

FORM GRANT AGREEMENT

THIS GRANT AGREEMENT (this "Agreement") is made this _____ day of _____, 20____, by and between the Maryland Department of the Environment (the "Department" or "Grantor"), a principal department of the State of Maryland (the "State"), and _____, a [corporation][limited liability company][partnership][other entity type], organized and existing under the laws of _____ (the "Grantee").

RECITALS

Pursuant to Section 9-1605.2 of the Environment Article of the Annotated Code of Maryland, and all acts supplemental thereto or amendatory thereof (the "Act"), the General Assembly of the State has appropriated funds to help achieve Maryland's nutrient and sediment loading goals for the Chesapeake Bay and authorized the Department to purchase nitrogen, phosphorus, and sediment reductions from environmental practices throughout Maryland.

To provide for such nutrient and sediment removal, the Department issued a Request for Proposals (the "RFP") to implement strategies to achieve nutrient and sediment reductions. In response to the RFP, Grantee submitted its Application for grant funding, including its proposal of strategies to reduce nutrients and/or sediment described therein.

The Department has approved an award of grant funds to the Grantee and authorized the award of the Grant (as defined herein) to purchase nitrogen, phosphorus and sediment load reductions, as the case may be, resulting from the projects and/or environmental practices set forth in the Grantee's Application, as described in Exhibit B of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the Grantor and the Grantee, each intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

"Act" has the meaning set forth in the Recitals.

"Administration" means the Maryland Water Quality Financing Administration, a unit of the Department of the Environment of the State, and its successors and assigns.

"Agreement" means this Grant Agreement, including the Exhibits attached hereto and any amendments hereto.

“Application” means the application for the Grant submitted by the Grantee to the Grantor, together with any amendments thereto.

“Authorized Officer” means, in the case of the Grantee, any person authorized by law, the Grantee’s Organizational Documents or by a resolution of the governing body of the Grantee to perform any act or execute any document on behalf of the Grantee.

“Board” means the Board of Public Works of the State.

“Business Day” means a day other than a Saturday, Sunday, or day on which the offices of the Grantor or commercial banks in the State are authorized or obligated to remain closed.

“Default” means an event or condition, the occurrence of which would, with the lapse of time or the giving of notice or both, constitute an Event of Default.

“Default Rate” means the rate designated as such on Exhibit B to this Agreement.

“Department” means the Maryland Department of the Environment, and its successors and assigns.

“Director” means the Director of the Administration.

“Event of Default” means any occurrence or event specified in Section 4.01 hereof.

“Expiration Date” means the date designated as such on Exhibit B to this Agreement.

“Fund” means the Bay Restoration Fund.

“Governmental Authority” means the United States, the State of Maryland, or any of their political subdivisions, agencies, departments, commissions, boards, bureaus or instrumentalities, including any local authority having jurisdiction over the Project, the Department, the Board and the Administration.

“Grant” means the aggregate amounts, not to exceed \$_____, which are advanced from time to time by or on behalf of the Grantor to the Grantee pursuant to the terms and provisions of this Agreement.

“Grant Closing Date” means _____, 20__.

“Grant Commitment” means that amount not to exceed the amount of the Grant which the Grantor is obligated to disburse to the Grantee pursuant to the terms and provisions of this Agreement and subject to the satisfaction of the conditions set forth in this Agreement, as such amount may be adjusted as provided in this Agreement.

“Grant Documents” means, collectively, this Agreement and all of the other documentation required by the Grantor on or prior to the Grant Closing Date as a condition to its obligations to fund the Grant.

“Grantee” means the individual, corporate entity or governmental entity that is identified in the first paragraph of this Agreement, and its successors and assigns as permitted hereunder.

“Grantee Fiscal Year” has the meaning set forth in Exhibit C.

“Grantor” means the governmental entity that is identified in the first paragraph of this Agreement, and its successor and assigns.

“Grantor Fiscal Year” means the period of 12 consecutive months commencing on July 1 in any calendar year and ending on June 30 of the succeeding calendar year.

“Independent Counsel” means any attorney or law firm with attorneys duly admitted to practice law before the highest court of any state who has or have regularly engaged in the practice of law as the primary occupation of such attorney or attorneys for at least five years.

“Organizational Documents” means, all of the following as applicable to the Grantee and any entity with control of the Grantee, articles of incorporation, bylaws, articles of organization, operating agreements, certificates of formation of partnership, partnership agreements, joint venture agreements and any other documentation related to corporate formation, governance and control.

