

Funding Agreement

This Agreement, made as of April ____, 2015, by and the New York State Urban Development Corporation d/b/a the Empire State Development (“ESD”), a public benefit corporation of the State of New York, with offices at 633 Third Avenue, New York, New York 10017 and the County of Erie (“County”), a municipal corporation organized under the laws of the State of New York, with offices at 95 Franklin Street, Buffalo, New York 14202.

Recitals

- I. In October of 2014, ESD received a grant award in the amount of One Hundred Seventy-Nine Thousand Six-Hundred Thirty Dollars and 00/100 (\$179,630.00) on behalf of the County from the Division of Pollution Prevention of the United States Environmental Protection Agency (“USEPA”) from its Pollution Prevention Program (the “Program”). The Program provides grant funding to state entities to support local pollution prevention and sustainability programs.
- II. The grant will be used by the County to assist in the implementation of the Western New York Sustainable Business Roundtable (“SBR”), a collaboration of businesses in Western New York with oversight and assistance provided by the Erie County Department of Environment and Planning. The goal of the SBR is to create a more sustainable and resilient region by assisting the private sector in meeting sustainability goals such as reducing solid wastes and pollution and optimizing the use of energy and materials.
- III. It is the intention of the parties that the grant funds received from USEPA by ESD shall be made available to the County for expenses associated with the SBR and that

the County shall be responsible for complying with all requirements of the Program and grant award.

Now, therefore, ESD and the County in consideration of the foregoing and the mutual covenants contained herein, hereby agree to the following:

1. The Project

In accordance with all rules and requirements of the Program and grant award, the County shall continue the SBR with the goal of providing assistance to local businesses engaging in pollution prevention and sustainability programs (hereinafter the “Project”). The County shall be responsible for administering the grant funds and complying with Program requirements in accordance with all applicable rules and regulations of the Program and any and all terms and conditions that may be required by the USEPA.

2. Project Funding

- (a) Subject to the terms and conditions set forth herein, ESD shall remit to the County funds received by the USEPA for the Project.
- (b) The County agrees the funds provided by USEPA shall be used in accordance with all Program rules, regulations and requirements.
- (c) Notwithstanding anything herein to the contrary, ESD shall have no obligation to provide any funds to the County in excess of funds actually received by ESD from the USEPA.

3. Project Reports

The County shall be responsible for providing any documentation required by USEPA and/or ESD detailing the use of funds received pursuant to this agreement and shall comply with all reporting requirements as may be required by USEPA.

4. Audit

The County shall maintain accurate books and records concerning the Project. ESD and the USEPA shall have the right to audit the books and records of the County with respect to funds received for the Project for a period extending six years from the time of completion or termination of the Project.

5. Amendments

This Agreement may be amended only by written instrument executed by the parties hereto.

6. Independent Contractor

Notwithstanding any other provisions of this Agreement, the County's status (and that of any Subconsultant) shall be that of an independent contractor and not that of an agent or employee of ESD. Accordingly, neither the County nor any contractor of the County shall hold itself out as, or claim to be acting in the capacity of an employee, or agent of ESD.

7. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument.

8. Notices

Each notice required hereunder shall be in writing and shall be deemed given upon receipt by the other party, if personally delivered or transmitted via facsimile, or three days after

dispatch by certified mail, return receipt requested. Notices shall be sent to the following addresses:

(a) to ESD:

Empire State Development
95 Perry Street, Suite 500
Buffalo, New York 14203
Attn: Christopher Schoepflin, WNY Regional Director

With a copy to:

Empire State Development Corporation
633 Third Avenue
New York, New York 10017
Attn: General Counsel

(b) to the County:

Erie County Department of Environment & Planning
Office of the Commissioner
95 Franklin Street, Room 1077
Buffalo, New York 14202

With a copy to:

Erie County Attorney
95 Franklin Street, Room 1634
Buffalo, New York 14202

9. No Assignment

This Agreement and the rights hereunder may not be assigned by the parties hereto.

10. Governing Law

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

11. Conflict of Interest

No member director, official or employee of any party hereto has or shall have any personal interest, direct or indirect, in the Project, nor shall any such member, director, official or employee participate in any decision relating to any of the foregoing which effects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

12. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

13. Indemnification

To the furthest extent permitted by law, the County agrees to defend, indemnify and hold harmless ESD and their employees, directors and officers from and against any and all liability for any injury or damage, cost or expense of any nature whatsoever as a result of or in any way in connection with the Project including but not limited to any claim made by the USEPA or attempt by the USEPA to recoup funds provided for the Program.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date set forth above.

