

State of Maryland
Department of Natural Resources

Chesapeake & Atlantic Coastal Bays 2010 Trust Fund

Grant Agreement

This Grant Agreement, entered into this _____ day of _____, 20____ by and between the State of Maryland, Department of Natural Resources, Tawes State Office Building, 580 Taylor Avenue, Annapolis, MD 21401 (hereinafter “Department”) and

(Name)

(Address)

(Federal Tax Identification # or Social Security #),
hereafter “Grantee”

WHEREAS, there is a Chesapeake & Atlantic Coastal Bays 2010 Trust Fund (“Trust Fund”), established with the purpose to provide financial assistance necessary to advance Maryland’s progress in meeting the goals established in the Chesapeake 2000 Agreement for the restoration of the Chesapeake Bay and the Atlantic Coastal Bays and their tributaries by focusing limited financial resources on nonpoint source pollution control projects in all regions of the State of Maryland, as set forth in Annotated Code of Maryland, Natural Resources Article §8-2A-01 et seq.; and

WHEREAS, the BayStat Subcabinet agencies administer the Trust Fund in accordance with the Trust Fund final work and expenditure plans, including distribution of funds through grants to counties, bicounty agencies, municipalities, forest conservancy district boards, soil conservation districts, academic institutions, and nonprofit organizations that have a demonstrated ability to implement nonpoint source pollution control projects; and

WHEREAS, funding has been appropriated for the Trust Fund by the General Assembly for Fiscal Year _____, to be disbursed in grants to certain entities, for the purposes set forth in Code, Natural Resources Article § 8-2A-01 et seq.; and

WHEREAS, the Grantee has been selected by the BayStat Subcabinet to receive such grant assistance from the Trust Fund, and the Grantee has agreed to the provisions contained herein;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and the receipt of a Grant in the amount of _____ Dollars (\$____), the parties agree to the following provisions:

1. This Grant Agreement (hereafter "Agreement") shall become effective on _____ and shall expire without notice on _____. This Agreement may be amended only by a writing signed by both parties.

2. Unless the Grantee is a unit of the Department of Natural Resources, the Grantee acknowledges that it is neither an agent nor an employee of the Department, but is an independent entity.

3. The Grantee shall be responsible for identifying and acquiring all supplies and materials necessary for performance of all work, and for withholding any taxes and social security payments due in relation to this Agreement. The Grantee is responsible for supervision of and the technical accuracy and coordination of all work pursuant to this Agreement as set forth in the attached Scope of Work. The Scope of Work is hereby incorporated into this Agreement and is made an integral part of this Agreement.

4. No work may be initiated under this Agreement until the Grantee has been instructed in writing to proceed by the Department. The Grantee shall prosecute all work continuously and diligently until the termination of this Agreement, and shall not sublet, assign, or transfer this Agreement or any portion thereof without prior written consent of the Department. Unless otherwise specified in writing, the Grantee agrees that all reports, drawings, studies, estimates, maps, and computations prepared by or for it under the terms of the Agreement shall be delivered upon request to, and become the property of, the Department upon termination or completion of the work.

5. (a) Funds paid to the Grantee under this Agreement shall be used only for the purposes set forth in this Agreement and the Scope of Work. The Grantee shall submit billings for the expenses authorized for the work under this Agreement in accordance with the payment schedule set forth in the attached Scope of Work. In the absence of a payment schedule, the Grantee shall submit billings for time periods ending March 31, June 30, September 30, and December 31 of each year. Each billing shall identify the progress made in relation to the schedule, and the amount of payment requested. The Grantee shall submit a final invoice no later than 45 days after the date of expiration of this Agreement set forth in Paragraph 1, above.

(b) The Grantee shall follow cost accounting practices acceptable to the Department. Payments will be made only for the costs authorized under in the Scope of Work. Billings shall be due and payable within 30 days of receipt by the Department. The Grantee agrees that no claims or charges for damages shall be made by it for any delays or hindrances from any cause during the term of this Agreement. Under no circumstances is the Department responsible for payment of any charges due to late payment of invoices.

6. The Grantee shall submit quarterly status/progress reports to the Department at the same time as the billing submissions required under Paragraph 5, above. Each status report shall contain the information required by Code, Natural Resources Article § 8-2A-04 (e) for work performed during that quarter. Payment of the costs identified in the

billing submissions is contingent on the Department's satisfaction with the Grantee's progress in the work. At the end of the term of the Agreement, the Grantee shall submit a final report, as described in the Scope of Work.

7. In the performance of its activities with a Grant from the Trust Fund pursuant to this Agreement, the Grantee shall conform to Federal, State, and local laws and regulations and to the specifications contained in the attached Scope of Work. The Grantee shall obtain and maintain all licenses, permits, insurance, and government approvals, if any, necessary to the performance of its obligations under this Agreement. In the case of any sub-contract or sub-grant, the Grantee agrees to bind the subcontractor and every subcontractor agrees to be bound by all terms of this Agreement, unless the Grantee requests, and the Department agrees in writing, to amend this Agreement to modify or waive one or more provisions. The Department retains the right, by written direction to the Grantee, to at any time make any change in the work within the general scope of the Agreement.