“Project” means, collectively, the projects, facilities, programs and/or environmental practices described in Exhibit B to this Agreement.

“Requirement” means any law, ordinance, code, order, rule or regulation of a Governmental Authority, including, without limitation, a condition set forth in a National Pollution Discharge Elimination System (“NPDES”) permit or in a construction permit issued by the Department related to the Project or its operations.

“State” means the State of Maryland.

Section 1.02. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) words importing the singular number include the plural number and words importing the plural number include the singular number;

(b) words of the masculine gender include correlative words of the feminine and neuter genders;

(c) words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof;

(d) the terms “agree” and “agreement” shall include and mean “covenant”, and all agreements contained in this Agreement are intended to constitute covenants and shall be enforceable as such;

(e) the headings and the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect; and

(f) any reference to a particular Article or Section shall be to such Article or Section of this Agreement unless the context shall otherwise require.

(g) any reference to the governing body of the Grantee shall be to the board of directors, members, partners or other persons (as the case may be) with the authority to act on behalf of the Grantee pursuant to the Grantee’s Organizational Documents and agreements.

ARTICLE II

REPRESENTATIONS AND COVENANTS OF GRANTEE

Section 2.01. Representations of Grantee. The Grantee represents for the benefit of the Grantor as follows:

(a) Corporate Organization and Authority. The Grantee is duly organized and existing [corporation][limited liability company][partnership], in good standing with the State and, if different from the State, its state of formation. Grantee is duly authorized to engage in business in the State. Grantee has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the Project, to enter into this Agreement, to execute and deliver the Grant Documents, and to carry out and consummate all transactions contemplated by this Agreement.

(b) Full Disclosure. There is no fact that the Grantee has not disclosed to the Grantor in writing that materially adversely affects or (so far as the Grantee can now foresee) that will materially adversely affect the properties, activities, prospects or condition (financial or other) of the Grantee or the ability of the Grantee to perform its obligations under this Agreement.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Grantee threatened, against or affecting the Grantee in any court or before any Governmental Authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the ability of the Grantee to perform its obligations under this Agreement and that have not been disclosed in writing to the Grantor in the Application or otherwise.

(d) Obligations Authorized. The consummation of the transaction provided for in this Agreement and compliance by the Grantee with the provisions of this Agreement:

(i) are within its powers, will not violate its Organizational Documents and have been duly authorized by all necessary action on the part of the governing body of the Grantee; and

(ii) will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrances upon any property or assets of the Grantee pursuant to, any indenture, Grant agreement or other instrument (other than this Agreement) or corporate restriction to which the Grantee is a party or by which the Grantee may be bound, nor will such action result in any violation of the provisions of laws, ordinances, governmental rules, regulations or court orders to which the Grantee or its properties or operations is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon execution of this Agreement or receipt of the Grant, would constitute a Default hereunder. The Grantee is not in violation, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Grantee or the ability of the Grantee to perform its obligations under this Agreement, and that have not been disclosed in writing to the Grantor in the Application or otherwise.

(f) Governmental Consent. The Grantee has obtained all permits and approvals required to date by any Governmental Authority for the making and performance by the Grantee of its obligations under this Agreement or for the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority that has not been obtained is required on the part of the Grantee as a condition to the execution and delivery of this Agreement or the consummation of any transaction herein contemplated.

(g) No Conflicts. No director, member, officer, or employee of the Grantee, or its designees, or agents, nor any consultant of the Grantee or of any Governmental Authority, who exercises or has exercised any authority over the Project during such person's tenure, shall have any interest, direct or indirect, in any contract or subcontract, or its proceeds, in any activity, or in any benefit therefrom, which is part of the Project.

(h) Use of Proceeds. The Grantor will disburse to Grantee proceeds of the Grant for the reduction of nutrients and/or sediment in accordance with the schedule set forth in Exhibit C attached hereto and made a part hereof. Before each and every advance of the proceeds of the Grant to the Grantee, the Grantee shall submit to the Grantor evidence, satisfactory to the Grantor, of the nutrient and/or sediment reductions meeting the requirements of Section 3.03 of this Agreement.

