

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY**

BOARD MEETING DATE – July 19, 2023

SUBJECT: Legal Review
Standard Terms and Conditions

TO: Board of Directors

FROM: Jayne B. Blake
Chief Counsel

All financial assistance applications approved by the Board of Directors of the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) on July 19, 2023 shall be subject to the applicable terms and conditions listed below. The funding offer provided to each Funding Recipient shall include the specific terms and conditions applicable to the project being funded.

GENERAL FINANCIAL TERMS & CONDITIONS

Funding Recipient. For purposes of this Funding Offer, Company may be referred to herein as Funding Recipient.

Funds Availability. Funding Recipient agrees that this Funding Offer is subject to the availability of PENNVEST funds.

Repayment. Funding Recipient agrees to repay PENNVEST in accordance with the terms set forth in this Funding Offer.

Settlement Date. Funding Recipient agrees to make every effort to confirm the contractual obligations with PENNVEST and to provide consideration for this Funding Offer (“Settlement”) within one hundred eighty-two (182) days from the date the Board approved the original funding for this project (“Settlement Date”). In any event, if a Settlement Date does not occur within two hundred seventy-six (276) days from the date the Board approved the original funding for this project, this Funding Offer will terminate on the last day of the month in which the funding offer reaches two hundred seventy-six days after Board approval, unless there are extenuating circumstances which in PENNVEST’s sole discretion require an extension.

Collateral. Funding Recipient agrees, if applicable, to secure repayment by providing the collateral set forth in this Funding Offer. Any change to the collateral set forth in the Funding Offer shall require a written request from the Funding Recipient and the consent of PENNVEST.

Revenue Stream. If applicable, Funding Recipient agrees to provide, in a form satisfactory to PENNVEST, evidence that Funding Recipient has a revenue stream sufficient to repay the debt service on the financial assistance provided by PENNVEST, unless PENNVEST has approved the use of other collateral independent of the revenue stream to secure repayment. In addition, the Funding Recipient shall enact an ordinance, adopt a resolution, or take other such official action as may be appropriate, prior to Settlement, which provides for the implementation of sufficient rates or revenues to cover all operational and maintenance costs, the debt service on any PENNVEST loan and the debt service on all other outstanding debt of the Funding Recipient at least three (3) months prior to the scheduled amortization date (as defined in the Funding Agreement). In any event, Funding Recipient shall provide, in a form satisfactory to PENNVEST, a plan for repayment of any PENNVEST loan. If Funding Recipient is regulated by the Public Utility Commission (“PUC”), Funding Recipient agrees to take all necessary actions to obtain PUC approval of revenue stream rates.

Payment of Costs. Funding Recipient agrees, without condition, to pay all reasonable fees, expenses, taxes, costs and charges associated with the financial assistance being provided by PENNVEST, including but not limited to, title insurance premiums and search fees, survey costs, and recording and filing fees, if any.

Additional Information. Funding Recipient agrees that PENNVEST can require additional information or documentation and impose further conditions if PENNVEST deems necessary based upon review of the information submitted by the Funding Recipient.

Assignment. Funding Recipient agrees not to assign the proceeds from the financial assistance provided by PENNVEST without the prior written consent of PENNVEST. Any attempt at assignment without consent shall be void.

Modification. Funding Recipient agrees that no change or modification to this Funding Offer shall be valid unless and until PENNVEST initiates an amended Funding Offer and the Funding Recipient views the changes or modifications and elects to proceed with Settlement on the Funding Offer.

Entire Agreement. Funding Recipient further agrees that this Funding Offer represents the entire funding offer agreement between the parties. To the extent this offer represents an increase funding approval this offer integrates any and all prior or contemporaneous agreements between the parties relating to this project.

Survival. Funding Recipient agrees that the obligations set forth in this Funding Offer shall survive Settlement on the financial assistance and shall be continuing obligations until all required payments, including applicable interest and fees, have been made in full and all other obligations have been fully completed and discharged.

Outstanding Financial Assistance. Funding Recipient agrees that, to the extent that financial assistance requiring repayment was previously provided to Funding Recipient by PENNVEST and has not been fully repaid, Funding Recipient is in compliance with obligations under the prior funding documents and is not delinquent on repayment.

Refinancing. Funding Recipient shall not use PENNVEST funds to replace long-term financing that has been offered or committed to the Funding Recipient at reasonable rates as of the date of this Funding Offer.

Independent Audits. Funding Recipient agrees, if required by PENNVEST, to obtain independent audits of its financial documents and condition and to submit certified copies of such audits to PENNVEST.

Other Obligations. Funding Recipient agrees that accepting funding from PENNVEST will not result in a default by Funding Recipient on any other obligation of Funding Recipient, including but not limited to, a default pursuant to the terms of any bond offering, indenture, mortgage, restriction, lease, or other agreement. Funding Recipient agrees to provide PENNVEST with evidence that no such default will occur, in a form satisfactory to PENNVEST, prior to the Settlement Date.

Insurance. Funding Recipient agrees to maintain, or cause to be maintained, adequate business insurance coverage on its business assets for the term of the financial assistance including the construction period and to provide PENNVEST with evidence of such insurance, in a form satisfactory to PENNVEST, prior to the Settlement Date. In the event of a Brownfields project, Funding Recipient also agrees to obtain and cause to be maintained adequate environmental cost cap and remediation liability insurance until such time that Funding Recipient receives a letter from DEP releasing the Funding Recipient from liability of known contaminants under Act 2, a later defined term. In the event PENNVEST obtains a mortgage as collateral, Funding Recipient also agrees to obtain a lenders title insurance policy and endorsements on terms and conditions acceptable to PENNVEST.

Tax-Exempt Financing. Funding Recipient agrees not to report any funding received from PENNVEST as a tax-exempt financing.

Automatic Debit/Credit. Funding Recipient agrees to comply with any automated debit or credit system that PENNVEST may institute.

Attorney. Funding Recipient agrees, if applicable, to retain an attorney, licensed to practice law in the Commonwealth of Pennsylvania, to provide legal assistance and advice to the Funding Recipient with regard to the terms and conditions of this Funding Offer and to provide the requisite opinions of counsel at Settlement. Funding Recipient agrees to provide PENNVEST with a copy of its engagement letter, which shall include the attorney's total anticipated fee with respect to the project, in a form satisfactory to

PENNVEST, prior to the Settlement Date. At Settlement, the Funding Recipient shall furnish to PENNVEST an opinion of the Funding Recipient's counsel, in a form satisfactory to PENNVEST, that, among other things, the Funding Recipient is duly organized and authorized to enter into the transaction; that the transaction and its terms do not violate any rules, regulations, laws, orders or agreements by which the Funding Recipient is bound; that there is no litigation threatened or pending that will affect the Funding Recipient's ability to enter into the transaction or complete this project; and that the Funding Recipient has acquired, and has good and marketable title to, all real property interests necessary to complete this project. The opinion letter will also address any other matters to which PENNVEST wishes the Funding Recipient's counsel to opine.

