

PAY-FOR-SUCCESS CONTRACT

THIS PAY-FOR-SUCCESS CONTRACT (“Contract”) (CWIP-2025-XXX) is made this _____ day of _____, 2024, (“Effective Date”) by and between the Susquehanna River Basin Commission (the “Commission”), 4423 North Front Street, Harrisburg, Pennsylvania, a Federal-State interstate water management agency, and [Awardee Name] (“Contractor”), [Awardee Address].

RECITALS

WHEREAS, to address the unique challenges associated with nutrient pollution loads behind the Conowingo Dam, the States of Maryland, Delaware, New York, West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia developed the Conowingo Watershed Implementation Plan (“CWIP”), which is separate from the Bay TMDL jurisdictional Watershed Implementation Plans; and

WHEREAS, pursuant to the July 28, 2023, Memorandum of Understanding Between the Maryland Department of the Environment (“MDE”) and the Susquehanna River Basin Commission the MDE has provided a maximum funding amount to the Commission to develop and administer a program to enter into Pay-for-Success Contracts to help achieve Maryland’s nutrient loading goals for the Chesapeake Bay under the CWIP and authorized the Commission to purchase verified nutrient reductions from environmental practices throughout the Susquehanna River Watershed; and

WHEREAS, to provide for such nutrient removal, the Commission issued a Request for Proposals #2023-002 (the “RFP”) to implement strategies to achieve verified nutrient reductions. In response to the RFP, Contractor submitted its Application for funding, including its proposal of strategies to reduce nutrients and a verification procedure described therein; and

WHEREAS, the Commission has approved an award of funds to the Contractor and authorized the Award Amount (as defined herein) to purchase nitrogen load reductions resulting from the projects and/or environmental practices set forth in the Contractor’s Application, as described in Exhibit A, attached hereto and entitled “Project Description and Information,” (hereinafter “Exhibit A”).

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

ARTICLE I

DEFINITIONS

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

“Application” means the application submitted to the Commission by the Contractor in response to the Request for Proposals, together with any amendments thereto.

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

“Award Amount” means the aggregate amounts, not to exceed the award listed in Exhibit B, which is advanced from time to time by or on behalf of the Commission to the Contractor pursuant to the terms and provisions of this Contract.

“Award Commitment” means that amount not to exceed the Award Amount which the Commission is obligated to disburse to the Contractor pursuant to the terms and provisions of this Contract and subject to the satisfaction of the conditions set forth in this Contract, as such amount may be adjusted as provided in this Contract.

“Commission” means the Susquehanna River Basin Commission, and its successor and assigns.

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

“Contract Documents” means, collectively, this Contract and all of the other documentation required by the Commission on or prior to the Contract closing date as a condition to its obligations to fund the Award Amount.

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

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

“Executive Director” means the Executive Director of the Commission.

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

“Expiration Date” means the date designated as such on Exhibit A.

“Governmental Authority” means the United States, the States of Maryland, New York or the Commonwealth of Pennsylvania, or any of their political subdivisions, agencies, commissions, boards, bureaus or instrumentalities, including any local authority having jurisdiction over the Project, and the Commission.

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

“MDE” means the Maryland Department of the Environment.

“Pay-for-Success Contract” means this agreement, including the Exhibits attached hereto and any amendments hereto.

“Project” means, collectively, the projects, facilities, programs and/or environmental practices described in the Project Description/Scope of Work contained in Exhibit A.

“Requirement” means any law, ordinance, code, order, rule or regulation of a Governmental Authority, including, without limitation, a condition set forth in any permits applicable to the Project or its operations.

“Verification” means the process through which the Commission ensures practices, treatments, and technologies resulting in reductions of nutrient loads are implemented and operating correctly.

“Verified Nutrient Reductions” means reductions in nitrogen and phosphorus loading, which is modeled or directly measured as a single, quantifiable, and certified unit of improvement to the environment.

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

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

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

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

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

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

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

(g) any reference to the governing body of the Contractor shall be to the legislative body, board of directors, corporate officers, or other persons (as the case may be) with the authority to act on behalf of the Contractor.

