

Amended and Restated Operating Agreement

As of December 2006

**For the Organization and Administration
of the New York State Clean Water
State Revolving Fund**

State of New York
Department of Environmental Conservation

United States
Environmental Protection Agency
Region II

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RECITALS

WHEREAS, Title VI of the Clean Water Act (33 USC § 1381, et. seq.) as amended (hereinafter referred to as "Title VI"), and the regulations promulgated thereunder, authorize the Administrator of the United States Environmental Protection Agency (EPA) to make capitalization grants to States for deposit into State Water Pollution Control Revolving Funds (SRFs) for the provision of financings and other types of financial assistance for, among other things, the construction of publicly-owned wastewater treatment facilities; and

WHEREAS, the State of New York (State) has duly established and maintained a Clean Water State Revolving Fund (CWSRF) for the purpose of receiving capitalization grants under the Act; and

WHEREAS, the New York State Department of Environmental Conservation (DEC) is the instrumentality of the State responsible under Title VI and State law for the administration of the CWSRF program; and

WHEREAS, pursuant to a Memorandum of Understanding (MOU) dated November 16, 1989, as amended and restated from time to time, DEC has delegated certain CWSRF program responsibilities to the New York State Environmental Facilities Corporation (EFC), a public benefit corporation duly organized and existing under the laws of the State; and

WHEREAS, EPA and DEC entered into an Operating Agreement with respect to the administration of the CWSRF dated March 27, 1992, as amended from time to time to present; and

WHEREAS, EPA and DEC have determined to enter into this Amended and Restated Operating Agreement, which Operating Agreement is intended to supersede all prior agreements between the parties not specifically exempted herein;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION 1: GENERAL PROVISIONS.

A. Parties and Authorized Signatories. The parties to this Operating Agreement are the EPA, Region II, and the DEC. The authorized signatory for EPA is the Regional Administrator of Region II. The authorized signatory for DEC is the Commissioner.

B. Term and Effective Date. This Operating Agreement shall be effective upon execution. The term of this Operating Agreement shall be from the effective date until December 31, 2012.

C. Attachments. The following attachments are incorporated by reference into this Operating Agreement as if more fully set forth herein:

- Attachment 1: Memorandum of Understanding (DEC/EFC)
- Attachment 2: Model Project Finance Agreement (Leveraged Financings)
- Attachment 3: Model Project Finance Agreement (Direct Financings)
- Attachment 4: Functional Organizational Chart
- Attachment 5: Cash Draw Procedures
- Attachment 6: Federal Authorities Applicable to Equivalency Projects
- Attachment 7: Project Review and Disbursement Procedures and Processing
- Attachment 8: State Environmental Review Process

D. Prior Agreements Superseded. Upon execution, and except as otherwise noted herein, this Operating Agreement supersedes all prior written agreements between the parties, including the Operating Agreement entered into September 14, 1994, as amended; provided, however, that nothing herein shall affect the validity of any prior action taken with respect to the prior agreements between EPA and DEC or the parties' rights and obligations thereunder.

E. Governing Law. This Operating Agreement is entered into pursuant to the authority granted under 40 CFR § 35.3130. The provisions of this Operating Agreement are subject to the provisions of the Clean Water Act (33 USC § 1381, et. seq.), the regulations set forth at 40 CFR Part 35, Subpart K, and all other applicable federal statutes, Executive Orders, and regulations, which are incorporated by reference herein. Except to the extent federal law is applicable and controlling, the rights, responsibilities, and obligations of the parties to this Operating Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New York.

F. Modifications.

(i) This Operating Agreement may be amended at any time by mutual agreement in writing between the authorized signatories, including with respect to the term hereof. Proposed amendments to this Operating Agreement may be submitted in conjunction with the annual capitalization grant application submission. Information that changes from year to year shall be contained in the annual Application for Federal Assistance and annual Intended Use Plan (IUP), as set forth below.

