

DRAFT---GRANT AGREEMENT

THIS GRANT AGREEMENT (“Agreement”) is made as of _____, 20____ (“Effective Date”) by and between The State of Delaware, Delaware Department of Natural Resources, **[Division of Energy and Climate** (“Grantor”), and **[NAME OF ENTITY/ORGANIZATION RECEIVING GRANT FUNDS]** (“Grantee”).

W I T N E S S E T H :

WHEREAS, Grantor is charged with administering and granting funds from the Regional Greenhouse Gas Initiative (RGGI) under the Delaware Clean Transportation Incentive Program . RGGI CODE HERE.

WHEREAS, Grantee has made an application dated _____ (“Application”) to Grantor for a Grant under the CEPF Program, in an amount not to exceed _____ Dollars (\$___). The Grant funds shall be used by Grantee to carry out the [Name of the Project] (“Clean Transportation Project”), as more completely described herein.

WHEREAS, Grantor, with consultation from the Delaware Division of Energy and Climate (DEC), has (i) considered the Application under the criteria for the Delaware Clean Transportation Incentive Program, and (ii) resolved to Grant _____ Dollars (\$_____) to the Grantee in accordance with the terms and conditions of this Agreement and Attachments hereto.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Obligation(s) of Grantee.

- (a) Grantee shall use the Grant Funds to carry out the Delaware Clean Transportation Incentive Program Project, herein described and in the Application and Attachments hereto as Appendix B:

[DESCRIBE COMMUNITY ENVIRONMENTAL PROJECT]

- (b) Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Grantor’s Grant Application Instructions; and (c) Grantee’s Application for grant funds. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

- (c) Grantee shall appoint a "Project Manager" or "Contact Person" who will oversee the completion of the Delaware Clean Transportation Incentive Program Project and serve as a person of contact for Grantee in communications with Grantor. Grantee will notify Grantor of changes to the "Project Manager" or "Contact Person" within a reasonable time not to exceed thirty (30) days.
- (d) Grantee shall undertake to conduct and complete the Project in a professional and competent manner. Grantee shall take reasonable efforts to assure that the Project is in conformance with all pertinent federal, state, and local statutes, codes, ordinances, resolutions and other applicable regulations. Grantee shall solely bear the costs of permits and other relevant costs required in the performance of the Project.

2. Obligations of Grantor; Disbursement & Limitation of Grant Funds.

- (a) Grantor shall serve as administrator of the Grant Funds under this Agreement. Grantor shall furnish Grant Funds to Grantee on a reimbursable basis. Upon incurring eligible expenses, Grantee shall complete and submit to Grantor a "Delaware Clean Transportation Project Reimbursement Request Form," ("Reimbursement Request Form") attached hereto.
- (b) Grantor shall reimburse Grantee within thirty (30) days of receipt of Grantee's Reimbursement Request. If Grantor disputes a portion of a Reimbursement Request, Grantor agrees to pay the undisputed portion of the Reimbursement Request within thirty (30) days of receipt and to provide Grantee a detailed statement of Grantor's position on the disputed portion of the Reimbursement Request within thirty (30) days of receipt.
- (c) Grantor shall not be obligated to reimburse Project costs incurred by Grantee on a date before a Purchase Order allocating the Grant Funds has been approved by the Delaware Department of Finance. Grantor shall notify Grantee within a reasonable time not to exceed fourteen (14) days of when the Purchase Order has been approved. Grantee shall be solely responsible for all costs and expenses incurred before a Purchase Order allocating the Grant Funds is approved. Grantor's total liability that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Grantor's Purchase Order.
- (d) Grantor's obligation to reimburse Grantee will not exceed the total amount of Grant Funds (\$_____) awarded to Grantee from the Delaware Clean Transportation Incentive Program Fund and authorized in the Purchase Order. Grantee is solely responsible for any and all costs or expenses incurred in excess of the Grant Funds awarded. Grantor is in no way liable for any such excess costs, fees or expenses.
- (e) Grantee shall submit its Final Reimbursement Request Form for all remaining "Eligible Project Costs," along with its "Final Project Financial and Narrative Reports," within Sixty (60) days of completing its Delaware Clean Transportation Incentive Program Project. Any awarded Grant Funds remaining after Grantor has

made its final reimbursement to Grantee shall be returned to the Delaware Clean Transportation Incentive Program .

- (f) Grantor reserves the right to withhold disbursement of Grant Funds if Grantor determines, in its sole discretion, that Grantee's performance or completion of the Project is in violation of any federal, state, or local law or rule; or creates a risk to the public health, safety or environment.
- (g) Grantor is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

3. Term.

- (a) This Agreement shall commence upon the execution of this Agreement by the parties, and shall continue until Grantor provides Grantee its final disbursement of Grant Funds due on Grantee's Final Reimbursement Request Form; or for One (1) year from the Execution Date, whichever occurs first. The parties may agree, by writing, to extend this Agreement for a mutually agreeable term to be specified in the writing.