ARTICLE II

CONTRACTOR REPRESENTATIONS AND RESPONSIBILITIES

Section 2.01. Representations of Contractor. The Contractor represents for the benefit of the Commission as follows:

(a) Organization and Authority. The Contractor has all requisite power and authority to own, or otherwise have legal access to, and operate the Project, as described in Exhibit A as the Project Description/Scope of Work, to enter into this Contract, to execute and deliver all necessary documents, obtain and maintain all necessary licenses and permits required to construct and operate the Project, and to carry out and consummate all transactions contemplated by this Contract.

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

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

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

(i) are within its powers and have been duly authorized by all necessary action on the part of the governing body of the Contractor; and

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

(iii) the Contractor has all necessary and eligible capital and financing to begin work on the Project upon the issuance of the Notice to Proceed by the Commission.

(e) No Defaults. No event has occurred and no condition exists that, upon execution of this Contract or receipt of the Award Amount, would constitute a Default hereunder.

The Contractor is not in violation, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Contractor or the ability of the Contractor to perform its obligations under this Contract, and that have not been disclosed in writing to the Commission in the Application or otherwise.

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

(g) Project Description/Scope of Work. The Contractor has applied to the Commission for this Award and the Application, as well as any requirements in the RFP, are incorporated into this Contract by reference. The full description of the Project is provided in Exhibit A as the Project Description/Scope of Work. The Project Description/Scope of Work cannot be amended without the express, written consent of the Commission, through its Executive Director.

(h) Use of Proceeds. The Commission will disburse to Contractor proceeds of the Award Amount for the reduction of nutrients in accordance with the schedule set forth in Exhibit B, entitled “Annual Reductions and Award Payment Schedule,” attached hereto and made a part hereof (hereinafter “Exhibit B”). Before each and every advance of the proceeds of the Award Amount to the Contractor, the Contractor shall submit to the Commission evidence, satisfactory to the Commission, of the verified and reported nutrient reductions meeting the requirements of Section 3.03 of this Contract.

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

Section 2.02. Particular Covenants of the Contractor.

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

(b) Maintenance of Project; Insurance. The Contractor, at its own expense, shall, to the extent applicable to the Project, (i) keep, operate and maintain, or cause to be kept, operated and maintained, the Project in good working order, condition and repair; and (ii) observe and comply with, or cause to be observed and complied with, all Requirements, including all

necessary government permits and approvals. The Contractor shall, to the extent applicable to the Project, maintain or cause to be maintained at its sole cost and expense insurance with respect to the Project, both during its construction and thereafter, against such casualties and contingencies and in such amounts as are customarily maintained by entities similar to Contractor similarly situated and as are consistent with sound maintenance and operations practice by entities similar to Contractor with respect to facilities, programs and/or practices similar to the Project. Proof of this insurance must be provided to the Commission and the Commission must be added as an additional insured on any general liability policy.

(c) Sale or Disposition of Project. The Contractor reasonably expects that no portion of the Project will be sold, transferred or otherwise disposed of by Contractor prior to the Expiration Date for this Contract. In the event that the Contractor shall sell or otherwise dispose of any portion of the Project prior to the Expiration Date of this Contract, the Contractor shall obtain the prior written consent of the Commission in order to transfer the obligations of this Contract to the new owner per Section 3.06.

(d) Inspections. The Contractor or any other person representing the Contractor shall allow authorized employees or agents of the Commission or the MDE, without advance notice, at any reasonable time (including, without limitation, any time during which the Project is under construction or in operation) and upon presentation of appropriate credentials, and without delay, to have access to and inspect all areas where the Project is being constructed, operated and/or maintained, or otherwise exercise all investigative powers authorized under 18 CFR § 808.12.

(e) Audit. The Contractor shall give the Commission, MDE and its audit contractors access to, and the right to examine, inspect and make copies of, all records and documents that are related to the production of verified nutrient reductions resulting from this Contract and shall supply such reports and information as the Commission may reasonably require in connection therewith. The Contractor shall permit access to facilities, personnel, and other individuals and information that the Commission or MDE may determine is necessary. The Contractor shall comply with any compliance review conducted by the Commission or MDE. The ability to audit and inspect these records will survive the Termination Date of this Contract.