(ii) Changes in implementation and review procedures affecting the administration of the CWSRF but not altering this Operating Agreement may be effected by the agreement of the Director of Management and Budget on behalf of DEC and the Director, Division of Environmental Planning and Protection, Region II, for EPA.

(iii) The parties agree that any modification to this Operating Agreement that may be mandated by federal statute, Executive Order, or regulation will be made and implemented on a schedule negotiated by the parties. EPA shall provide such assistance, as available, as to how any new federal mandate will be carried out. Unless required by such statute, Executive Order, or regulation, any modification to this Operating Agreement shall not affect the then existing obligations of EPA to DEC as established by any previously executed

capitalization grant agreement. In addition, any such modification(s) shall be inapplicable to any previous commitment made to local governmental units by EFC on behalf of DEC under the terms of an executed capitalization grant agreement.

G. Limited State Liability. In accordance with State Finance Law § 41, the State shall have no liability under this Operating Agreement to any contractor or any other person or entity.

SECTION 2: PROGRAM ADMINISTRATION.

A. State Authorities and Certifications.

(i) The New York State Water Pollution Control Revolving Fund (hereinafter referred to as “the CWSRF”) was duly created and is existing pursuant to Chapter 565 of the Laws of 1989, as amended (State Act) including Section 1285-j of the New York Public Authorities Law and Section 17-1909 of the New York Environmental Conservation Law, as amended. The statutes establish DEC and EFC as the State instrumentalities responsible for the administration and conduct of the CWSRF program.

(ii) DEC has promulgated regulations at 6 NYCRR Part 649, as amended, providing rules and procedures for the provision of financial assistance from the CWSRF.

(iii) EFC is a public benefit corporation duly organized and existing pursuant to New York Public Authorities Law § 1282, et. seq., and has promulgated regulations at 21 NYCRR Part 2602 governing the administration of the CWSRF program.

(iv) Each year upon the submission of a capitalization grant application, as provided below, the Attorney General of the State of New York will certify that State law grants such powers and authority as necessary to implement and administer the CWSRF program

consistent with the Title VI and applicable regulations. By the submission of a capitalization grant application, DEC certifies that the CWSRF consists of separate accounts dedicated solely to providing financings and other forms of assistance approved under Title VI.

(v) DEC is authorized and empowered to enter into any agreement, through its designated representative, between the State and EPA, including but not limited to this Operating Agreement and any capitalization grant agreements, and to accept such capitalization grant awards. DEC is responsible for assuring compliance with all terms and conditions of this Operating Agreement and any capitalization grant agreements, and for the fiscal integrity of the CWSRF.

B. Roles and Responsibilities.

(i) EPA is subject to certain responsibilities and obligations arising under federal law and regulation with respect to the funding and administration of the CWSRF. DEC and EFC have entered into a MOU (incorporated herein by reference as Attachment 1) assigning and delegating between such entities various functions and responsibilities relating to the administration of the CWSRF, as arising under federal and state law and regulation.

(ii) DEC and EFC, under the MOU, are responsible for all actions necessary to comply with the requirements of Title VI; to develop the IUP described below; to perform technical project reviews; and to monitor construction and completion of projects. EFC, pursuant to the State Act and the MOU, is responsible for coordinating the total management of the CWSRF program and will be the primary contact for dealing with EPA. EFC will manage the CWSRF, establish and maintain the separate CWSRF accounts, and manage state match and financing repayments, in accordance with State law, regulation, and the MOU between DEC and EFC.

(iii) DEC will apply the environmental review procedures set forth in 6 NYCRR Part 649 and in Attachment 8 to this Operating Agreement to all projects funded by the CWSRF. For equivalency projects, DEC will perform all functions which 40 CFR Part 6 would otherwise require of EPA.