Disclosure of Funding. Funding Recipient agrees to disclose to the system users the costs and benefits of receipt of funds from PENNVEST (this does not apply to PUC regulated systems or systems without ratepayers).

Conference Calls. As a condition of this Funding Offer, Funding Recipient, its licensed engineer and its attorney, if applicable, shall be available to participate in conference calls with PENNVEST to work through the Settlement process effective immediately after approval of this Funding Offer, unless such condition is expressly waived by PENNVEST. All conference call attendees should have electronic access to the PENNVEST Online Funding Request website during all scheduled conference calls.

Funds Disbursement Process. As a condition of this Funding Offer, Funding Recipient understands that it will be required to participate in PENNVEST's funds disbursement process.

Financial Statements. If applicable, within one hundred eighty (180) days after the end of each fiscal year, the Funding Recipient shall transmit to PENNVEST its financial statements using PENNVEST's DocuSign upload procedure on the PENNVEST website under Services/Loan Servicing/Annual Financial Reporting. The financial statements shall consist of a balance sheet, income statement and statement of source and application of funds. Such financial statements:

- a. Shall be prepared by an independent public accounting firm approved by the Authority;
- b. Shall be prepared in accordance with generally accepted accounting principles and practices consistently applied or generally accepted governmental accounting principles and practices consistently applied, as applicable;
- c. Shall be in a form satisfactory to PENNVEST; and
- d. Shall be certified as true and correct by the chief financial officer of the Funding Recipient.

Confidential Information. The Funding Recipient agrees not to include confidential or proprietary information or trade secrets as part of any submission to PENNVEST in response to this Funding Offer or in preparation for Settlement. If the Funding Recipient determines that it must divulge such information as part of its submissions, the Funding Recipient agrees to submit a signed written statement to that effect in accordance with 65 P.S. § 67.707(b) and agrees to additionally provide a redacted version of its proposal, which removes only the confidential or proprietary information and trade secrets for public disclosure purposes.

Right-to-Know Law

- a. The Pennsylvania Right-to-Know Law (hereinafter referred to as the “RTKL”), 65 P.S. §§ 67.101-3104, applies to this Funding Offer and all documents provided to PENNVEST in connection with Settlement (the “Funding Documents”). For the purpose of administering the matters relating to the RTKL set forth in this Section, the applicable “Commonwealth agency” as provided in the RTKL shall be PENNVEST. Capitalized terms used but not otherwise defined herein shall have the same meaning as set forth in the RTKL.
- b. If PENNVEST needs the Funding Recipient’s assistance in any matter arising out of the RTKL, PENNVEST shall notify the Funding Recipient in writing.
- c. Upon written notification from PENNVEST that it requires the Funding Recipient’s assistance in responding to a request under the RTKL for information that may be in the Funding Recipient’s possession, constituting, or alleged to constitute, a Public Record in accordance with the RTKL, Funding Recipient shall:
 1. Provide PENNVEST, within ten (10) calendar days after receipt of such notification, access to, and copies of, any document or information in the Funding Recipient’s possession arising out of this Funding Offer or the Funding Documents that PENNVEST reasonably believes may be a Public Record under the RTKL (“Requested Information”), to permit PENNVEST to evaluate whether such Requested Information is, in fact, a Public Record within the scope of the subject RTKL information request; provided, however, that providing such Requested Information not previously in PENNVEST’s possession shall not be considered an admission by the Funding Recipient that such records are Public Records under the RTKL; and
 2. Provide such other assistance as PENNVEST reasonably may request, in order to comply with the RTKL.

If the Funding Recipient fails to provide the Requested Information within ten (10) calendar days after receipt of such request, the Funding Recipient shall

indemnify and hold PENNVEST harmless for any damages, penalties, detriment or harm that PENNVEST may incur under the RTKL as a result of the Funding Recipient's failure, including any statutory damages assessed against PENNVEST.

- d. If the Funding Recipient considers the Requested Information not to be a Public Record, or exempt from production due to the inclusion of trade secret, confidential proprietary information, or any other reason for exemption from production as a Public Record under the RTKL, the Funding Recipient shall provide a written statement to PENNVEST within seven (7) days of receipt of PENNVEST's request for the Requested Information. This statement shall be signed by a representative of the Funding Recipient, explaining why the Funding Recipient considers the Requested Information exempt from public disclosure.
- e. If such a written statement is timely provided, PENNVEST will rely upon it in denying a RTKL request for the information. However, if PENNVEST reasonably determines that such written statement is patently flawed or the Requested Information is, on its face, clearly not protected from disclosure under the RTKL, the Funding Recipient shall, subject to its rights of appeal, provide the Requested Information within five (5) business days of notification of PENNVEST's decision.

If the Funding Recipient fails to provide the Requested Information within the five (5) business days, the Funding Recipient shall indemnify and hold PENNVEST harmless from any damages, legal fees, penalties, detriment or harm, including statutory damages assessed against PENNVEST that PENNVEST may incur under the RTKL as a result of the Funding Recipient's failure to provide the records.

- f. The Funding Recipient shall be entitled to challenge or appeal any decision of PENNVEST, the Commonwealth Office of Open Records ("OOR") or any applicable court mandating the release of any record to the public which the Funding Recipient believes is not properly subject to disclosure under the RTKL; provided, however, that (i) the Funding Recipient shall be solely responsible for all costs related to such action; and (ii) the Funding Recipient shall indemnify and hold harmless PENNVEST from and against any and all legal fees, damages, penalties, detriment or harm that PENNVEST may incur under the RTKL as a result of such action, including any statutory damages assessed against PENNVEST, regardless of the outcome of such legal challenge. If the Funding Recipient does not appeal or is not successful after final appeal from a determination by the OOR or Pennsylvania courts, the Funding Recipient agrees to waive all rights or remedies that may be available to it as a result of PENNVEST's subsequent disclosure of Requested Information pursuant to such a decision by the OOR or Pennsylvania courts. PENNVEST will reimburse the

Funding Recipient for any costs associated with complying with this provision, but only to the extent allowed under the fee schedule established by the OOR, or as otherwise provided by the RTKL, if the fee schedule is inapplicable.