(f) Indemnification. With regard to any claim, protest, or litigation arising from or related to the Contractor's performance in connection with or incidental to this Contract, Contractor agrees to defend, indemnify, protect, and hold the Commission, the State of Maryland, and the MDE and their agents, officers, Board members, and employees harmless from and against any and all claims against the Contractor or its subcontractors, asserted or established liability for damages or injuries to any person or property, including injury to the Contractor or its employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of the Contractor and its agents, officers, or employees, in performing the work or services herein, and all expenses of investigating and defending against same, including attorney fees and costs; provided, however, that the Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the Commission, its Board of Commissioners, agents, officers, or employees.

Further, the Contractor shall be aware of and assume full responsibility for compliance

with all Federal, State and local laws, ordinances and regulations, including but not limited to those governing, relating or referring to employment of labor, hours of work, workers' compensation, unemployment compensation, safety and health, environmental protection, working conditions, payment of wages or benefits, deductions for taxes, etc. Contractor agrees, to the fullest extent permitted by law, to indemnify, defend and hold the Commission, the State of Maryland and the MDE, harmless from and against any and all damages and claims arising or resulting from, relating to, or in connection with, the failure to comply with said laws, ordinances and regulations for work performed under this Contract.

(g) Non-discrimination. The Contractor agrees: (1) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (2) to include a provision similar to that contained in (g)(1), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (3) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

At such times as the Commission requests, the Contractor shall submit to the Commission information relating to the Contractor's operations, with regard to the categories outlined in (g)(1), above, on a form to be prescribed by the Commission.

(h) Compliance with Requirements. The Contractor acknowledges that the Award Amount and this Contract are subject to, and the Contractor agrees to comply with, all Requirements applicable to the Project and the operation and/or administration thereof, including (without limiting the generality of the foregoing) all applicable State and federal statutes and such rules, regulations, orders and procedural guidelines as may be promulgated from time to time by any applicable government authority.

Section 2.03 Contractor Requirements; Notice to Proceed; Project Utilization

(a) Requirements for Pay-for-Success Contract Execution. On or before the execution of this Contract, the Contractor will cause to be delivered to the Commission each of the following items:

(i) fully executed counterparts of this Contract;

(ii) correct, true and complete copies of the ordinance, resolution or other official action of the governing body of the Contractor, statute or other legal authority authorizing the execution and delivery of this Contract, all as certified by an appropriate officer of the Contractor;

(iii) a certificate, dated as of the Effective Date, signed by an Authorized Officer of the Contractor and in form satisfactory to the Commission, confirming the Contractor's obligations under and representations in this Contract as of such date; and

(iv) such other certificates, documents, opinions and information as the Commission may require.

(b) Notice to Proceed. After the Contract is fully executed and pursuant to the MOU between the Commission and the MDE, the Commission will present the fully executed Contract and an invoice to the MDE for the full Award Amount for this Contract. Once the MDE distributes the total funds to the Commission to pay for the verifiable environmental outcome(s) associated with this Contract, the Commission will issue a Notice to Proceed to the Contractor authorizing work on the Project to begin. No work or activity may be undertaken under this Contract until the Notice to Proceed is issued and the Contractor will be proceeding at their own risk if actions are taken prior to receiving the Notice to Proceed.

(c) Project Utilization. The Contractor agrees that any nutrient-based environmental outcomes are restricted to be used only for, and shall only be attributed to, Maryland's commitment under the CWIP as outlined in the MOU between the Commission and the MDE.

(d) Small Diverse Business Requirements. It is the policy of the Commission that Small Diverse Business (SDBs), including Minority-Owned and Women-Owned Small Business Enterprises, shall have the maximum feasible opportunity to participate in the performance of this Contract. The Contractor is required to make good-faith efforts to utilize SDBs through any procurement or subcontractors used in the construction or operation of the Project. Any SDBs used must be certified by the Commonwealth of Pennsylvania (or the equivalent if the Project is located in New York or Maryland) and follow all applicable state rules and requirements.