(iv) DEC agrees, and shall cause EFC to ensure that projects shall meet acceptable technical, environmental and financial requirements as established or referenced in this Operating Agreement and the MOU, and that the CWSRF will be continuously and effectively operated. Administrative costs shall be accounted for separately in accordance with federal law and regulation. DEC assures that a coordinated state interagency program will be carried out with respect to the operation and administration of the CWSRF.

(v) EPA agrees to provide funding through the award of capitalization grants to DEC, as set forth below, upon the joint acceptance of this Operating Agreement and approval of a completed application, in accordance with the provisions of Title VI and 40 CFR Part 35, Subpart K.

(vi) If requested, EPA will provide technical assistance to the State as needed and as available.

C. Annual Project Priority List and Intended Use Plan.

(i) An Annual Project Priority List (PPL) and IUP will be developed by EFC pursuant to the MOU, with DEC input and involvement, after providing drafts of each document for public comment and review. The IUP shall be a part of the annual application for the capitalization grant. Each IUP shall include, without limitation: a list of projects proposed for assistance; long-term and short-term goals of the CWSRF program; information on CWSRF activities to be supported; criteria and methods for distributing CWSRF funds; and assurances and specific proposals.

(ii) The IUP will include a PPL to determine which projects should be funded, as described in 6 NYCRR Part 649. All projects potentially qualified to receive CWSRF assistance will be identified in priority order. The priority ranking of projects will be identified and will be given consideration in the selection of projects to be funded, but may not be the only factor considered. The project list may include non-point source and/or estuary activities which are identified through the State's non-point source pollution control management plan, or an approved national estuary conservation and management plan along with applicable permits and plans acceptable to DEC. Allocation of CWSRF funds among listed projects is a three step process by which: (a) the amount of financial assistance needed for each community is determined; (b) the source and limits of all of that fiscal year's funds are identified; and (c) the CWSRF funds are allocated among the projects, as described in 6 NYCRR Part 649.

D. Capitalization Grant Applications.

(i) In each year that a federal appropriation is made, DEC will submit a complete capitalization grant application to EPA. In addition to this Operating Agreement, a complete capitalization grant application includes the following components: (1) a properly executed Application for Federal Assistance, EPA Form 5700-33 with supporting documentation, certifications and related forms, including an Annual Payment Schedule; (2) the IUP; and (3) any proposed modifications to the Operating Agreement, as applicable.

(ii) A capitalization grant application shall not be considered complete until all parts and any necessary attachments or exhibits have been received by the EPA Region II Regional Administrator. To the extent practicable, DEC shall submit all parts of the capitalization grant application in one package.

(iii) DEC agrees to submit a complete capitalization grant application to the EPA Regional Administrator at least 60 days prior to the anticipated grant award date.

(iv) Upon the receipt by the Regional Office of the complete capitalization grant application submission, EPA shall take action on that application. If EPA approves the capitalization grant application, the EPA award official shall promptly prepare and sign a capitalization grant agreement and send it to DEC for execution.

(v) DEC shall execute such capitalization grant agreement promptly upon receipt or request an extension, but in no event later than thirty (30) days. Execution of the capitalization grant agreement by EPA and DEC shall constitute an obligation for the payment of the designated amount of federal funds to the CWSRF.

(vi) DEC, upon receiving the capitalization grant agreement, agrees to manage the CWSRF program in accordance with this Operating Agreement, the terms of the capitalization grant agreement, Title VI, and applicable federal and State law and regulation.

E. Miscellaneous Provisions.

(i) The State will consider the long term financial health and viability of the CWSRF. Pursuant to the MOU, each year DEC and EFC will assess the financial health of the CWSRF by examining, without limitation, fund balances, sources of funds, and the repayment stream, etc., and revise procedures as necessary to maintain fund perpetuity.

(ii) For purposes of managing the PPL, IUP, grant application, and CWSRF, the federal fiscal year from October 1 through September 30 shall be used.

SECTION 3: FINANCIAL ADMINISTRATION.