- g. Notwithstanding the foregoing, nothing set forth herein is intended, nor shall it be construed, to expand the Funding Recipient's obligations, or PENNVEST's authority, beyond those obligations and authority, respectively, as are set forth in the RTKL, and the sole remedy for any failure by the Funding Recipient to perform any obligation arising hereunder, or under the RTKL, shall be limited to those specifically provided for pursuant to the RTKL, and the failure of the Funding Recipient to comply with the provisions of this Section shall not constitute a default or Event of Default under the Funding Offer or the Funding Documents.

Nutrient/Environmental Credits. The nutrient credits, or any other marketable environmental credits, (if any) generated as a result of this subsidized funding, as well as any proceeds derived from the subsequent sale of the same, shall be the property of PENNVEST to the extent of the value of the subsidy associated with credit generating project components. Thus a grant, principal forgiveness offer or subsidized interest rate loan shall afford PENNVEST ownership in the credits and proceeds derived therefrom in an amount equal to the grant, principal forgiveness or the present value of the interest rate subsidy provided, to the extent such funds were used to finance credit generating project components, including a proportionate share of indirect costs. At the time of Settlement, once project costs are known based on bids in hand, a preliminary estimate of the value of the subsidy will be calculated and included in the Funding Agreement. Once final project costs are determined, the final value of the subsidy will be calculated by PENNVEST at the time of project closeout. PENNVEST shall have the right to collect nutrient credits, or proceeds of the sale of same, until the end of the useful life of the Project, which date will be included in the Funding Agreement. The end of the useful life of the Project will be calculated by PENNVEST in its sole discretion; however, PENNVEST will use industry standards in making its determination of the useful life of the Project. The Funding Recipient shall take all steps necessary to certify, verify or register any nutrient credits or other credits generated as a result of the Project Funding that are owned by PENNVEST and for which PENNVEST requests such steps to be taken on the part of the Funding Recipient. PENNVEST will reimburse reasonable costs (as determined by PENNVEST) incurred by the Funding Recipient for the actions undertaken to comply with this requirement, provided that there are sufficient revenues accruing to PENNVEST from its ownership interest in these nutrient or other credits. If such revenues are insufficient, PENNVEST, at its discretion, may use other revenues for this purpose. Notwithstanding the foregoing, PENNVEST hereby agrees that the Funding Recipient shall be entitled to retain no less than fifty percent (50%) of all nutrient credits generated in any water compliance year, or no less than fifty percent (50%) of the proceeds derived from the subsequent sale of the same. PENNVEST, in its sole discretion, has the right to claim up to fifty percent (50%) of the nutrient credits

generated by the Funding Recipient in any water compliance year, or up to fifty percent (50%) of the proceeds derived from the subsequent sale of the same. If the Funding Recipient desires to sell nutrient credits generated as a result of this Project Funding, the Funding Recipient shall obtain the PENNVEST's prior written consent, at which time PENNVEST will issue a determination as to whether it intends to redeem any nutrient credits, or proceeds of the sale of the same. If the Funding Recipient delivers nutrient credits to PENNVEST, the per-credit value of the nutrient credit shall be equal to the most recent price at which credits of that particular nutrient type and watershed type were sold in PENNVEST's nutrient credit auction, or if that information is not available, the most recent price at which the closest nutrient credit type and watershed type were sold in PENNVEST's nutrient credit auction, as determined by the Authority in its sole discretion.

CONSTRUCTION-RELATED TERMS & CONDITIONS

Construction Start. Funding Recipient agrees construction shall not be initiated prior to the Settlement Date unless Funding Recipient has obtained prior written authorization from PENNVEST.

Engineering. Funding Recipient agrees, if applicable, to retain a licensed engineer competent to design and/or implement the project and provide construction oversight. Funding Recipient agrees to provide PENNVEST with evidence of such engineer's agreement, including the engineer's total fee to complete the project, in a form satisfactory to PENNVEST, prior to the Settlement Date.

Continuing Education. Funding Recipient agrees to comply with the continuing education requirements set forth in the Pennsylvania Infrastructure Investment Authority Act, March 1, 1988, P.L.82, No. 16, as amended, 35 P.S. § 751.10(j).

Steel Products. Funding Recipient agrees to comply with the provisions of the Steel Products Procurement Act, March 3, 1978, P.L. 6, No. 3, 73 P.S. § 1881 *et seq.*, in every construction contract awarded for this project.

Real Estate. Prior to Settlement on this Funding Offer, Funding Recipient agrees to acquire all easements, rights-of-way, or other interests in real property needed for the construction of the project, and to have its attorney opine that all real property interests are free and clear of all liens and encumbrances other than those liens and encumbrances which will not adversely interfere with the project. If property interests are being acquired through condemnation and appeal rights have not been waived, PENNVEST will not conduct Settlement until the appeal period has expired and any preliminary objections have been satisfactorily resolved. If PENNVEST assumes an interest in real estate as part of its collateral securing the PENNVEST funding, Funding Recipient agrees to obtain an appraisal and survey of the real estate and title insurance on the real estate on terms and conditions satisfactory to PENNVEST.

Permits. Funding Recipient agrees to obtain all permits needed for the construction of the project prior to Settlement on this Funding Offer. PENNVEST will not conduct Settlement until all appeal periods for such permits have expired. If an appeal is filed, PENNVEST, in its sole discretion, may choose not to close on this Funding Offer until the appeal is satisfactorily resolved.

Compliance. Funding Recipient agrees to comply with all local, state and federal statutes, regulations, and permit requirements applicable to the construction of the project and the operation of the project or system of which the project is a component part.

Bid Requirement. Funding Recipient agrees that no specification for bids in connection with the project financed by this Funding Offer shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment and, if available, Funding Recipient shall include at least two brand names or trade names of comparable quality or utility followed by the words “or equal”. Notwithstanding the forgoing, the “or equal” requirement is categorically waived for supplies and equipment being purchased under the Commonwealth’s Cooperative Purchasing Program (COSTARS) or projects being constructed under the Guaranteed Energy Savings Act (GESA).

Construction Contracts. Funding Recipient agrees to enter into written contracts with parties constructing the project and to require insurance, performance bonds and payment bonds covering the work to be performed. Funding Recipient agrees to provide PENNVEST with evidence of such contracts, insurance and bonds, in a form satisfactory to PENNVEST, prior to the Settlement Date.