ARTICLE III

AVAILABILITY AND DISBURSEMENT OF AWARD AMOUNT TO CONTRACTOR; GENERAL PAY-FOR-SUCCESS CONTRACTS

Section 3.01. The Award Amount. Subject to the provisions of Sections 3.02, 3.03 and 3.05 hereof, the Commission hereby agrees to make payments in the amounts specified in this Contract to the Contractor in an aggregate amount not to exceed the maximum amount of the Award Amount set forth in Exhibit B attached hereto.

Section 3.02. Availability of Funds. Pursuant to Section 2.03(b), the Commission will issue a Notice to Proceed when it has received the funding specified in this Contract from MDE. The Commission will hold the funding in a designated account for the benefit of this Project to maintain these funds in an amount sufficient to make payments to the Contractor in accordance with the "Nutrient Reduction Payment Schedule" included in Exhibit B attached hereto.

Section 3.03. Disbursements; Conditions Precedent to Contract Closing.

(a) Disbursements. The Commission shall disburse funds to Contractor in accordance with the "Nutrient Reduction Payment Schedule" in the maximum amounts set forth in Exhibit B for payment of verified and reported nutrient reductions submitted to the applicable state jurisdiction, within 30 days after receipt from Contractor of an invoice, the required certifications and BMP verification and supporting documentation for the verified nutrient reductions achieved during the relevant Commission Fiscal Year. Each such invoice shall include certifications that state: (i) the amount of the verified and reported nutrient reduction achieved and

submitted to the applicable state jurisdiction (supported by appropriate third-party verification, reports or other evidence satisfactory to the Commission to confirm the reductions set forth in the certification were achieved by the Project); (ii) that no Default or Event of Default under this Contract has occurred and is continuing; and (iii) certify and describe any SDB utilization for the Project construction or operation.

(b) Availability of Verified Nutrient Reductions. The Commission recognizes that the Contractor's ability to achieve verified nutrient reductions may be adversely affected by events or circumstances beyond the Contractor's control. Notwithstanding any provision to the contrary in this Contract, the Commission specifically agrees that the Contractor shall have no obligation to provide any amounts of nutrient reductions to the Commission. Commission and Contractor agree that it shall remain within Contractor's sole discretion to determine what number of verified and reported nutrient reductions to submit for requisitions for reimbursement under the terms of this Contract.

(c) Award Amounts Payable. The aggregate number of disbursements for any verified nutrient reductions occurring during any Commission Fiscal Year shall not exceed the maximum disbursement amount for such verified nutrient reductions applicable to such year, as set forth in Exhibit B. If the verified nutrient reduction achieved by the Project during any Commission Fiscal Year is less than the amount of the maximum reduction set forth in Exhibit B to this Contract, the Commission shall disburse Award Amount funds in an amount proportionate to the verified nutrient reduction achieved during such Commission Fiscal Year based on the price per pound of reduction set forth in Exhibit B to this Contract. If the verified nutrient reductions achieved by the Project during any Commission Fiscal Year exceeds the amount of the maximum reduction set forth in Exhibit B to this Contract, the Commission, in its discretion, may disburse Award Amount funds for the excess amounts from the allocation for future years provided the total payout does not exceed the maximum amount set forth in this Contract.

(d) Verification. The Contractor will provide reductions in nutrient loadings as specified in this Contract and quantified, verified, and reported using the applicable state's approved procedures for the BMPs implemented. The Contractor shall use a third-party to verify and report to the applicable state the nutrient reductions that are approved by the Commission. The Contractor will update the BMP reporting documentation as prescribed to demonstrate that it has been inspected and is verified as still functioning at the time of the Chesapeake Bay Program CAST model credit duration period ending (e.g. every year for annual practices, year 10 or year 15 for structural practices, etc.).

Section 3.04. Award commitment. The Contractor acknowledges and agrees that the monies attributable to the Contractor's Award Amount are the property of the Commission and are held by the Commission to provide for payments to be made to the Contractor in accordance with this Contract or to be otherwise disposed of by the Commission in accordance with this Contract.