(i) Grant Closing Submissions. On or before the Grant Closing Date, the Grantee will cause to be delivered to the Grantor each of the following items:

- (i) an opinion of Independent Counsel, acceptable to the Grantor, dated as of the Grant Closing Date, substantially in the form set forth in Exhibit D to this Agreement;
- (ii) fully executed counterparts of this Agreement;
- (iii) correct, true and complete copies of Grantee's Organizational Documents, evidence of Grantee's good standing in the State and, if applicable, its state of formation, copies of the resolutions or other official action of the governing body of the Grantee authorizing the execution and delivery of this Agreement, all as certified as of the Grant Closing Date by an appropriate officer of the Grantee;
- (iv) a certificate, dated as of the Grant Closing Date, signed by an Authorized Officer of the Grantee and in form satisfactory to the Grantor, confirming the Grantee's obligations under and representations in this Agreement as of such date; and
- (v) such other certificates, documents, opinions and information as the Grantor may require.

Section 2.02. Particular Covenants of the Grantee.

(a) Completion and Establishment of Project. The Grantee shall, to the extent applicable to the Project, complete any needed planning, design, construction, and upgrade of the Project and the related environmental practice specified in its Application at its own expense and risk in order to achieve the nitrogen, phosphorus, and sediment reductions, as applicable, that it agreed to achieve in its Application for purchase by the Grantor under terms of this Agreement.

(b) Maintenance of Project; Insurance. The Grantee shall, to the extent applicable to the Project, (i) keep, operate and maintain, or cause to be kept, operated and maintained, the Project in good working order, condition and repair; (ii) make or cause to be made all needed and proper replacements to the Project so that the Project will at all times be in good operating condition, fit and proper for the purposes for which it was originally erected or installed; (iii) not permit any waste of the Project; (iv) observe and comply with, or cause to be observed and complied with, all Requirements; and (v) operate, or cause to be operated, the Project in the manner in which similar projects are operated by persons operating a first-class facility of a similar nature. The Grantee shall, to the extent applicable to the Project, maintain or cause to be maintained at its sole cost and expense insurance with respect to the Project, both during its construction and thereafter, against such casualties and contingencies and in such amounts as are customarily maintained by entities similar to Grantee similarly situated and as are consistent with sound maintenance and operations practice by entities similar to Grantee with respect to facilities, programs and/or practices similar to the Project.

(c) Sale or Disposition of Project. The Grantee reasonably expects that no portion of the Project will be sold, transferred or otherwise disposed of by Grantee prior to the Expiration Date for this Agreement. In the event that the Grantee shall sell or otherwise dispose

of any portion of the Project prior to the Expiration Date of this Agreement, the Grantee shall apply the net proceeds thereof to the repayment of the Grant or as the Grantor shall otherwise direct unless the Grantee shall have obtained the prior written consent of the Grantor to some other proposed application of such net proceeds.

(d) Inspections; Information. The Grantee shall permit the Grantor or its designee to examine, visit and inspect, at any and all reasonable times (including, without limitation, any time during which the Project is under construction or in operation), the property constituting the Project, to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating to the Project and the operating thereof, and shall supply such reports and information as the Grantor may reasonably require in connection therewith. Without limiting the generality of the foregoing, the Grantee shall keep and maintain any books, records, and other documents that may be required under applicable federal and State statutes, regulations, guidelines, rules and procedures now or hereafter applicable to and reasonably necessary to reflect and disclose fully the amount and disposition of the Grant, the nutrient and sediment reductions purchased, in whole or in part, with the proceeds of the Grant. All such books, records and other documents shall be maintained at the offices of the Grantee, as specified on Exhibit B attached hereto, for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Grantor. All such books, records and other documents shall be maintained with respect to the nutrient and sediment reductions achieved during any Grantee Fiscal Year for a period of at least three (3) after the end of such Grantee Fiscal Year.

(e) Indemnification. To the extent permitted by law, the Grantee releases the Grantor, the Fund, the Administration, the Board and the State from, agrees that the Grantor, the Fund, the Administration, the Board and the State shall not have any liability for, and agrees to protect, indemnify and save harmless the Grantor, the Fund, the Administration, the Board and the State from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the Grantor, the Fund, the Administration, the Board or the State, as a result of or in connection with the Project or the financing thereof.

(f) Non-discrimination. The Grantee certifies that it does not discriminate, and covenants that it shall not discriminate, on the basis of (1) political or religious opinion or affiliation, marital status, race, color, creed or national origin, or (2) sex or age, except where sex or age constitutes a bona fide occupational qualification, or (3) the physical or mental handicap of a qualified handicapped individual. At such times as the Grantor requests, the Grantee shall submit to the Grantor information relating to the Grantee's operations, with regard to political or religious opinion or affiliation, marital status, physical or mental handicap, race, color, creed, sex, age, or national origin, on a form to be prescribed by the Grantor.

