

Grant No:

Date:

Grantee:

Grant Amount:

GRANT AGREEMENT
(Asset Management Plan Grant Program)

This Grant Agreement (this "Agreement") is entered into by and between the Massachusetts Clean Water Trust (together with its successors and assigns, the "Trust"), an instrumentality of The Commonwealth of Massachusetts (the "Commonwealth") and the grantee listed above, a political subdivision or public instrumentality (together with its successors and assigns, the "Grantee").

WHEREAS, in accordance with the Enabling Act the Massachusetts Department of Environmental Protection (the "Department") has issued a Project Approval Certificate to the Trust approving the Project (as defined in Section 2.2) and the costs thereof to be funded by the Trust and, in connection therewith, the Grantee and the Department are executing and delivering, simultaneously with the execution and delivery of this Agreement, one or more Project Regulatory Agreements pertaining to the eligible activities as approved by the Department for the Project.

WHEREAS, the Trust is willing to extend financial assistance in the form of a grant (the "Grant") to the Grantee on the terms and conditions stated herein;

WHEREAS, the Grantee will agree to adopt, follow and publicize the Project after completion thereof to the satisfaction of the Department; and

WHEREAS, the Grantee is willing to accept the Grant and its obligations hereunder on the terms stated herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I - REPRESENTATIONS OF THE GRANTEE

Recognizing that the Trust is relying hereon, the Grantee represents, as of the date of this Agreement, as follows:

- (a) *Organization; Power, Etc.* The Grantee is a Local Governmental Unit or other Eligible Borrower (each as defined in the Enabling Act) with full legal right and authority to authorize, execute, and deliver this Agreement, to receive the Grant, to undertake and implement the Project and to carry out and consummate all transactions contemplated by the foregoing;
- (b) *Authority.* The Grantee has duly and validly authorized the execution and delivery of this Agreement, and all approvals, consents, and other governmental or corporate proceedings necessary for the execution and delivery of the foregoing or required to make this Agreement the legally binding obligation of the Grantee that it purports to be, in accordance with its terms, have been obtained or made.

- (c) *No Litigation.* No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, other than as disclosed to the Trust and the Department, is pending or, to the knowledge of the Authorized Officers of the Grantee (as identified on Schedule A) executing this Agreement, threatened (1) seeking to restrain or enjoin the execution and delivery of this Agreement, or the undertaking of the Project or (2) contesting or affecting the validity of this Agreement, or the power of the Grantee to apply any revenues or to assess and collect, as applicable, betterments, taxes, rates and charges to provide the Grantee Contributions (both cash and In-Kind Services as described in Schedule A) as contemplated by this Agreement; and neither the corporate existence of the Grantee nor the title to office of any Authorized Officer of the Grantee executing this Agreement, is being contested.
- (d) *No Conflicts.* The authorization, execution and delivery of this Agreement, and performance thereof, will not constitute a breach of, or a default under, any law, ordinance, resolution, agreement, indenture or other instrument to which the Grantee is a party or by which it or any of its properties is bound.
- (e) *Binding Agreement.* This Agreement is, or when executed and delivered will be, the legal, valid, and binding obligation of the Grantee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- (f) *Information Submitted.* All information, reports, and other documents and data submitted to the Trust in connection with this Agreement (including without limitation the Application) were, at the time the same were furnished, and are, as of the date hereof, complete and correct in all material respects.
- (g) *Ratification.* By executing this Agreement, the Grantee affirms and ratifies all statements, representations and written documents that it has submitted to the Trust in connection with this Agreement (including, without limitation, the Application).

ARTICLE II - THE GRANT

2.1 Grant Amount and Expiration Date

- (a) *Grant Amount.* The Trust agrees to make and the Grantee agrees to accept, on the terms and conditions stated in this Agreement, a Grant, in the maximum amount specified on Schedule A hereto.
- (b) *Expiration Date.* The Grant, and the obligation of the Trust to disburse the Grant, or any portion thereof, shall expire on the date (the "Expiration Date") specified on Schedule A hereto. No portion of the Grant will be disbursed by the Trust after the Expiration Date. The Trust, in its sole discretion, may approve extensions of the Expiration Date.

2.2 Project

- (a) *Grant Purpose.* The Grant has been made solely to finance the establishment or extension of the asset management plan (including the publication and implementation thereof) described on Schedule B (the "Project").

- (b) *Project Schedule.* The Grant will be disbursed by the Trust no more frequently than monthly during the active project phase. The Department and the Grantee have established the payment request schedule set forth in Schedule C. Project completion will be evaluated by the Department.

ARTICLE III - CONDITIONS OF FUNDING

3.1 General Conditions

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to the Trust in its discretion).