COUNTY OF ERIE

EMPIRE STATE DEVELOPMENT

MARK POLONCARZ/ MARIA R. WHYTE

County Executive / Deputy County Executive
Date: _____

Name: _____
Title: _____
Date: _____

APPROVED AS TO CONTENT

THOMAS DEARING
Commissioner
Erie County Department of Environment and Planning
Dated: _____

APPROVED AS TO FORM

GREGORY KAMMER
Assistant County Attorney
Document No. _____
Dated: _____

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY CLERK'S OFFICE

BUFFALO, N.Y., NOVEMBER 25, 2014

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY, That at the 22nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the **twenty-fifth day of November, 2014 A.D.**, a Resolution was adopted, of which the following is a true copy:

WHEREAS, the Erie County Department of Environment and Planning (DEP) has played a crucial role in pollution prevention and sustainability issues throughout the region for decades and has more recently played an important role in the formation of the Western New York Sustainable Business Roundtable (WNYSBR); and

WHEREAS, the DEP is committed to provide staff support and conduct work to assist and expand the WNYSBR; and

WHEREAS, the United States Protection Agency (USEPA) provides grant assistance to state agencies to implement pollution prevention projects; and

WHEREAS, Empire State Development (ESD) applied for USEPA and was awarded grant funds to support the WNYSBR; and

WHEREAS, ESD and USEPA named Erie County as a sub-awardee within that grant to receive \$179,630.00 in funding to assist businesses in reducing their environmental impact through the WNYSBR; and

WHEREAS, this necessitates the execution of a sub-awardee agreement with ESD and USEPA, the adoption of a grant budget; and the creation of an Environmental Compliance Specialist (JG-9) position within the DEP which will be 100 % grant funded.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive is hereby authorized to execute the necessary agreements to accept a grant of \$179,630.00 from the USEPA and ESD for the purpose of establishing a two-year "WNYSBR" project; and be it further

RESOLVED, that the grant budget and project period for the "WNYSBR" project is hereby created in the DEP, Business Area 162, Fund 281 as follows:

Western New York Sustainable Business Roundtable Project
(October 1, 2014 – September 30, 2016)
SAP Grant Account #162WNYSBR1416

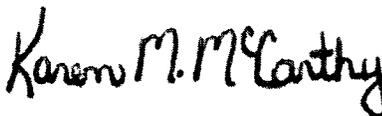
REVENUE:

<u>Account</u>	<u>Description</u>	<u>Amount</u>
414000	Federal Aid	\$179,630
TOTAL REVENUE		\$179,630

APPROPRIATIONS:

<u>Account</u>	<u>Description</u>	<u>Amount</u>
500000	Full Time Salaries	\$ 98,000
502000	Fringe Benefits	\$ 62,230
505000	Supplies	\$ 400
510100	Out of Area Travel	\$ 2,000

ATTEST



KAREN M. McCARTHY

Clerk of the Legislature of Erie County

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY CLERK'S OFFICE

BUFFALO, N.Y., NOVEMBER 25, 2014

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY, That at the 22nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the **twenty-fifth day of November, 2014 A.D.**, a Resolution was adopted, of which the following is a true copy:

516020	Professional Services Contract	\$ 16,000
530000	Other	\$ 1,000
TOTAL APPROPRIATIONS		\$179,630

and be it further

RESOLVED, that the following position, for which sufficient funding through NYSDOS grant funding for personal services and fringe benefits exists, will be created in the above grant:

Environmental Compliance Specialist (JG-9)
B-100 No. 7971
Budgeted Annual Salary: \$49,000

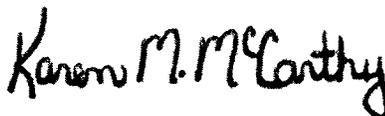
and be it further

RESOLVED, that the Director of the Division of Budget and Management is hereby authorized to implement any budget adjustments as required to comply with State and local funding requirements; and be it further

RESOLVED, that certified copies of this resolution shall be forwarded to the County Executive; the Director of the Division of Budget and Management; the County Attorney; the County Comptroller; Maria R. Whyte, Commissioner of Environment and Planning; Thomas Hersey, Jr., Deputy Commissioner of Environment and Planning; and Bonnie Lawrence, Coordinator – Pollution Prevention Program.

REFERENCE: COMM. 21E-18 (2014)

ATTEST



KAREN M. McCARTHY

Clerk of the Legislature of Erie County