A. Roles and Responsibilities.

(i) EPA will make payments pursuant to the capitalization grant agreement and DEC agrees to accept such grant payments in accordance with the accepted payment schedule attached thereto.

(ii) As required by Title VI, DEC agrees that an amount equaling 20 percent of the amount of each grant payment shall be deposited in the CWSRF from State monies on or before the date on which the State receives each payment from the grant award. For purposes of this Operating Agreement, the term "deposit" shall mean appropriation by the New York State Legislature. The source of the specific State match for each year will be specified in the capitalization grant application for that year. DEC certifies that a capital appropriation for the CWSRF state match represents a binding financial arrangement and that the State's proportional share will be converted to cash when the capitalization grant is drawn upon. In the event that the capital appropriation for the CWSRF is not made, or is subsequently reduced, withdrawn or otherwise limited, DEC will immediately notify EPA. DEC acknowledges and agrees that in such a circumstance EPA will take those remedies authorized by law and regulation. Any State contribution in excess of 20% of the federal capitalization funds will be credited toward future State match requirements.

(iii) As required by Title VI, binding commitments in an amount equal to 120 percent of each capitalization grant payment will be made within one (1) year of receipt of each capitalization grant payment. Target application completion dates for each project to receive financing shall be provided in the IUP. As further required by Title VI, DEC agrees to expend all funds in a timely manner in accordance with State laws, regulations, and policies.

(iv) All principal and interest payments on recipient financings and returns on invested CWSRF funds will be credited directly to the CWSRF. Since the CWSRF may leverage financings by selling EFC's bonds or notes and providing the proceeds to the recipients, recipient payments of principal and interest of such leveraged financings shall be used to repay the principal and interest payments due on those EFC bonds or notes used to finance the recipient's project. Repayments will commence not later than one year after completion of each project, and all recipient financings shall be fully amortized not later than 30 years from EFC's financing closing date.

(v) DEC shall cause EFC to provide financial assistance only to projects that are not inconsistent with the applicable plans developed under Sections 205(j), 208, 303(e), 319, or 320 of the Clean Water Act.

(vi) DEC shall comply and shall cause EFC to comply with applicable federal law and regulation in the use of moneys deposited in the CWSRF. EPA has indicated that the federal law and regulation identified in 40 CFR § 35.3145, as well as the Historic Sites Act, P.L. 74-292, may apply to the CWSRF program and to CWSRF equivalency projects. Recipients of CWSRF assistance will be required to comply with federal law and regulation applicable to that assistance. Based on factual information regarding noncompliance with any federal law and regulation applicable to a project, DEC shall submit a formal referral to the appropriate federal agency. DEC shall cooperate and coordinate with the federal agencies with respect to their enforcement actions. If requested, EPA shall provide any additional technical assistance to DEC and shall provide appropriate enforcement assistance in such matters. Any actions resulting from a formal referral by DEC to a federal agency will be reflected in the annual report, as necessary.

B. Types of Financial Assistance Provided.

(i) Only the types of assistance authorized under Title VI of the Clean Water Act, as amended, will be awarded from the CWSRF. The type of assistance for each CWSRF project shall be identified in the IUP.

(ii) Direct financings, both short-term and long-term, may be offered as provided in the IUP. Long-term direct financings may be provided as EFC may determine for projects (a) it is unable to finance as a leveraged financing; (b) where inclusion in a leveraged financing would be impractical; or (c) which small communities could not otherwise afford. The interest rate for direct financings can range from 0% to two-thirds of market rate depending on the financial status of the recipient as determined by EFC. The interest rate is determined at the time of closing the long-term direct financing and is a function of the interest rate of the most recently closed leveraged (MFI) pooled financing.