- (a) *Executed Grant Agreement.* The Trust shall receive a duly executed original of this Agreement.
- (b) *Executed Consulting Agreement.* The Department shall receive a duly executed original of the consulting engineering contract between the Grantee and a consulting engineering firm acceptable to the Department, relating to the Project.

3.2 Conditions to Disbursements

The obligations of the Trust to approve or make any disbursement of the Grant is subject to the satisfaction of each of the following conditions on or before the date of such disbursement (all documents, certificates and other evidence of such conditions are to be satisfactory to the Trust in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Grantee contained in this Agreement be true and correct on and as of the date of such disbursement as though made on and as of such date.
- (b) *Accounting of Grantee Contributions.*
 - (i) *Cash Contributions Expended.* That the Grantee shall have provided an accounting, in form and detail acceptable to the Department, of the amount of Cash Contributions (A) expended prior to the date of the disbursement and (B) the amount, if any, expected to be expended following such disbursement.
 - (ii) *In-Kind Services Applied.* That the Grantee shall have provided an accounting, in form and detail acceptable to the Department, of the amount and calculation of Grantee Contributions constituting In-Kind Services (A) applied to the date of the disbursement and (B) the amount, if any, expected to be applied following such disbursement.
- (c) *Compliance with Agreement.* That Grantee is in material compliance with this Agreement.
- (d) *Additional Documents.* That the Grantee provides the Trust with such additional documents as the Trust may reasonably request.

3.3 Grant Disbursements

Subject to Section 4.2, the Trust shall make disbursements of the Grant no more frequently than monthly.

- (a) Disbursements shall be in an amount that is approved by the Department as eligible costs and is accounted for by consultant/supplier invoices, In-Kind Services records, and cash contribution records.
- (b) Monthly disbursements are contingent on the Grantee submitting monthly progress reports in form and detail acceptable to the Department. Failure to submit such reports may place a hold on future disbursements from the Trust until the Department confirms to the Trust that reporting for the Grantee is up to date.
- (c) The final disbursement shall be in an amount that, together with the amounts previously disbursed, will not exceed the Grant amount. Upon completion of the Project, the Grantee shall file a Project Completion Certificate with the Department as described in the Project Regulatory Agreement. The final disbursement shall not be made until the Department approves Project completion, as evidenced by the Department's filing of the Project Completion Certificate with the Trust.

ARTICLE IV - AFFIRMATIVE COVENANTS

4.1 Generally

Unless otherwise agreed to in writing by the Trust, while this Agreement is in effect, the Grantee shall duly observe each of the affirmative covenants contained in this Article IV -.

4.2 Use of Disbursements and Application of Grantee Contributions

The Grantee shall expend the Grant funds and shall expend or apply, as the case may be, Grantee Contributions only for eligible costs of the Project as determined by the Department. The Trust shall have no obligation to disburse or expend any amounts for the Project in excess of the Grant.

4.3 Additional Project Funding

The Grantee shall ensure that adequate funding is in place to complete the Project and will obtain loans or funds or receive binding commitments for supplemental funding in an amount needed to ensure completion of the Project.

4.4 Additional Affirmative Covenants or Conditions

The Grantee shall comply with the additional affirmative covenants or conditions, if any, set forth in Exhibit I hereto.

ARTICLE V - TERMINATION AND REMEDIES

5.1 Termination of the Grant by the Trust

- (a) *Termination of the Grant by the Trust.* The Trust, in its sole discretion, may terminate this Agreement and cease making disbursements of the Grant:
- (i) if, as of the Expiration Date, the Grantee has not met all conditions to the final disbursement as described in Section 3.3(c) to the satisfaction of the Department;
 - (ii) if the Grantee has materially breached of any term of this Agreement, including but not limited to terms relating to timely expenditure and application of Grantee Contributions, providing property owner permissions and furnishing construction permits and meeting the milestones set forth in the approved Project schedule, or that the Grantee has failed to strictly comply with any applicable state or federal regulation applicable to the Project and/or the Grant;
 - (iii) if any representation or warranty made by the Grantee in the Application, any request for disbursement, this Agreement, any certification, or other supporting documentation thereunder shall prove to have been incorrect in any material respect at the time made;
 - (iv) if the Grantee shall cease operations, on a voluntary or involuntary basis, of the drinking water, wastewater and/or stormwater system, as applicable, for which the Project is being completed.
 - (v) in the event of loss of availability of sufficient funds for the purposes of this Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate Trust action inconsistent with performing its obligations under this Agreement.
- (b) *Notice of Termination.* The Trust shall provide the Grantee with written notice of termination of the Grant as provided in subsection (a), setting forth the reason(s) for termination. The termination of the Grant and this Agreement shall be effective as of the date such notice of termination is sent by the Trust.