(g) Compliance with Requirements. The Grantee acknowledges that the Grant and this Agreement are subject to, and the Grantee agrees to comply with, all Requirements applicable to the Project and the operation and/or administration thereof, including (without limiting the generality of the foregoing) the Act, and all other applicable State and federal statutes and such rules, regulations, orders and procedural guidelines as may be promulgated from time to time by the Board, the Administration, the Grantor, or other Governmental Authority.

ARTICLE III

AVAILABILITY AND DISBURSEMENT OF GRANT TO GRANTEE; GENERAL AGREEMENTS

Section 3.01. The Grant. Subject to the provisions of Sections 3.02, 3.03 and 3.05 hereof, the Grantor hereby agrees to advance amounts under this Agreement to the Grantee, and the Grantee agrees to accept from the Grantor and apply in accordance with this Agreement the amounts advanced under this Agreement, in an aggregate amount not to exceed the maximum amount of the Grant set forth on Exhibit B attached hereto.

Section 3.02. Availability of Funds. The Grantor expects to have, and shall use its best efforts to obtain and maintain, funds in an amount sufficient to make advances to the Grantee in accordance with the “Nutrient and Sediment Reduction Payment Schedule” included in Exhibit C attached hereto. The Grantee recognizes, however, that the Grantor is a governmental entity with limited financial resources and that the Grantor’s ability to make such advances may be adversely affected by events or circumstances beyond the Grantor’s control. The Grantee accordingly assumes the risk that monies may not be available to make advances of the Grant to the Grantee, and, in such event, the Grantee specifically agrees that the Grantor shall have no obligation to disburse any amounts to the Grantee in excess of the amount theretofore advanced to the Grantee.

Section 3.03. Disbursements; Conditions Precedent to Grant Closing.

(a) Disbursements. The Grantor shall disburse Grant funds to Grantee once each Grantor Fiscal Year in the maximum amounts set forth in Exhibit C for payment of nutrient and/or sediment reductions, upon receipt of requisitions from Grantee, including the required certifications and supporting documentation for the nutrient and sediment reductions achieved during the relevant Grantee Fiscal Year. Each such requisition shall contain certifications that state: (i) separately for each nutrient and for sediment, as applicable, the amount of the reduction achieved (supported by appropriate test results, reports or other evidence satisfactory to the Grantor to confirm the reductions set forth in the certification were achieved by the Grantee from the Project), and (ii) that no Default or Event of Default under this Agreement has occurred and is continuing.

(b) Grant Amounts Payable. The aggregate amount of Grant disbursements for any nutrient or sediment reductions occurring during any Grantee Fiscal Year shall not exceed the maximum disbursement amount for such nutrient or sediment reduction applicable to such Grantee Fiscal Year, as set forth on Exhibit C. If the nutrient or sediment reduction achieved by the Project during any Grantee Fiscal Year is less than the amount of the maximum reduction set forth in Exhibit C to this Agreement, the Grantor shall disburse Grant funds in an amount proportionate to the reduction achieved during such Grantee Fiscal Year based on the price per pound of reduction set forth in Exhibit C to this Agreement. If the nutrient or sediment reduction achieved by the Project during any Grantee Fiscal Year exceeds the amount of the maximum reduction set forth in Exhibit C to this Agreement, the Grantor shall disburse Grant funds in the maximum amount set

forth in Exhibit C to this Agreement. Without the prior written consent of the Grantor, the Grantee may not carryover the excess reduction achieved during any Grantee Fiscal Year for credit toward the reductions achieved during any subsequent Grantee Fiscal Year for purposes of determining the amount of the Grant funds payable to Grantee during such subsequent Grantee Fiscal Year.

(b) Conditions Precedent. Before execution and delivery of this Agreement, the Grantor shall receive the following in form and content satisfactory to the Grantor:

- (i) proof of Grantee ownership and/or control of the Project;
- (ii) documentation sufficient to establish baseline loads for each nutrient and any sediment reductions that Grantor has agreed to purchase under this Agreement; and
- (ii) evidence satisfactory to the Grantor that the conditions (if any) set forth in Exhibit A to this Agreement have been satisfied.

In addition, it shall be a condition precedent to the Grantor's obligation to make any advance of Grant proceeds under this Agreement that no Default or Event of Default shall have occurred and be continuing at the time of any such advance.