(iii) In accordance with Title VI, local debt obligations may be purchased or refinanced at or below market rates, where such debt was incurred and construction began after March 7, 1985. In cases where multi-purpose bonds were issued for purposes in addition to wastewater facility construction, the CWSRF will provide refinancing only for eligible purposes. In addition, the CWSRF may provide for the purchase of debt obligations for a repayment term not exceeding thirty (30) years, subject to the terms and conditions outlined in (i) EFC's proposal letter of October 19, 1999 (as revised by letter dated September 1, 2000), and (ii) EPA's February 9, 2001 acceptance thereof, with stated conditions, as such conditions may be amended from time to time. The proposal, as revised, and the February 9, 2001 letter with the other referenced correspondence are hereby incorporated into this Operating Agreement as if more fully stated herein.

(iv) An amount of the fund permitted by federal law may be used to provide CWSRF program administration costs. These monies must be used for reasonable and eligible direct and indirect costs.

(v) Although direct financings and other forms of assistance authorized by Title VI may be provided, the CWSRF shall use leveraged financings as the primary vehicle for providing assistance to eligible projects.

(a) For a leveraged project financing, the CWSRF may provide financial assistance through an allocation: (i) in an amount of not less than one third of the financed amount (a "corpus allocation"); or (ii) in an amount necessary and sufficient as determined by EFC and set forth in the IUP (a "reserve allocation"). All such funds will exist within and be held by the CWSRF. In the alternative, EFC may provide other security or funds ("other CWSRF moneys") in an amount necessary to provide the desired subsidy. EFC will issue its own bonds or notes to raise proceeds in an amount essentially equivalent to the project finance amount and provide such proceeds to the recipient in return for the recipient's general obligation or revenue bonds or notes. Allocations will serve as a source of security for the EFC bonds or notes. The earnings on any corpus or reserve allocation or, in the absence of a corpus or reserve allocation, amounts attributable to other CWSRF moneys shall be used to reduce the interest paid by the recipient. The schedule of repayment of these recipient bonds or notes supports the repayment of principal and interest on the EFC bonds or notes. The recipient repays the principal due on its recipient bonds or notes plus interest due net of any subsidy provided by allocation, or other CWSRF moneys.

(b) Upon receipt of each payment of principal and interest from the financing recipient, EFC will make corresponding principal and interest payments on its bonds or notes and will reduce any applicable corpus or reserve allocation such that it will be maintained at the original financing ratio. Subject to the correction of defaults by other leveraged financing

recipients, funds released by each corpus or reserve allocation reduction can be used for additional financings or to provide other forms of assistance.

(c) Except in the event of a recipient default, when the proceeds in the reserve fund are available to pay bond holders, funds used as security for leveraged financings never leave the CWSRF, thereby assuring and protecting the long-term viability of the CWSRF.

(vi) The State through EFC agrees to enter into Project Finance Agreements (PFAs) which shall be binding commitments to provide assistance in accordance with the requirements of Title VI for an amount equal to 120 percent of each capitalization grant payment within one (1) year of payment receipt. Sample PFAs are provided in Attachment 2 and Attachment 3, respectively. Except as specifically noted otherwise, use of the term "PFA" herein shall generally refer to various types of financing agreements entered into by EFC in connection with financings.

C. Payments and Cash Draws.

(i) EPA will increase DEC's existing Account No. 0208 in accordance with the payment schedule contained in the capitalization grant agreement, and the State agrees to follow procedures as outlined in the EPA Payment System Recipient's Manual. Before cash draws are processed, DEC will notify the Office of the State Comptroller that the cash draws are pending. DEC agrees to maintain a split coded voucher system when making cash draws for the federal funds and State match. DEC shall assure that each cash draw will be made in accordance with EPA's CWSRF rules of cash draws as contained in 40 CFR Part 35, Subpart K.

(ii) Capitalization grant funds approved for CWSRF assistance shall be available for payment based upon the negotiated payment schedule contained in the capitalization grant agreement. Payments shall be based on the projected schedule of financings

contained in the IUP. Payments for CWSRF administrative costs shall be made as requested by DEC.