Storm Water Ordinance. Funding Recipient agrees, if applicable, to provide, in a form satisfactory to PENNVEST, evidence that a storm water ordinance has been adopted by and is in effect in each municipality in which the project is located in accordance with the Storm Water Management Act, 1978, Oct. 4, P.L. 864, No. 167, 32 P.S. § 680.1 *et seq.* and the Clean Streams Law, 1937, June 22, P.L. 1987, No. 394, 35 P.S. §691.1 *et seq.*, as amended.

Stormwater Engineering Certification. Funding Recipient agrees, if applicable, to provide PENNVEST with certification from a licensed engineer that the design, plans and specifications for the project shall be consistent with all storm water ordinances applicable to the project.

Performance Certification. On the one-year anniversary of completion of the project, Funding Recipient agrees, if applicable, to provide PENNVEST with certification from a licensed engineer or other designated professional that the design, construction,

maintenance and operation of the project system is consistent with the plans and specifications, as approved by PENNVEST and DEP.

Asset Depreciation. Funding Recipient agrees that it will depreciate the applicable assets purchased or constructed using proceeds of the loan, bond purchase, grant or principal forgiveness, as may be applicable, on a straight line basis pursuant to Public Law 98-369, Act of July 11, 1984, known as the Deficit Reduction Act of 1984.

Funding Additional Costs of Construction. Prior to Settlement on this Funding Offer, Funding Recipient agrees to provide evidence to PENNVEST of all other sources of funding which will be used to finance any portion of the construction costs for this project. Funding Recipient further acknowledges that this Funding Offer does not obligate PENNVEST to finance any increase in the cost of construction for this project.

Project Scope. Funding Recipient agrees not to change the scope of the project as presented to PENNVEST in its application, and any associated plans and specifications, without the express written consent of PENNVEST. If prior to Settlement a change of scope affects the project priority ranking previously assigned to this project to the extent that it would not have been approved by the PENNVEST Board of Directors, this Funding Offer, and any acceptance thereof, shall be null and void.

Cost-effectiveness Analysis. If prior to Settlement, PENNVEST determines that the nutrient discharge problem to be alleviated by the project being funded by this Funding Offer can be more cost-effectively achieved through the purchase of nutrient credits, then PENNVEST reserves the right, in its sole discretion, to modify the terms and conditions of this Funding Offer to accommodate the purchase of nutrient credits.

Land Acquisition Costs. To the extent this Project will be funded in whole or in part with monies obtained by PENNVEST from the Unconventional Gas Well Fee Act, February 14, 2012, P.L. 87, No. 13, 58 Pa.C.S. §2301 et seq. and Funding Recipient is an authorized organization as defined in 27 Pa.C.S. §6103, the Funding Recipient agrees not to use funds provided through this offer for land acquisition unless the Funding Recipient has obtained the written consent of the county and municipality in which the land is situated in accordance with 58 Pa.C.S. §2315(b)(2).

MANAGEMENT TERMS & CONDITIONS

Corporate Charter. Funding Recipient agrees to ensure that the term of its corporate charter extends through the amortization period associated with this Funding Offer.

Discrimination. Funding Recipient agrees not to discriminate on the basis of race, color, religious creed, ancestry, age, sex, natural origin, non-job related handicap or disability, or the use of a guide or support animal because of the blindness, deafness or physical handicap against any individual or independent contractor in activities funded by this

Funding Offer, and shall be in compliance with the Pennsylvania Human Relations Act, Oct. 27, 1955, P.L. 744, No. 222, as amended, 43 P.S. § 951 *et seq.*

Contractor Responsibility. Consistent with Commonwealth Management Directive 215.9, *Contractor Responsibility Program*, dated October 25, 2010, Funding Recipient certifies that neither Funding Recipient nor any contractor or supplier providing services on this project are under suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government. Funding Recipient further certifies that it has no delinquent tax liabilities or other Commonwealth obligations. If any suspension, debarment or delinquent obligation arises during the term of the agreement with PENNVEST for financial assistance, Funding Recipient agrees to notify PENNVEST within 15 days. Moreover, Funding Recipient agrees that failure to provide such notice shall constitute a default of the agreement. Funding Recipient agrees to be responsible for all necessary and reasonable costs incurred by the Office of Inspector General in investigating compliance with this provision when such investigation results in suspension or debarment of funding recipient or a contractor providing services on this project.

Contractor Integrity. Funding Recipient agrees to comply, and to require compliance by any contractors providing services on this project, with the contractor integrity provisions set forth in *Management Directive 215.8, Contractor Integrity Provisions for Commonwealth Contracts*, dated June 17, 2010.

Inspection/Audit. Funding Recipient agrees that PENNVEST, or its agents and representatives, shall have the right to inspect the project and audit the financial condition of Funding Recipient at any and all reasonable times. Funding Recipient further agrees to allow PENNVEST, or its agents and representatives, to examine and make copies of its drawing, plans, books, records, accounting data and other documents pertaining to the project or the financial condition of Funding Recipient.

Default. Funding Recipient agrees that PENNVEST, upon the occurrence of any of the following events, may declare Funding Recipient in default and exercise any available rights or remedies as PENNVEST deems necessary and appropriate:

- a. **Adverse Change.** An adverse change in conditions represented to PENNVEST at or prior to Settlement on this Funding Offer relating to: (1) the financial condition of the Funding Recipient or any guarantor, (2) the Funding Recipient's ownership interest in or physical condition of the real property required for the project, or (3) the nature/scope of the project;

- b. Bankruptcy.** The filing by or against the Funding Recipient or any guarantor of a petition in bankruptcy or insolvency, for reorganization or the appointment of a receiver or trustee; or the making by the Funding Recipient or any guarantor of an assignment for the benefit of creditors, or in the event of any similar act or ordinance; or
- c. Suspension/Debarment.** Failure to notify PENNVEST within 15 days of any suspension or debarment of the Funding Recipient, its contractors or suppliers by the Commonwealth of Pennsylvania, any other state or the federal government, or failure to notify PENNVEST within 15 days of any delinquent tax liability or other Commonwealth obligation of the Funding Recipient.

This provision shall apply from the date of the issuance of this Funding Offer through the Settlement Date.

Public Relations, Lobbying, Litigation. Funding Recipient agrees not to use funds provided through this offer for the purpose of public relations, outreach not directly related to project implementation, communications, lobbying or litigation costs.

ADDITIONAL TERMS & CONDITIONS FOR FEDERALLY-FUNDED PROJECTS

Recycled Materials. Funding Recipient agrees to comply with Section 6002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, and regulations set forth in 40 C.F.R. Part 247, which require that preference be given in procurement programs to the purchase of specific products containing recycled material.

