

**CLEAN VESSEL ASSISTANCE PROGRAM
OPERATION & MAINTENANCE GRANT AGREEMENT**

VILLAGE OF MAMARONECK

and

**NEW YORK STATE ENVIRONMENTAL
FACILITIES CORPORATION**

2021 - 2025

This Operation and Maintenance Grant Agreement (hereinafter referred to as the "Agreement"), by and between the New York State Environmental Facilities Corporation, a New York State public benefit corporation (hereinafter referred to as the "Corporation"), with offices located at 625 Broadway, Albany, New York, 12207-2997, and the Recipient identified on the cover page hereof, with offices located at 123 Mamaroneck Avenue, Mamaroneck, NY 10543.

WHEREAS, the Corporation is the agency of the State of New York which is the recipient of federal grant funds provided under the Clean Vessel Act Grant Program (hereinafter referred to as the "CVA"), such program being authorized pursuant to the Clean Vessel Act of 1992 and the regulations promulgated thereunder for the purpose of providing federal grant funds to states for the construction, renovation, operation and maintenance of pumpout and dump stations to improve water quality; surveying existing pumpout and dump stations; and implementing education programs to increase public awareness of the use and availability of pumpout and dump stations to receive sewage waste from marine recreational vessels; and

WHEREAS, the New York State Department of Environmental Conservation ("DEC") is an executive department of the State of New York with jurisdiction over the environmental policy, law and regulations of this State, pursuant to, among other things, Environmental Conservation Law ("ECL") Section 3-0301; and

WHEREAS, pursuant to Section 1285(5) of the Public Authorities Law, the Corporation is empowered to provide certain assistance to municipalities, persons and state agencies, including, among other things, advice on matters relating to the identification, collection, handling, separation and disposal of waste, and on matters relating to the prevention and control of air emissions and water discharges subject to regulation pursuant to the ECL; and

WHEREAS, the Recipient has submitted a Clean Vessel Assistance Program ("Program" or "CVAP") Letter of Intent (the "LOI") to the Corporation seeking financial assistance for reimbursement of costs incurred by Recipient for the operation and maintenance ("O&M") of the project(s) listed in the LOI;

NOW, THEREFORE, in consideration of the promises and assurances in this Agreement, the Corporation and the Recipient agree as follows:

1. The Recipient previously submitted the LOI to the Corporation for grant assistance under the Program, for costs associated with the O&M of the project(s) as described in the LOI.
2. The representations set forth in the LOI are true and correct as of the date hereof, and Recipient has complied with, performed and will continue to comply with and perform all of the covenants and promises therein.
3. There have been no material changes in the information concerning the project(s) since submission of the LOI.
4. The term of this Agreement is five (5) years ending at 5 p.m. on December 31, 2025, unless sooner terminated by the Corporation.
5. No litigation of any nature is now pending or threatened, to restrain or enjoin, or in any manner question or affect, directly or indirectly Recipient's ability or authority to carry out all responsibilities or receive reimbursement under this Agreement.
6. The Recipient is not the subject of any pending, threatened or existing action, whether under any bankruptcy, reorganization or insolvency law or any other proceeding, nor any undischarged or unpaid judgment, lien or claim, nor in default under any loan or mortgage agreement, nor delinquent on the payment of any federal, state, or local tax, or sales or compensating use tax, which has not been previously disclosed to the Corporation. The Recipient agrees to immediately notify the Corporation in writing of any change in the above circumstances.
7. The project(s) is and will remain accessible to all recreational marine vessels during normal operating hours. If the project(s) is not operational for any reason, the Recipient will notify the Corporation within 45 days.
8. Reimbursement for O&M costs shall be paid by the Corporation in reliance upon the representations and certifications set forth in this Agreement and the Request for Reimbursement Form, which shall be used by Recipient to request reimbursement under the Agreement.
9. The Recipient shall complete and submit the Request for Reimbursement Form annually.

10. The annual grant amount shall not exceed the lesser of \$5,000 or 75% of the total O&M costs for the annual funding period for pumpout boats and \$2,000 for all other pumpout/dump stations. Reimbursement under this Agreement will be based on documented O&M costs incurred for the project(s) during each annual funding period.

11. The Corporation and the Recipient acknowledge that grant awards are limited to the amount of available funding for the Program, and that the amount actually received may be less than the maximum eligible amount.

12. O&M costs for which reimbursement is requested herein are reasonable, necessary, and allocable to the project(s) funded by the Agreement.

13. Federal funding received under this Agreement or from any other federal source, is limited to 75% of the total O&M costs for the annual funding period. There is a 25% match required from the Recipient, from state, local or other non-federal sources, which amount and sources will be reflected on the Request for Reimbursement Form submitted to the Corporation.

14. a. Any expenditure which will be reimbursed by any other municipal, state or federal sources shall not be eligible for reimbursement under this Agreement.

b. Recipient will not seek or accept reimbursement from any other municipal, state or federal sources for any expenditures previously reimbursed, or to be reimbursed, under this Agreement.

c. If the Recipient has or will receive funding from any other municipal, state or federal sources for costs reimbursed under this Agreement, Recipient will repay to the Corporation all such funding to the full extent of any such reimbursement.

d. The Recipient shall not, under any circumstances, be entitled to receive state, federal or other governmental assistance in excess of 100% of the costs of the operation and maintenance of the facility.

15. The making of any reimbursement request under this Agreement as reflected on the Request for Reimbursement Form has been duly authorized by the Recipient, and no change in circumstances has occurred, or will occur upon the making of the reimbursement payment herein requested, which would constitute a default or breach of the Agreement.

16. The project(s), including O&M thereof, is in compliance with state and federal regulations and Program guidelines.

17. The Recipient has obtained all licenses, permits or other approvals required as of the date hereof to undertake the O&M, including, but not limited to, any and all DEC approvals or permits.

18. If the project(s) is conveyed or transferred to a third party, the Agreement shall be incorporated in the sales contract, and the Recipient and purchaser, with the consent of the Corporation, shall execute an assignment and assumption agreement of the terms and conditions set forth in the Agreement.

19. Recipient acknowledges that continuation of the Program is dependent upon the availability of CVA funding from the United States Fish and Wildlife Service, and to the extent that funds are not available, the Corporation shall not be obligated to release funds under the Agreement.

20. Neither the State nor the Corporation shall have any liability under this Agreement to any contractor or any other person or entity. The Recipient understands that nothing in this agreement or any other materials presented to the Recipient in connection with the CVA constitutes legal or tax advice from the Corporation.

21. This Agreement may only be amended in writing by both parties. Any amendment must identify itself as an amendment to this Agreement.

22. This Agreement and its exhibits constitute the entire agreement of the parties with respect to the subject matter of this Agreement.

23. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

24. This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. The exchange of copies of signature pages by scanned portable document format (".pdf") e-mail attachment shall constitute effective execution of this Agreement, and .pdf copies of this Agreement shall have the same force and effect as an original.

RECIPIENT

By:



Jerry Barberio
Village Manager

Date:

12/13/21

NEW YORK STATE ENVIRONMENTAL
FACILITIES CORPORATION

By:


Maureen A. Coleman
President and CEO

Date:

1/6/2022

STATE OF NEW YORK)

COUNTY OF Watchkill) ss.:

On this 13 day of Dec, 2021, before me personally came Jerry Barberio, to me known, who, being by me duly sworn, did depose and say that he is the individual described in and which executed the foregoing instrument, and duly acknowledged to me that he signed the same.

SALLY J. ROBERTS
Notary Public, State of New York
No. 01R08471726
Qualified in Watchkill County
Commission Expires 07/30/2022


Notary Public