(iii) Cash draws from the EPA are limited by the ceiling available in the CWSRF account established for the State. Cash will be transferred to the CWSRF from the U.S. Department of Treasury in accordance with established EPA procedures. A split coded voucher system shall be used in making cash draws. At any point in time the minimum requirements for proportionality will be maintained. Cash draws will be made in accordance with the following:

(a) For direct financings, cash draws will be made as project costs are incurred. Cash draws will be the federal share of incurred eligible costs. The balance of the costs will come from matching state funds or other funds in the CWSRF. Cash draws for direct financings may be made to reimburse the CWSRF funds previously advanced to the recipient.

(b) For the refinancing and purchase of local debt, only projects for which debt was incurred and construction or acquisitions initiated after March 7, 1985, may be refinanced. This provision does not apply to prebuilding planning and design costs incurred prior to the date of the CWSRF financing. Cash draws for projects where construction has been completed, except as indicated below, shall be made at a rate no greater than equal amounts over the maximum number of quarters that payments can be made, and up to the amount committed to the refinancing or purchase of the local debt. Cash draws for incurred building costs will generally be treated as refinanced costs. Upon the execution of a capitalization grant agreement, the State may immediately draw cash for up to five percent of each fiscal year's capitalization grant or two million dollars, whichever is greater, to refinance or purchase local debt. For projects or portions of projects not constructed, the State may draw cash based on incurred construction costs as set forth above for direct financings and below for leveraged financings.

(c) For capitalization grant funds approved for leveraged financings on a non-aggressive basis, cash can be drawn up to the amount committed as security (reserve) for

EFC bonds or notes in accordance with the schedule based on the national Title II annual outlay rate or actual construction cost. In the latter case, the amount of the cash draw would be the actual construction costs multiplied by the Federal share of the reserve multiplied by the ratio of the reserve to either the amount guaranteed or the proceeds of the bonds or notes issued. As an additional option, the State can identify a group of projects whose value equals approximately the total of that portion of the federal funds and the State match dedicated as security. The State can then draw cash based on the incurred construction costs of the selected projects, multiplied by the ratio of the Federal portion of the security to the entire security.

(d) For aggressive leveraged financings, EPA may permit an exception and provide for a more accelerated cash draw. However, such cash draws cannot be made at a rate greater than equal amounts over the maximum number of quarters that payments can be made.

(e) For administrative costs, funds shall be drawn as costs are incurred, to the extent such funds are available.

(f) The State agrees to limit cash draws to amounts DEC certifies as incurred costs, except for that portion that is committed as security for EFC bonds or notes.

D. Disbursements.

EFC will disburse funds from the CWSRF in accordance with applicable State law and regulations. No cash draws from the EPA will be made for the purpose of making an advance on any project. Prior to certifying the disbursement of funds to ongoing construction projects, EFC will check each disbursement request and required supporting cost documentation for reasonableness and eligibility.

SECTION 4: RECORDS, REPORTING, ACCOUNTING, AND AUDITING.

A. Records.

(i) EFC is responsible for maintaining project source documents and associated records related to all CWSRF disbursements for projects. DEC and EFC will maintain appropriate source documentation for all administrative expenses. DEC and EFC will maintain data systems (including records) which will enable the provision, in a timely manner, of information needed to respond to requests made by EPA.

(ii) As a condition of making a financing or providing other assistance from the CWSRF, DEC and EFC shall require that the recipient of such assistance maintain project accounts in accordance with generally accepted government accounting standards. DEC or EFC will receive and review project documents from recipients. These documents, together with DEC and/or EFC review memos and the summary checklists, will be filed in an official project file maintained by EFC or DEC, as applicable. The project files shall be made available to EPA for review at their respective locations upon reasonable notice by EPA. Such files may be reviewed on a sample basis in conjunction with on-site visits scheduled as part of the annual review, or otherwise to monitor the management of CWSRF funds.