Purchase of Real Property. Funding Recipient agrees not to use PENNVEST funds for the acquisition of real property or interests therein, unless the acquisition is integral to the project (*i.e.*, is needed for the purpose of locating eligible project components), and the purchase is from a willing seller (*i.e.*, not acquired through the use of eminent domain).

Land Costs. Funding Recipient agrees not to use PENNVEST funds for the acquisition of real property or interests therein, unless the acquisition is integral to the project (*i.e.*, is needed for the purpose of locating eligible project components).

Bonding. Funding Recipient agrees to require bid guarantees, performance bonds and payment bonds in accordance with 40 C.F.R. § 31.36(h) and shall provide PENNVEST with evidence of compliance prior to the Settlement Date.

Relocation/Real Property Acquisition. Funding Recipient agrees to comply with Section 305 of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, January 2, 1971, P.L. 91-646, Title III, § 305, as amended, 42 U.S.C. § 4655 and Funding Recipient may use funds provided through this Funding Offer for costs associated with such compliance provided such costs are otherwise eligible.

Debarment/Suspension. Funding Recipient agrees to comply with 2 C.F.R. Part 180, Subpart C and shall certify that no contractor or subcontractor retained to perform work on this project has been debarred or suspended by the United States Environmental Protection Agency. The Funding Recipient may access the federal suspension and debarment information at <http://www.sam.gov>.

Criminal Offenses. Funding Recipient agrees to certify that no person convicted of a criminal offense pursuant to Section 113(c) of the Clean Air Act, 42 U.S.C. § 7413(c), or Section 309(c) of the Clean Water Act, 33 U.S.C. § 1319(c), will provide any goods, materials or services on this project from the facility that gave rise to such offense if the facility is owned, leased or supervised by the convicted person.

Coordination. Funding Recipient agrees to coordinate the review of this project with area wide planning agencies or local governments in accordance with Executive Order 12372, *Intergovernmental review of Federal programs*, issued July 14, 1982.

Lobbying. Funding Recipient agrees to comply with restrictions on lobbying set forth in 31 U.S.C. § 1352 and 40 C.F.R. Part 34, which prohibit the use of federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action.

Drug-Free Workplace. Funding Recipient agrees to comply with the provisions in 40 C.F.R. Part 32, Subpart F, Drug-Free Workplace Requirements.

Single Audit. Funding Recipient agrees to comply with all applicable federal and state grant requirements including the Single Audit Act Amendments of 2016, P.L. 114-301, § 2(a)(2), 31 U.S.C. §§ 7501-7506; 2 CRF Part 200 as amended, and any other applicable law or regulation, and any amendment to such other applicable law or regulation that may be enacted or promulgated by the federal government.

Race, Color or National Origin Discrimination. Funding Recipient agrees not to discriminate on the basis of race, color or national origin in any activity funded by this Funding Offer in accordance with Title VI of the Civil Rights Act of 1964, July 2, 1964, P.L. 88-352, Title VI, 42 U.S.C. § 2000d.

Age Discrimination. Funding recipient agrees not to discriminate on the basis of age in any activity funded by this Funding Offer in accordance with the Age Discrimination Act, Nov, 28, 1975, P.L. 94-135, as amended, 42 U.S.C. § 6101 *et seq.*

Disability Discrimination. Funding recipient agrees not to discriminate on the basis of disability in any activity funded by this Funding Offer in accordance with the Section 504

of the Rehabilitation Act of 1973, Sept. 26, 1973, P.L. 93-112, Title V, § 504, 29 U.S.C. § 794.

Additional Disability Discrimination Requirement. Funding recipient agrees not to discriminate on the basis of disability in any activity funded by this Funding Offer in accordance with the Americans With Disabilities Act of 1990, P.L. 101-336, 42 U.S.C. § 12101 *et seq.*, as amended, and federal regulations set forth at 28 C.F.R. Part 35.

Sex Discrimination. Funding Recipient agrees not to discriminate on the basis of sex in any activity funded by this Funding Offer in accordance with Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Oct. 18, 1972, P.L. 92-500, § 13, and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, as amended.

Environmental Justice. In accordance with Executive Order 12898, dated February 11, 1994, Funding Recipient agrees not to fund any action with this Funding Offer that will have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

Equal Employment Opportunity. Funding Recipient agrees to provide an equal opportunity for employment in all contracts and subcontracts funded by this Funding Offer in accordance with Executive Order 11246, dated September 24, 1965, as amended, and as supplemented in Department of Labor regulations set forth at 41 C.F.R. Part 60.

Federal Participation. Funding Recipient agrees to inform all parties that this project is being supported in part by Federal funding when issuing statements, press releases, requests for proposals, bid solicitations and other documents related to the project.

CFDA Number. This Project will be funded in whole or in part with federal monies obtained by PENNVEST from the U.S. Environmental Protection Agency, awarded by PENNVEST to the Funding Recipient through the Drinking Water State Revolving Loan Fund and carrying a Catalog of Federal Domestic Assistance (CFDA) number of 66.468.

CFDA Number. This Project will be funded in whole or in part with federal monies obtained by PENNVEST from the U.S. Environmental Protection Agency, awarded by PENNVEST to the Funding Recipient through the Clean Water State Revolving Loan Fund and carrying a Catalog of Federal Domestic Assistance (CFDA) number of 66.458.

Prohibition Statement. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

Davis-Bacon Act Wage Rates. As used in this term, subrecipient shall mean the Funding Recipient and its subcontractors or anyone hired by its subcontractors. The State, State recipient and recipient shall mean PENNVEST and/or the Commonwealth of Pennsylvania, and EPA shall mean the United States Environmental Protection Agency.

Requirements For Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance through the state revolving funds with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>.

a. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Construction projects funded under the Drinking Water State Revolving Fund (DWSRF) or Clean Water State Revolving Fund (CWSRF) are subject to DB. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the State recipient before authorizing work on that site.

b. Obtaining Wage Determinations.

1. Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
 - A. While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

- B. If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
2. If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
 3. Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
 4. As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

c. Contract and Subcontract provisions.

The subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the Clean Water State Revolving Fund (CWSRF) financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1 or FY 2015 Water Resource Reform and Development Act, the following clauses:

1. Minimum wages.

- A. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.D. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.B. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

- B. (1) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional

classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (b) The classification is utilized in the area by the construction industry; and
 - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.
- (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the State award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.B.(2) or (3) of this section, shall

be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- C. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - D. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
2. Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
 3. Payrolls and basic records.
 - A. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the

types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- B. (1) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide

addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(a) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(b) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(c) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.B.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

C. The contractor or subcontractor shall make the records required under paragraph 3.A. of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be

necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees.

A. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws

approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- B. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- C. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
 7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
 8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
 9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.
 10. Certification of eligibility.
 - A. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - B. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - C. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- d. Contract Provision for Contracts in Excess of \$100,000.**
1. Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs 1.A., B., C., and D. of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item

c., above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1.A. of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1.A. of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1.A. of this section.
- C. Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph c.2. of this section.
- D. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1.A. through D. of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier

subcontractor with the clauses set forth in paragraphs 1.A. through D. of this section.

2. In addition to the clauses contained in Item c., above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

e. Compliance Verification

1. The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
2. The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
3. The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the

contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

4. The subrecipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Items e.2. and 3. above.
5. Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

Davis-Bacon Act Wage Rates. As used in this term, subrecipient shall mean the Funding Recipient and its subcontractors or anyone hired by its subcontractors. The State, State recipient and recipient shall mean PENNVEST and/or the Commonwealth of Pennsylvania, and EPA shall mean the United States Environmental Protection Agency.

Requirements For Subrecipients That Are Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance through the state revolving funds with respect to State recipients and subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

a. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Construction projects funded under the Drinking Water State Revolving Fund (DWSRF) or Clean Water State Revolving Fund (CWSRF) are subject to DB. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the State recipient before authorizing work on that site.

b. Obtaining Wage Determinations.

1. Subrecipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to RA-DavisBacon@pa.gov for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)
2. Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
 - A. While the solicitation remains open, the subrecipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
 - B. If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the

solicitation to ensure that wage determinations contained in the solicitation remain current.

3. If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
4. Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
5. As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

c. Contract and Subcontract provisions.

The subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the Clean Water State Revolving Fund (CWSRF) or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1 or the FY 2015 Water Resource Reform and Development Act, the following clauses:

1. Minimum wages.
 - A. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of

wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.D. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.B. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

- B. (1) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (b) The classification is utilized in the area by the construction industry; and

- (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.
 - (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the State award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.B.(2) or (3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- C. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the

wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- D. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
2. Withholding. The subrecipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. Payrolls and basic records.
 - A. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- B. (1) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (a) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (b) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (c) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.B.(2) of this section.
- (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- C. The contractor or subcontractor shall make the records required under paragraph 3.A. of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees.

A. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- B. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- C. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The

prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.
10. Certification of eligibility.
 - A. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - B. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - C. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

d. Contract Provision for Contracts in Excess of \$100,000.

1. Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs 1.A., B., C., and D. of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item c., above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1.A. of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1.A. of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1.A. of this section.
- C. Withholding for unpaid wages and liquidated damages. The subrecipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 1.B. of this section.
- D. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1.A. through D. of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1.A. through D. of this section.

2. In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

e. Compliance Verification

1. The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
2. The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
3. The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to

the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

4. The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Items e.2. and 3. above.
5. Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

Reporting Requirements. The Funding Recipient agrees to comply with all reporting requirements and requests for information or materials related to this Project which may be required by PENNVEST in order to comply with its reporting requirements under the Federal Funding Accountability and Transparency Act.

American Iron and Steel. If the plans and specifications for this project were reviewed and approved by DEP after January 17, 2014, the Funding Recipient agrees to comply with the requirements for the purchase of American Iron and Steel (“AIS”) in accordance with the provisions of the Federal Consolidated Appropriations Act, January 17, 2014, P.L. 113, No. 76, §436, in every construction contract awarded for this project.

a. Definitions. As used in this term and condition—

1. “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
3. *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

b. Domestic preference.

1. This term and condition implements the Water Resources Reform and Development Act of 2014 (WRRDA) by requiring that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system or treatment work are produced in the United States except as provided in paragraph b.2. and b.3. of this section and condition.
2. This requirement does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to January 17, 2014.
3. This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that:—
 - A. applying the requirement would be inconsistent with the public interest;
 - B. iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - C. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

c. Request for a Waiver under b.3.

1. Any Funding Recipient request to use foreign iron or steel products in accordance with paragraph b.3. of this section shall include adequate information for Federal Government evaluation of the request, including—
 - A. A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - B. Unit of measure;
 - C. Quantity;
 - D. Cost;
 - E. Time of delivery or availability;
 - F. Location of the project;

G. Name and address of the proposed supplier; and

H. A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph b.3. of this section.

2. If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.
 3. Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with the FY 2015 Water Resource Reform and Development Act.
- d. This term and condition shall be applied in a manner consistent with United States obligations under international agreements.

Architectural and Engineering Services. The Funding Recipient agrees to comply with the all competitive bidding requirements for the procurement of architectural and engineering services as identified in 40 U.S.C. Section 1101 et. seq, for all architectural and engineering contracts executed, amended or renewed on or after October 1, 2014.

Brownfields Projects. If the project receiving PENNVEST funding is being performed on a Brownfields site, then Funding Recipient shall certify and provide evidence satisfactory to PENNVEST that the purpose of the brownfields project is to encourage the cleanup and reuse of contaminated property pursuant to Pennsylvania's Land Recycling and Environmental Remediation Standards Act ("Act 2"), 35 P.S. § 6026.101 et seq., as administered under the Pennsylvania Department of Environmental Protection ("DEP") Land Recycling Program. Such evidence shall include, but not be limited to, DEP review and approval of the project under Act 2 standards and DEP review and approval of the means and methods of remediation at the time of application, DEP review and approval of any changes in the means and methods of remediation at the time of Settlement and DEP review of the completed project and release of the Funding Recipient from liability at the time of project completion. For purposes of this Funding Offer, the term construction includes remediation work on Brownfields sites.

Disadvantaged Business Enterprise Solicitation Requirements. Funding Recipient has taken and will continue to take all necessary affirmative steps to solicit, and document its solicitation efforts of, minority business enterprises and women's business enterprises, individually and collectively referred to as Disadvantaged Business Enterprises (DBE), in accordance with the Six Good Faith Efforts, as more particularly described on DEP's Disadvantaged Business Enterprises Resources Website found at <https://www.dep.pa.gov/Business/Water/CleanWater/InfrastructureFinance/Pages/DisadvantagedBusiness.aspx>.