4. Independent Status. It is understood that Grantee is an independent entity, and is not an agent or employee of Grantor. Grantee shall complete the Project in its own manner and method. Grantee shall be solely responsible for, and shall indemnify, defend and save Grantor harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

5. Modifications. Grantee shall provide written notice to Grantor within a reasonable time not to exceed Thirty (30) days of planned changes or modifications which impact the scope, purpose, objectives, or nature of the Project for which the Grant Funds were awarded. If Grantor determines that the changes or modifications are of such significance as to no longer qualify the Project for Grant Funds, Grantor may terminate this Agreement in its discretion.

6. Assignment. Any attempt by Grantee to assign or otherwise transfer any interest in this Agreement without the prior written consent of Grantor shall be void.

7. Termination.

- (a) Grantor may, by written notice to Grantee, terminate this Agreement if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Grantee or any agent or representative of Grantee to any officer or employee of the State of Delaware or Grantor with a view toward securing a contract or securing favorable treatment with respect to the awarding of Grant Funds or making of any determinations with respect to the performance of this Agreement.

- (b) If sufficient funds are not appropriated by the Delaware General Assembly, or other appropriate federal or state agency, to sustain in whole or in part Grantor's performance under this Agreement; or if such appropriation is reduced such that the amount of the appropriation is insufficient to sustain said performance; this Agreement shall be null and void at the insistence of Grantor. Funds cannot be recalled or otherwise taken back once disbursed to Grantee.
- (c) Grantee acknowledges that Grantor has an obligation to ensure that public funds are not used to subsidize private discrimination. Grantee recognizes that if it refuses to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Grantor may declare Grantee in breach of this Agreement, terminate this Agreement, and designate Grantee as non-responsible.
- (d) Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Grantor shall have the right to terminate this Agreement.
8. Indemnification. Grantee shall indemnify and hold harmless Grantor, the State of Delaware, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of Grantee, its agents or employees, or (B) Grantee's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Grantee shall have been notified promptly in writing by Grantor of any notice of such claim; and (ii) Grantee shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.
9. Insurance.
- (a) Grantee shall maintain the following insurance during the term of this Agreement or any extension thereto:
1. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
 2. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and
 3. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate; or
 4. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, or
 5. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and

6. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
 - (b) Grantee shall provide Forty-Five (45) days written notice of cancellation or material change of any policies.
 - (c) Before any activity in furtherance of this Agreement is undertaken by Grantee, the Certificate of Insurance and/or copies of the insurance policies, referencing the Agreement Number stated herein, shall be filed with the State. The certificate holder is as follows: DNREC, Division of Energy and Climate.
 - (d) In no event shall the State of Delaware be named as an additional insured on any policy required under this Agreement.
10. Notices. All notices, reports or other written communication required or permitted herein shall be given in writing to the addresses set forth below:
 - If to Grantor:

The Delaware Division of Energy and Climate
506 S. State Street, Suite 5A
Dover, Delaware 19901
302-735-3480
 - If to Grantee:

[Provide Grantee contact information]
11. Force Majeure. Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.
12. Entire Agreement; No Oral Modification. This Agreement constitutes the entire agreement pertaining to the subject matter hereof between Grantor and Grantee. Neither this Agreement nor any Appendix may be modified or amended except by the mutual written agreement of the parties. The provisions of this Agreement supersede all prior oral and written applications, quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Grantee consents to jurisdiction and venue in the State of Delaware.

14. Severability. If any term or provision of this Agreement shall be held illegal, invalid or unenforceable by a Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement. Such term or provision held invalid shall be deemed modified to the extent necessary in the Court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.
15. Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and shall not be construed to define, limit or prescribe the scope or intent of this Agreement or any part thereof.
16. Surviving Clauses. The following clauses survive the termination of this Agreement: Section 5 "Indemnification;" Section 10 "Governing Law."
17. Miscellaneous Provisions.
- (a) The rights and remedies of Grantor provided for in this Agreement are in addition to any other rights and remedies provided by law. Grantor and the State of Delaware do not waive its sovereign immunity by entering into this contract and fully retain all immunities and defenses provided by law with regard to any action based on this Agreement.
 - (b) Grantee will not use the State of Delaware's name or the Great Seal of the State of Delaware, either expressly or impliedly, in any of its advertising or soliciting materials without the State of Delaware's express written consent.
 - (c) Grantee certifies that the information reported herein is true, accurate and complete to the best of Grantee's knowledge based upon reasonable diligence of individuals with material knowledge of the Project. Grantee understands that these representations are made in support of claims for government funds.

[This section left intentionally blank, signatures follow]

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

**GRANTOR
STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

Witness: _____

Name: _____

Title: _____

Date: _____

Date: _____

GRANTEE

[]

Witness: _____

Name: _____

Title: _____

Date: _____

Date: _____