(iii) EFC will retain official project files as required herein in accordance with State law and 40 CFR Part 31. DEC and EFC will retain project-related documentation during the repayment period of the financings as necessary to ensure that sufficient legal documentation exists to justify any claims in the event of default and to ensure bondholders are protected until redemption of all outstanding bonds. Retention and ultimate disposition of the project files shall be in accordance with State law and as appropriate pursuant to 40 CFR Part 31.

B. Reporting.

(i) As required by federal law and regulation, DEC agrees to make annual reports to the Administrator on the actual use of funds and how the CWSRF has met the goals and objectives identified for the previous federal fiscal year.

(ii) The annual report will be submitted no later than 90 days after the end of the federal fiscal year and will indicate the extent to which the goals and objectives, as set forth in this OA and in the previous year's IUP, were met. The report will identify recipients of financing assistance, financing amounts, CWSRF administration expenses funded with Title VI monies, dates on which financings were closed, and the duration of such financings. Notwithstanding the State fiscal year, all accounting information and financial reports shall be maintained in such a manner that same will be available for a complete annual report as provided herein.

(iii) EFC will annually provide EPA with a specified set of project level data for the National Information Management System (NIMS). The NIMS report will be submitted to EPA once each year, on a mutually agreed schedule, to reflect actual activities and events.

(iv) EPA will contact EFC as needed for more detailed current information about a project or series of projects, or refer citizens with inquiries to EFC. EPA agrees to provide EFC with the reasons for, and details concerning, the requested data and a reasonable amount of time to obtain same. EFC will provide the information requested by citizens, to the extent it is available for public access under the New York State Freedom of Information Law (Public Officers Law Art. 6), in a timely manner. Information related to the capitalization grant agreements and supporting documents in the possession of EPA will be available to the extent available for public access under the federal Freedom of Information Act.

(v) DEC or EFC, as appropriate, will respond to Congressional and public inquiries relating to the CWSRF as necessary and will coordinate such responses with EPA, exempting responses to requests for records submitted under the New York State Freedom of Information Law (Public Officers Law Art. 6). A copy of the response, with a copy of the inquiry, will be sent to EPA for all Congressional inquiries. Although DEC and/or EFC, as appropriate, will be responsible for project level inquiries, it is recognized that certain CWSRF program level inquiries may need to be directed to EPA, and EPA will be responsible for any necessary response. In such cases, DEC and EFC agree to provide, in a timely manner, such background information as may be necessary to prepare responses, and EPA agrees to provide copies of such inquiries and responses to the State.

C. Accounting.

(i) DEC and EFC shall establish and maintain fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, for payments received by the CWSRF, disbursements made by the CWSRF, and fund balances at the beginning and end of the accounting period. Financial management policies and procedures shall be maintained by both DEC and EFC to assure adequate control of all funds flowing into and out of the CWSRF. Such accounting policies and procedures shall include, but not be limited to, account structure, operating procedures, financial reporting, internal control and cash management procedures specific to the operation of the CWSRF. DEC, as recipient of the capitalization grant, is responsible for insuring the financial management integrity of the CWSRF.

(ii) All policies, procedures, and systems described above shall be in conformance with the latest edition of "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" published by the Government Accounting Office (GAO). The accounting system and cash management procedures shall be maintained by DEC and EFC in accordance with Generally Accepted Accounting Principles (GAAP), State and Title VI

requirements, and EPA regulations set forth at 40 CFR Part 31. The accounting system shall properly identify and record all financial transactions of the CWSRF. To insure that the accounting system properly reflects the full range of cost reporting needs of the CWSRF and has built in an audit trail with clearly identifiable bench marks, EPA may review the system's framework and operation and provide comments regarding any identified inadequacies.