Nonpoint Source and Estuary Protection Projects. If the project receiving PENNVEST funding is a nonpoint source or estuary protection project, then Funding Recipient shall construct or maintain the nonpoint source or estuary protection project contemplated herein, in order to comply with 25 Pa. Code §965.3. In the event the Funding Recipient maintains the project, or employs an agent to maintain the project on its behalf, such maintenance shall be for the useful life of the equipment or asset, or the life of the loan (if applicable), whichever is greater.

Fiscal Sustainability Plan. If the Funding Recipient is issuing to PENNVEST a debt obligation in the form of a note or bond, or the Funding Recipient has received a principal forgiveness loan, the Funding Recipient agrees to comply with all requirements for the development, implementation and certification of a fiscal sustainability plan pursuant to Section 603(d)(1)(E) of the Federal Water Pollution Control Act, January 4, 2011, P.L. 111-378, 33 U.S.C. §1383, as amended.

Project Accounts. Funding Recipient shall comply with generally accepted government accounting standards, as it relates to the maintenance of project accounts, including standards relating to the reporting of infrastructure assets pursuant to Section 602(b)(9) of the Federal Water Pollution Control Act, January 4, 2011, P.L. 111-378, 33 U.S.C. §1382, as amended.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

As required by 2 CFR 200.216, the Funding Recipient, its subcontractors or anyone hired by its subcontractors, are prohibited from obligating or expending any portion of the PENNVEST funding to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Funding Recipient, its subcontractors or anyone hired by its subcontractors, may not use any portion of the PENNVEST funding to purchase:

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

a. Obligating or expending any portion of the PENNVEST funding for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or
- (3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list, which can be found at: <https://sam.gov/SAM/>.

Procurement. Funding Recipient agrees to comply with all applicable federal grant procurement requirements, including, but not limited to, the requirements set forth in 2 C.F.R. §§ 200.318 – 200.327, as amended, and any other applicable statute, regulation, guidance, directive, policy or procedure, and any amendment thereto, that may be approved, adopted, enacted or promulgated by the federal government.

Additional Requirements. Funding Recipient agrees to comply with all applicable federal grant requirements, including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, also referred to as the Uniform Guidance for Grants, set forth in 2 C.F.R. Part 200, as amended, and any other applicable statute, regulation, guidance, directive, policy or procedure, and any amendment thereto, that may be approved, adopted, enacted or promulgated by the federal government.

Additional Requirements; Infrastructure Investment and Jobs Act. Funding Recipient agrees to comply with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act (“IIJA”), Public Law No. 117-58, if applicable), as may be amended, and any other applicable statute, regulation, guidance, directive, policy or procedure, and any amendment thereto, that may be approved, adopted, enacted or promulgated by the federal government.

Build America, Buy America. Funding Recipient agrees to comply with the following construction requirements related to the project: all of the iron and steel, manufactured products, and construction materials used in the project are to be produced in the United States (“Build America, Buy America Requirements”) unless (i) the Funding Recipient has requested and obtained a waiver pertaining to the project from the federal agency contributing the greatest amount of federal funding to the project or the project is otherwise covered by a general applicability waiver; or (ii) all federal agencies providing funding for the project have otherwise advised the Funding Recipient in writing that the Build America, Buy America Requirements are not applicable to the project.

Funding Recipient further agrees to comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and/or PENNVEST), such as performance indicators of program deliverables, information on costs and project progress. The Funding Recipient understands that (i) each contract and subcontract related to the project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and the Funding Agreement may result in a default thereunder that results in a repayment of the project funding in advance of the maturity of the PENNVEST Debt Obligation, termination and/or repayment of any non-repayment funds or other types of financial assistance, and/or other remedial actions.

In addition, Funding Recipient shall ensure the following clause is included in all construction contracts associated with the project:

The Contractor acknowledges to and for the benefit of the _____ (“Owner”) and the _____ (the “Funding Authority”) that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as “Build America, Buy America;” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested

by the Owner or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary, for purposes of this paragraph only, and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.

Infrastructure Investment and Jobs Act Signage Requirements.

a. Signage Requirements

1. Building A Better America Emblem: The Funding Recipient shall ensure that a sign is placed at construction sites supported under this award displaying the official Building A Better America emblem and identifying the project as a "project funded by President Biden's Bipartisan Infrastructure Law." Construction is defined at 40 CFR 33.103 as "erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply." The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The Funding Recipient shall ensure compliance with the guidelines and design specifications for using the official Building A Better America emblem and corresponding logomark available at:

<https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>

2. EPA and PENNVEST Logos: The Funding Recipient shall ensure that signage displays the EPA and PENNVEST logos along with the official Building A Better America emblem. The EPA and PENNVEST logos must not be displayed in a manner that implies that EPA or PENNVEST themselves are conducting the project. Instead, the EPA and PENNVEST logos must be

accompanied with a statement indicating that the Funding Recipient received financial assistance from EPA and PENNVEST for the project.

The PENNVEST logo is available at:

<https://www.pennvest.pa.gov/Information/Funding-Programs/Pages/IIJA.aspx>.

The Funding Recipient shall ensure compliance with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the Funding Recipient should send a request directly to OPA and include the EPA Project Officer in the communication. Instructions for contacting OPA is available on the “Using the EPA Seal and Logo Page” available at: <https://www.epa.gov/aboutepa/using-epa-seal-and-logo>.

3. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, Funding Recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, Funding Recipients are encouraged to translate the language on signs (excluding the official Building A Better America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

ADDITIONAL TERMS & CONDITIONS FOR ADVANCE FUNDING OF DESIGN & ENGINEERING COSTS

Initiation of Construction. Funding recipient agrees to initiate construction of the proposed project no later than five years from the Settlement Date. Funding recipient agrees to provide PENNVEST with a schedule for construction of the proposed project prior to the Settlement Date.

Funding Subsequent Construction. Funding Recipient acknowledges that this Funding Offer does not have any effect on the priority or ranking of any subsequent application submitted by Funding Recipient for funding of construction of this project. Funding Recipient further acknowledges that this Funding Offer does not obligate PENNVEST to finance any portion of the future construction costs for this project.

Consultation. Funding Recipient agrees to meet with PENNVEST and DEP at intervals recommended by PENNVEST and DEP during the development of this project to consider the most cost-effective and environmentally sound options.

Federal Requirements. Funding Recipient agrees to design its proposed project to conform to all applicable federal requirements if the Funding Recipient intends to apply for additional funding from PENNVEST to construct the project.

Engineering. Funding Recipient agrees to retain a licensed engineer to design the project and Funding Recipient agrees to provide PENNVEST with evidence of such engineer's agreement, including the engineer's total fee to complete the project, in a form satisfactory to PENNVEST, prior to the Settlement Date.