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

(a) Any portion of the Award commitment allocated for any Commission Fiscal Year as set forth in Exhibit B not paid to the Contractor under Section 3.03 of this Contract for any Commission Fiscal Year at the end of two years following the end of such Commission Fiscal

Year shall no longer be available to be advanced to the Contractor and the amount of the Award commitment shall be reduced by an amount equal to the portion of the Award commitment not advanced, unless otherwise agreed to by the Commission in writing.

(b) The Commission may reduce the amount of the Award commitment if the Commission should for any reason determine that it will be inappropriate to fund the full amount of the Award commitment (including, without limitation, a determination that the verified nutrient reductions to be purchased with proceeds of the Award Amount are expected to be less than the reductions projected in determining the maximum amount of the Award commitment), or if it determines that the Contractor is no longer able to make the certifications required under Section 3.03 in connection with the submission of requisitions.

(c) The Commission shall advise the Contractor in writing of any reduction in the amount of the Award commitment. Such notice shall specify the reason for and the amount of the reduction. The Commission may require, and the Contractor shall deliver, such certificates, documents, opinions and other evidence as the Commission may deem necessary or advisable in connection with any such reduction in the Award commitment.

Section 3.06. Assignment. Neither this Contract nor the Award Amount may be assigned by the Contractor for any reason without the prior written consent of the Commission. The Commission may transfer or assign any or all of its rights or interests under this Contract without the prior consent of the Contractor.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

(d) false, misleading or defective verification of nutrient reductions achieved;

(e) if any representation made by or on behalf of the Contractor contained in this Contract, or in any instrument furnished in compliance with or with reference to this Contract, the Award commitment or the Award Amount, is false or misleading in any material respect on the date on which such representation is made;

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

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

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

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

(a) rescind the obligation to pay any remaining portion of the Award commitment and terminate this Contract;

(b) demand that Contractor repay (with interest at prime plus 2% and assessed from the date of such demand) any funds received by Contractor that may have been improperly and/or improvidently issued due to the a default condition in Section 4.01; and

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

Section 4.04. Attorneys' Fees and Other Expenses. The Contractor shall, on demand, pay to the Commission the reasonable fees and expenses of attorneys and any other reasonable expenses incurred in the collection of any sum due hereunder or in the enforcement of performance of any other obligations of the Contractor upon an Event of Default.

Section 4.05. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Commission is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy

or power accruing upon any Default or Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Commission to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

ARTICLE V

MISCELLANEOUS

Section 5.01. Notices. All notices required to be given, by either Party to the other, shall be deemed fully given when made in writing and received by the Parties at their respective addresses:

General Counsel	NAME
Susquehanna River Basin Commission	TITLE
4423 North Front Street	ADDRESS
Harrisburg, PA 17111	CITY, STATE
srbc@srbc.gov	E-MAIL

Any such communication shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the address specified above or e-mailed to the above address.

Section 5.02. Binding Effect. This Contract shall inure to the benefit of and shall be binding upon the Commission and the Contractor and their respective successors and assigns.

Section 5.03. Severability. In the event any provision of this Contract shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 5.04. Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.05. Applicable Law. This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania and the Parties expressly agree that the appropriate federal courts shall have exclusive jurisdiction to decide any questions arising hereunder in accordance with Section 2(o) of the Federal Reservations to the Susquehanna River Basin Compact, Pub. Law 91-575, 84 Stat. 1509 *et seq.*

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

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

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

Section 5.09. Amendment of this Pay-for-Success Contract. This Contract, or any part hereof, may be amended from time to time hereafter only by an instrument in writing jointly executed by the Commission and the Contractor.

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

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

Section 5.12. Pay-for-Success Contract Term. The term of this Contract shall end on the Expiration Date, unless sooner terminated pursuant to Article IV of this Contract, or by the mutual consent of the Contractor and the Commission. The term of this Contract shall not exceed the Useful Life of the Project set forth in Exhibit A to this Contract. The obligations and provisions set forth in Sections 2.02(d) and 2.02(e) shall survive the expiration or termination of this Contract.

