schedule Changes
  - Highlights and Lessons Learned in Reporting Period
  
- Annual Documentation
  - Construction Records
  - Photographs from Reporting Period
  - Monitoring Data (*if applicable*)
  - Other
  
- Summary of Anticipated Work in Upcoming Year