Steel Products. Funding Recipient understands it will need to comply with the provisions of the Steel Products Procurement Act, March 3, 1978, P.L. 6, No. 3, 73 P.S. § 1881 et seq., in every construction contract awarded for the project.

Compliance. Funding Recipient agrees to comply with all local, state and federal statutes, regulations, and permit requirements applicable to the design of the project.

Bid Requirement. Funding Recipient understands that in order to remain eligible for construction funding from PENNVEST that its bid specifications must not be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment and, if available, Funding Recipient shall include at least two brand names or trade names of comparable quality or utility followed by the words "or equal".

Stormwater Ordinance. If applicable, the Funding Recipient agrees to provide, in a form satisfactory to PENNVEST, evidence that a storm water ordinance has been adopted by and is in effect in each municipality in which the proposed project is located in accordance with the Storm Water Management Act, 1978, Oct. 4, P.L. 864, No. 167, 32 P.S. § 680.1 et seq. and the Clean Streams Law, 1937, June 22, P.L. 1987, No. 394, 35 P.S. §691.1 *et seq.*, as amended.

Stormwater Engineering Certification. If applicable, the Funding Recipient agrees to provide PENNVEST with certification from a licensed engineer that the design, plans and specifications for the project shall be consistent with all storm water ordinances applicable to the project.

Project Scope. Funding Recipient agrees not to change the scope of the proposed project as presented to PENNVEST in its application, and any associated plans and specifications, without the express written consent of PENNVEST. If prior to settlement a change of scope affects the project priority ranking previously assigned to this project

to the extent that it would not have been approved by the PENNVEST Board of Directors, this Funding Offer, and any acceptance thereof, shall be null and void.

Continuing Education. Funding Recipient understands that if it receives a funding offer for the construction of this project from PENNVEST that it will need to comply with the continuing education requirements set forth in the Pennsylvania Infrastructure Investment Authority Act, March 1, 1988, P.L.82, No. 16, as amended, 35 P.S. § 751.10(j).

Disadvantaged Business Enterprise Solicitation Requirements. Funding Recipient understands that if it receives a funding offer for the construction of this project from PENNVEST that it may be required to take all necessary affirmative steps to solicit, and document its solicitation efforts of, minority business enterprises and women's business enterprises, individually and collectively referred to as Disadvantaged Business Enterprises (DBE), in accordance with the Six Good Faith Efforts, as more particularly described on DEP's Disadvantaged Business Enterprises Resources Website found at <https://www.dep.pa.gov/Business/Water/CleanWater/InfrastructureFinance/Pages/DisadvantagedBusiness.aspx>.

Nonpoint Source and Estuary Protection Projects. The Funding Recipient understands that if it receives a funding offer for the construction of this project from PENNVEST and the project receiving PENNVEST funding is a nonpoint source or estuary protection project, then Funding Recipient shall construct or maintain the nonpoint source or estuary protection project contemplated therein, in order to comply with 25 Pa. Code §965.3. In the event the Funding Recipient maintains the project, or employs an agent to maintain the project on its behalf, such maintenance shall be for the useful life of the equipment or asset, or the life of the loan (if applicable), whichever is greater.

Permits. Funding Recipient understands that it will need to obtain all permits needed for the construction of the project prior to settlement on any funding offer for the construction of this project from PENNVEST. PENNVEST will not conduct settlement on such funding offer until all appeal periods for such permits have expired. If an appeal is filed, PENNVEST, in its sole discretion, may choose not to close on the funding offer for the construction of this project until the appeal is satisfactorily resolved.

Real Estate. Funding Recipient understands that prior to settlement on a funding offer for the construction of this project from PENNVEST that it must acquire all easements, rights-of-way, or other interests in real property needed for the construction of the project, and an attorney must opine on behalf of the Funding Recipient that all real property interests are free and clear of all liens and encumbrances other than those liens and encumbrances which will not adversely interfere with the project. If property interests are being acquired through condemnation and appeal rights have not been waived, PENNVEST will not conduct settlement on a future funding offer for the construction of this project until the appeal period has expired and any preliminary

objections have been satisfactorily resolved. If PENNVEST assumes an interest in real estate as part of its collateral securing the PENNVEST funding for the construction of this project, the Funding Recipient must obtain an appraisal and survey of the real estate and title insurance on the real estate on terms and conditions satisfactory to PENNVEST.

Construction Contracts. If the Funding Recipient receives funding for the construction of this project from PENNVEST, Funding Recipient understands that it will need to enter into written contracts with parties constructing the project and require insurance, performance bonds and payment bonds covering the work to be performed. Funding Recipient will also be required to provide PENNVEST with evidence of such contracts, insurance and bonds, in a form satisfactory to PENNVEST, prior to settlement on any future funding offer relating to construction of this project.

Asset Depreciation. Funding Recipient understands that if it receives a funding offer for the construction of this project from PENNVEST, that Funding Recipient will be required to depreciate the applicable assets purchased or constructed using proceeds of any loan, bond purchase, grant or principal forgiveness, as may be applicable, on a straight line basis pursuant to Public Law 98-369, Act of July 11, 1984, known as the Deficit Reduction Act of 1984.

Cost-effectiveness Analysis. The Funding Recipient understands that if it receives a funding offer for the construction of this project from PENNVEST and prior to settlement on such funding offer PENNVEST determines that the nutrient discharge problem to be alleviated by the project being funded can be more cost-effectively achieved through the purchase of nutrient credits, then PENNVEST reserves the right, in its sole discretion, to modify the terms and conditions of such funding offer to accommodate the purchase of nutrient credits.

Brownfields Projects. Funding Recipient understands that if it receives a funding offer for the construction of this project from PENNVEST and the project being performed is on a Brownfields site, then Funding Recipient shall be required to certify and provide evidence satisfactory to PENNVEST that the purpose of the brownfields project is to encourage the cleanup and reuse of contaminated property pursuant to Pennsylvania's Land Recycling and Environmental Remediation Standards Act ("Act 2"), 35 P.S. § 6026.101 et seq., as administered under the Pennsylvania Department of Environmental Protection ("DEP") Land Recycling Program. Such evidence shall include, but not be limited to, DEP review and approval of the project under Act 2 standards and DEP review and approval of the means and methods of remediation at the time of application, DEP review and approval of any changes in the means and methods of remediation at the time of settlement on the funding offer for construction of the project and DEP review of the completed project and release of the Funding Recipient from liability at the time of project completion.