D. Auditing.

(i) In accordance with federal statute, a compliance and financial audit of the operations of the CWSRF will be conducted once a year. The audit of the use of funds deposited in the CWSRF will be done in accordance with the auditing procedures of the federal General Accounting Office. The audit may be carried out by the office of the New York State Comptroller or other independent auditor, and may be done in conjunction with any audit performed in accordance with the Single Audit Act of 1984. (See OMB Circular A-128). The audit report will be completed within one year of the end of the State fiscal year and submitted to the EPA office of the Inspector General within 30 days of completion. Upon acceptance of the audit report by the Inspector General, the cycle of events as set forth in EPA Audit Order 2750 will commence. If such audits are not satisfactory to EPA, additional audits may be conducted directly by EPA.

(ii) EPA agrees to notify the State within 90 day after submission of the audit as to the adequacy of report and its findings.

(iii) In addition to the annual audit, DEC and EPA will jointly negotiate an annual review process and plan which will serve as the basis of an annual federal oversight review. The plan will include specific activities for review, the time and place to conduct reviews, and materials to be made available for such reviews. DEC agrees to make available to EPA the annual report, the IUP, and the latest annual audit, together with such other records reasonably required in conducting the annual review of the CWSRF program.

SECTION 5: COMPLIANCE AND SANCTIONS.

A. Procedure Upon Noncompliance.

(i) If EPA determines that the State has not complied with the terms of any capitalization grant agreement, this Operating Agreement, the IUP, or any other requirements of Title VI, EPA will notify DEC in writing of the noncompliance and of the corrective action necessary.

(ii) DEC and/or EFC, as appropriate, will take the indicated corrective action or will submit to EPA, within 60 days, a plan that will lead to compliance. If within 60 days of receipt of the written notice of noncompliance the State fails to either take the indicated corrective action or submit a plan that will lead to compliance, EPA shall withhold further payments (but not cash draws against payments previously made) to the CWSRF until the State has taken acceptable actions.

(iii) Once the State has taken the indicated corrective action or has submitted a plan that will lead to compliance, any payments withheld by EPA will be released and scheduled payments recommenced.

(iv) If the State fails to take the necessary corrective action deemed adequate by EPA within twelve months of receipt of the original written notice of noncompliance, any withheld payments shall be deobligated and reallocated to other States.

(v) Notwithstanding any other provisions in this Operating Agreement, if EPA shall determine that capitalization grant funds or the proceeds thereof were or are subject to waste, fraud, or abuse, the capitalization grant may be recovered under procedures outlined in 40 CFR Part 31.

B. Dispute Resolution. Determinations by the Regional Administrator concerning the denial of any application for a capitalization grant, as well as any disputes arising under a capitalization grant award, including the suspension or termination of grant assistance, will be final and conclusive unless appealed by the State within 30 days from the date of such final determination in accordance with the provisions of 40 CFR Part 31, Subpart F.

C. Recipient Appeals. Any recipient of funding or other assistance under the CWSRF aggrieved by any action or decision of the State may pursue any claim, review, or appeal relating to such action or decision as may be provided under State law. Recipients shall not have the right to pursue claims or appeals with regard to State actions or decisions with EPA.

SECTION 6: MISCELLANEOUS PROVISIONS.

A. Federal Authorities Applicable to Equivalency Projects (Cross-Cutters). The State will comply, and assure compliance by its agents and recipients of CWSRF assistance, with applicable Federal statutes including those identified in Attachment 6: Federal Authorities Applicable to Equivalency Projects (Cross-Cutters).

B. Severability. Invalidation of any one of the provisions of this Operating Agreement by Judgment or Court Order shall in no way affect any other provisions contained herein, which shall remain in full force and effect.

C. Execution in Counterparts. This Operating Agreement, and any amendments, modifications, or supplements thereto, may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.



Regional Administrator
United States Environmental
Protection Agency-Region II

Date: 12/7/06



Commissioner
New York State Department of
Environmental Conservation

Date: 10/11/06