5.2 Termination of the Grant by the Grantee

The Grantee may terminate the Grant by written notification to the Trust, setting forth the reasons for such termination and the effective date.

5.3 Termination on Final Disbursement

This Agreement shall terminate upon receipt by the Grantee of the final disbursement as described under Section 3.3(c).

5.4 Effect of Termination; Reimbursement of Disbursements

Upon termination of the Grant and this Agreement, the Trust shall have no further obligation to make disbursements. Upon termination of the Grant and this Agreement pursuant to Sections 5.1(a)(i)-(iv) or Section 5.2, the Grantee shall reimburse the Trust for all disbursements of the Grant on a schedule to be negotiated in good faith between the Trust and the Grantee, but in no event more than three (3) years from the date of such termination.

ARTICLE VI - MISCELLANEOUS

6.1 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing and delivered to the intended recipient at the “Address for Notices” specified in Schedule A; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Receipt of all such communications shall be deemed to have occurred when personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein.

6.2 No Waiver

No failure or forbearance on the part of the Trust to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by the Trust of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. Conditions, covenants, duties and obligations contained in this Agreement may be waived only by written agreement between the parties.

6.3 Governing Law

This Agreement shall be construed under, and governed by, the laws of the Commonwealth. The Grantee agrees to bring any Federal or State legal proceedings arising under this Agreement in which the Trust is a party in a court of competent jurisdiction within the Commonwealth. This section shall not be construed to limit any other legal rights of the parties.

6.4 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Grantee and the Trust and their respective successors and assigns, except that the Grantee may not assign or transfer its rights or obligations hereunder without the prior written consent of the Trust.

6.5 Complete Agreement; Waivers and Amendments

All conditions, covenants, duties and obligations contained in the Agreement may be amended only through a written amendment signed by the Grantee and the Trust unless otherwise specified in this Agreement. The parties understand and agree that this Agreement supersedes all other verbal and written agreements and negotiations by the parties regarding the matters contained herein.

6.6 Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

6.7 Severability

If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

6.8 Schedules, Exhibits and Attachments; Counterparts

Each Schedule and Exhibit and each other attachment hereto and referred to herein is an integral part of this Agreement. Moreover, this Agreement may be executed in several counterparts, each of which shall be deemed to be an original.

6.9 No Third Party Beneficiary

This Agreement is exclusively between the Trust on the one hand and the Grantee on the other, and does not nor is intended to create any privity of contract with any other party not a party hereto, nor to imply a contract in law or fact. Any funds disbursed by the Trust are intended to finance the Project. Any approvals given by the Trust or the Department to the Grantee are solely for the benefit of the Trust. The Trust is not obligated to disburse grant funds on any contract, or otherwise, between the Grantee and any other party, nor intends to assume, at any time, direct obligations for payment for work, goods, or other performance under such contracts. The obligation to pay any amounts due under such contracts is solely the responsibility of the Grantee. Nothing herein, express or implied, is intended to, or shall confer upon, any other person any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement between the Trust and the Grantee.

6.10 Term

This Agreement shall remain in effect until one of the following events has occurred:

- (a) The Grantee and the Trust replace this Agreement with another written agreement;
- (b) All of the Grantee's obligations under this Agreement have been discharged, including, without limitation, any obligation to reimburse the Trust for disbursements of the Grant; or
- (c) This Agreement has been terminated pursuant to the provisions of Article V - hereof.

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

MASSACHUSETTS CLEAN WATER TRUST

By: _____

Authorized Officer

Title: Executive Director

GRANTEE

By: _____

Authorized Officer

Title: _____

Schedule A

1. Grant No.:
2. Grantee:
3. Grant Amount:
4. Grant Agreement Date:
5. Expiration Date:
6. Grantee Contributions:
 - a. Cash:
 - b. Value of In-Kind Services:
 - c. Loan Proceeds:
7. Authorized Officers:
 - a. of the Trust: The Chair and the Vice Chair of the Trust (and each designee thereof pursuant to G.L. Ch.30 §6A) the Executive Director and Treasurer of the Trust
 - b. of the Department: The Commissioner, the Deputy Commissioner and the Deputy Assistant Commissioner for Financial and Construction Management of the Department
 - c. of the Grantee:
8. Addresses for Notices:
 - a. To the Trust: Massachusetts Clean Water Trust
One Center Plaza
Boston, Massachusetts 02108
 - b. To the Department: Department of Environmental Protection
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114
Attention: Commissioner
 - c. To the Grantee:

Schedule B

Description of Project

Schedule C

Funding Plan

Disbursements of the Grant are expected to be made on the following schedule, subject to, among other things, approval by the Department.

Exhibit I - Special Conditions