Section 3.04. Grant Commitment. The Grantee acknowledges and agrees that the monies attributable to the Grantee's Grant are the property of the Grantor and are held by the Grantor to provide for advances to be made to the Grantee in accordance with this Agreement or to be otherwise disposed of by the Grantor in accordance with this Agreement.

Section 3.05. Reduction of Grant Commitment. The Grant Commitment is subject to reduction in accordance with the provisions of this Section.

(a) Any portion of the Grant Commitment allocated for any Grantee Fiscal Year as set forth on Exhibit C not advanced to the Grantee under Section 3.03 of this Agreement for any Grantee Fiscal Year at the end of two years following the end of such Grantee Fiscal Year shall no longer be available to be advanced to the Grantee and the amount of the Grant Commitment shall be reduced by an amount equal to the portion of the Grant Commitment not advanced, unless otherwise agreed to by the Grantor in writing.

(b) The Grantor may reduce the amount of the Grant Commitment if the Grantor should for any reason determine that it will be unable to fund the full amount of the Grant Commitment (including, without limitation, a determination that the nutrient and sediment reductions to be purchased with proceeds of the Grant are expected to be less than the maximum amount of the Grant Commitment), or if it determines that the Grantee is no longer able to make the certifications required under Section 3.03 in connection with the submission of requisitions.

(c) Any reduction in the amount of the Grant Commitment shall not affect the obligation of the Grantee to repay the Grant in accordance with the provisions of this Agreement.

(d) The Grantor shall advise the Grantee in writing of any reduction in the amount of the Grant Commitment. Such notice shall specify the reason for and the amount of the reduction. The Grantor may require, and the Grantee shall deliver, such certificates, documents, opinions and other evidence as the Grantor may deem necessary or advisable in connection with any such reduction in the Grant Commitment.

Section 3.06. Refund of Grant. The Grantee agrees to return, within 30 days of a written request by the Grantor, any excess Grant funds received by Grantee. In the event that the Grantee fails to refund upon demand any excess funds released by the Grantor, the State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the Grantee) in an amount equal to the overpayment.

Section 3.07. Assignment. Neither this Agreement nor the Grant may be assigned by the Grantee for any reason without the prior written consent of the Grantor. The Grantor may transfer or assign any or all of its rights or interests under this Agreement without the prior consent of the Grantee.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

Section 4.01. Events of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) failure by the Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, which failure shall continue for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to the Grantee by the Grantor, unless the Grantor shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Grantor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Grantee within the applicable period and diligently pursued until the Default is corrected;

(b) gross abuse or corrupt practices by Grantee in the administration of the Project and any related environmental practice;

(c) poor, non-standard, or unsafe procedures in operating the Project and any related environmental practice;

(d) failure by the Grantee to apply the Grant in accordance with the terms this Agreement or applicable State laws, regulations and policies of the Department;

(e) if any representation made by or on behalf of the Grantee contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, the Grant Commitment or the Grant, is false or misleading in any material respect on the date on which such representation is made;

(d) if an order, judgment or decree is entered by a court of competent jurisdiction (i) appointing a receiver, trustee, or liquidator for the Grantee; (ii) granting relief in involuntary proceedings with respect to the Grantee under the federal bankruptcy act, or (iii) assuming custody or control of the Grantee under the provision of any law for the relief of debtors, and the order, judgment or decree is not set aside or stayed within 60 days from the date of entry of the order, judgment or decree; or

(e) if the Grantee (i) admits in writing its inability to pay its debts generally as they become due, (ii) commences voluntary proceedings in bankruptcy or seeking a composition of indebtedness, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a receiver, or (v) consents to the assumption of custody or control of the Grantee by any court of competent jurisdiction under any law for the relief of debtors.

Section 4.02. Notice of Default. The Grantee shall give the Grantor prompt telephonic notice by contacting the Director of the Administration, followed by prompt written confirmation, of the occurrence of any event referred to in Section 4.01(d) or (e) hereof and of the occurrence of any other event or condition that constitutes a Default or an Event of Default at such time as any senior administrative or financial officer of the Grantee becomes aware of the existence thereof.