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

Section 5.14. Third Party Beneficiary. This Contract is funded by the State of Maryland, which is a third-party beneficiary to this Contract. The MDE shall have the right, but not the obligation, to assume the rights and responsibilities of the Commission under this Contract. The MDE shall have the right to access and audit all documentation and information the MDE may require to verify environmental outcomes, including the right to access the site of the Project.

Section 5.15. Public Records; Public Dissemination of Information. The Commission's Public Access to Records regulation, 18 CFR § 801.14, applies to this Contract. The Commission, as an independent compact agency, is not subject to any of its member jurisdictions' laws regarding public access to records. Nevertheless, the Commission wishes to assure, to the maximum extent practicable, the availability of Commission records consistent with

the Susquehanna River Basin Compact. The Contractor hereby authorizes and gives permission for the Commission to use the information provided in the Contractor's application materials and associated with any Project activity, and excluding any confidential information, in connection with promotional materials to the media or the public relating to the Contractor's relations with the Commission and the CWIP Program. Promotional materials may include, but are not limited to, press releases, website posts, blogs, videos, social media, emails, articles in newspapers and other periodicals, pictures, photographs and digital media.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Pay-for-Success Contract to be executed and delivered as of the day and year first above written.

SUSQUEHANNA RIVER BASIN COMMISSION:

Andrew D. Dehoff
Executive Director

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

Jason E. Oyler, Esq.
General Counsel

[Signatures continue on following page]

ATTEST/WITNESS:

GRANTEE NAME:

Name:
Title:

By:
Name:

Title:

EXHIBIT A
PROJECT DESCRIPTION AND INFORMATION

Contractor Name and Address:

Project Name:

Project Description/Scope of Work:

[DESCRIPTION OF PROJECT]

The Project is fully described in the Application, which is incorporated into this Contract per Section 2.01.g.

Maximum Amount of Award Commitment: \$ xxx,xxx

Price per pound of nitrogen: \$ xx.xx

Expiration Date of Pay-for-Success Contract: December 31, 20xx

Estimated Useful Life of Project: xx years

The total anticipated nutrient load reduction that will be provided by the Project over its useful life:

Nitrogen: xx,xxx lbs.

Phosphorus: xxx lbs.

Address for Contractor's Office(s) Where Books and Records Are Kept, if different from address printed above:

EXHIBIT B
ANNUAL REDUCTIONS AND AWARD PAYMENT SCHEDULE

Contractor Name:

Project Name:

Breakdown of Maximum Annual Nutrient Reduction Payment:

[EXAMPLE]

A. Projected Nitrogen Reduction Purchase:

	<u>Allocated Annual Funding</u>
Description Maximum Pounds Projected per Year ¹	xxxx
Agreed Upon Price Per Pound	\$xx.xx
Max Annual Nitrogen Reduction Award Payment:	<u>\$xxxxx.xx</u>

B. Projected Phosphorus Reduction:

This contract pays only for pounds of nitrogen. However, all phosphorus reductions incurred as a co-benefit will be verified and delivered to MDE and not available to sell to other parties.

<u>Description</u>	<u>Amount</u>
Maximum Pounds Projected per Year	xx

Nutrient Reduction Payment Schedule

“Commission Fiscal Year” means the period of 12 consecutive months commencing on July 1 in each calendar year and ending on June 30 of the succeeding calendar year. For example FY 25 runs from 7/1/24 to 6/30/25.

A. Maximum Annual Nitrogen Reduction Payments. The Commission will make payments annually after the end of each fiscal year for verified nitrogen reductions achieved during that fiscal year Commission Fiscal Year in accordance with Article III of this Agreement. The following is the payment schedule:

¹ Commission Fiscal Year, which runs July 1 to June 30.

Commission Fiscal Year	Pounds of Nitrogen Reduced	Payment Requested
FY 2025		
FY 2026		
FY 2027		
FY 2028		
FY 2029		
FY 2030		
FY 2031		
FY 2032		
FY 2033		
FY 2034		
FY 2035		
FY 2036		
FY 2037		
FY 2038		
FY 2039		
FY 2040		
FY 2041		
FY 2042		
FY 2043		
FY 2044		
Total		

B. The Maximum Award Amount under this Pay-for-Success Contract shall not exceed \$ xxx,xxx