Section 4.03. Remedies on Default. Whenever any Event of Default referred to in Section 4.01 hereof shall have happened and be continuing, the Grantor shall have the right to take one or more of the following remedial steps:

(a) rescind the obligation to pay any remaining portion of the Grant Commitment and terminate this Agreement;

(b) demand that Grantee repay (with interest, based on the Default Rate and assessed from the date said funds were received) any funds received that were misapplied (i.e., not expended in accordance with the terms this Agreement or applicable State laws, regulations and policies of the Department); and

(c) take whatever other action at law or in equity that may appear necessary or desirable to collect any amounts due hereunder or to enforce the performance and observance of any obligation, agreement or covenant of the Grantee hereunder.

Section 4.04. Right of Set-Off. The State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the Grantee) in an amount equal to the misapplied funds plus interest demanded by Grantor pursuant to Section 4.03(b).

Section 4.05. Attorneys' Fees and Other Expenses. The Grantee shall on demand pay to the Grantor the reasonable fees and expenses of attorneys and any other reasonable expenses incurred in the collection of any sum due hereunder or in the enforcement of performance of any other obligations of the Grantee upon an Event of Default.

Section 4.06. Application of Monies. Any monies collected by the Grantor pursuant to Section 4.03 hereof shall be applied (a) first, to pay any attorneys' fees or other fees and expenses owed by the Grantee pursuant to Section 4.04 hereof, (b) second, to pay interest due on the Grant, (c) third, to repay all or any portion of the Grant demanded by Grantor, and (d) fourth, to pay any other amounts due hereunder.

Section 4.07. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Grantor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Default or Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Grantor to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

ARTICLE V

MISCELLANEOUS

Section 5.01. Notices. All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing, unless expressly stated otherwise herein. Any such communication shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Grantee at the address specified on Exhibit B attached hereto and to the Grantor at Maryland Department of the Environment, c/o Maryland Water Quality Financing Administration, 1800 Washington Blvd., Baltimore, Maryland 21230-1718, Attention: Director.

Section 5.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Grantor and the Grantee and their respective successors and assigns.

Section 5.03. Severability. In the event any provision of this Agreement shall be 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 5.04. Execution in Counterparts. This 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 5.05. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

Section 5.06. Captions. The captions or headings in this Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 5.07. Further Assurances. The Grantee shall, at the request of the Grantor, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements, certificates and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Agreement.

Section 5.08. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Grant. In the event of any inconsistency between the provisions of this Agreement and anything contained in the Application, the provisions of this Agreement shall prevail.

Section 5.09. Amendment of this Agreement. This Agreement, or any part hereof, may be amended from time to time hereafter only by an instrument in writing jointly executed by the Grantor and the Grantee.

Section 5.10. Disclaimer of Relationships. The Grantee acknowledges that the obligation of the Grantor is limited to making the Grant in the manner and on the terms set forth in this Agreement. Nothing in this Agreement and no act of either the Grantor or of the Grantee shall be deemed or construed by either of them, or by third persons, to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship whatsoever involving the Grantee and the Grantor.

Section 5.11. Effective Date. The effective date of this Agreement shall be the date of the Grantor's execution.

Section 5.12. Term of this Agreement. The term of this Agreement shall commence on the Grant Closing Date and end on the Expiration Date, unless sooner terminated pursuant to Article IV of this Agreement, or by the mutual consent of the Grantee and the Grantor. The term of this Agreement shall not exceed the Useful Life of the Project set forth on Exhibit B to this Agreement. The obligations and provisions set forth in Sections 2.02(d), 2.02(e) and 3.06 shall survive the expiration or termination of this Agreement.

Section 5.13. Delegation Not to Relieve Obligations. The delegation by the Grantee of the planning, construction or carrying out of the Project shall not relieve the Grantee of any obligations under this Agreement and any other documents executed in connection with the Grant.

Section 5.14. Additional Terms. This Agreement shall also be subject to the additional terms, if any, set forth in Exhibit A hereto. The terms, if any, set forth in Exhibit A shall be deemed to be a part of this Agreement as if set forth in full herein. In the case of any conflict between the terms set forth in Exhibit A and any term of this Agreement, the terms set forth in Exhibit A shall be controlling.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

(SEAL)

GRANTOR:

WITNESS:

MARYLAND DEPARTMENT OF THE ENVIRONMENT

Name:
Title:

By:

Name:
Title:

(SEAL)

ATTEST:

GRANTEE:

Name:
Title:

By:

Name:
Title:

Approved for form and legal sufficiency
this ____ day of _____, 20__

Approved for form and legal sufficiency
this ____ day of _____, 20__

Name:
Attorney for Grantee

Name:
Assistant Attorney General