8. The Department shall have the right, during normal business hours, to enter upon and inspect the lands, equipment, records, and property owned or used by the Grantee in connection with this Grant, to determine the Grantee's compliance with the terms and conditions of this Agreement. The Department retains the right to audit and inspect the records of the Grantee pertaining to this Grant for a period of 3 years after the conclusion of the Grant. Should the Department determine that Grant funds have been expended for activities outside the Scope of this Agreement, the Grantee, on demand by the Department, shall reimburse the Department for all such funds.

9. (a) Subject to the obligations and conditions set forth in this Agreement, title to equipment or personal property acquired with funds under this Agreement by the Grantee or a subgrantee will vest upon acquisition in the Grantee or subgrantee respectively. Title to real property will vest in the State. The Grantee and subgrantee shall maintain the equipment, and real and personal property, in good order, and shall employ adequate safeguards to prevent loss, damage, or theft of the property.

(b) For any item of real or personal property, including equipment, acquired with Grant funds which has an original per-unit fair market value of Five Thousand Dollars (\$5,000) or more, the Grantee shall, at its own expense, and for the duration of this Agreement or for 5 years, whichever is less, obtain and maintain insurance. The insurance shall provide full protection for the Grantee and the State against loss, damage, or destruction of or to the property. The Grantee shall, on request, provide the Department with satisfactory evidence of its compliance with this requirement. In case of loss, theft, or damage of the insured property, proceeds of insurance required by this paragraph shall be applied towards replacement of the property or towards the partial or total repayment to the State of the Grant, in the sole discretion of the Department.

(c) Equipment shall be used by the Grantee or subgrantee for the project or work for which it was acquired as long as needed, whether or not the project or work continues to be supported by Trust Fund Grant funds.

(d) The Grantee or subgrantee may not use equipment acquired with Trust Fund Grant funds to provide services for a fee to compete with private companies that provide equivalent services, unless specifically allowed by federal or state law.

(e) When no longer needed for the project or work under this Agreement, the equipment may be used in other work or projects currently or previously supported by a State agency. The Grantee or subgrantee may acquire replacement equipment, and may

use the original equipment to be replaced as a trade-in to offset the cost of the replacement equipment, subject to the approval of the Department.

10. (a) When no longer needed for the project or work under this Agreement or any other project currently or previously supported by a State agency, personal property and equipment, including replacement equipment, acquired under this Grant with a current per-unit fair market value of less than five thousand dollars (\$5,000.00) may be retained, sold, or otherwise disposed of by the Grantee.

(b) When no longer needed for the project or work under this Agreement or any other project currently or previously supported by a State agency, equipment, including replacement equipment, acquired under this Grant with a current per-unit fair market value of five thousand dollars (\$5,000.00) or more may be retained or sold, and any proceeds from a disposition shall be applied to repay to the State a percentage of the portion of the Grant allocable to the property disposed of, unless the Grantee and the Department agree to other terms and conditions. The percentage shall be equal to the percentage of the unadjusted bases of the property that would remain if the property had been recover property placed in service after 1986 and if all allowable deductions had been taken up to the time of disposition under the Accelerated Cost Recovery System (ARCS) specified in the 26 U.S.C. § 168.

11. This Agreement shall be governed by the laws of the State of Maryland, and the parties hereby expressly agree that the courts of the State of Maryland shall have exclusive jurisdiction to decide any questions arising hereunder.

12. The Grantee agrees that it will not discriminate in any matter against an employee or applicant for employment because of sex, race, age, color, religion, creed, marital status, ancestry, national origin, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; and Grantee agrees to include a provision similar to that contained herein in any subcontract except a subcontract for standard commercial supplies or raw materials; and to post and cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this paragraph.

13. The Grantee hereby represents and warrants that it and any subcontractor it hires is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.

14. To the fullest extent permitted under applicable law, the Grantee shall indemnify and save harmless the State and the Department from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against the State or the Department arising out of or as a result of this Agreement. To the fullest extent permitted by law, the Grantee is responsible for all damage to life and property due to its activities, or those of its agents, employees, sub-grantees, or sub-contractors, arising out of or in connection with its performance under this Agreement until all services under this Agreement are declared accepted by the Department.

15. This agreement may be terminated in writing by either party upon thirty (30) days written notice to the other party. Service of any notice required under this Agreement shall be complete upon mailing of such notice, postage prepaid, to the appropriate representative of the party at the address listed in the Agreement.

16. Any disputes between the Department and the Grantee related to this Agreement shall be presented in writing by the party asserting the dispute, to the other party. The written statement shall set forth the nature and, if applicable, the monetary value of the dispute, and the facts on which the dispute is based. The parties agree that they will work diligently and in good faith to resolve any dispute, and that, pending the resolution of the dispute, the Grantee will proceed with the work under this Agreement.

17. The Department may instruct the Grantee to terminate the performance of work under this Agreement in whole, or from time to time in part, whenever the Department determines that such termination is in the best interest of the Department. The Department will pay all reasonable costs associated with the Grantee's work under this Agreement, which the Grantee has incurred and has documented, up to the date of termination.

18. If the Grantee fails to fulfill its obligations under this Agreement, or otherwise violates any provision of the Agreement, the Department may terminate the Agreement for default by issuing written notice to the Grantee. The notice shall specify the acts or omissions cited as cause for termination. All finished or unfinished work accomplished by the Grantee shall, at the Department's option, become the Department's property. The Department shall pay the Grantee fair and equitable compensation for any satisfactory work prior to the issuance of the notice of termination, less the amount of any set-off or damage caused by the Grantee's breach of its obligations. The Grantee is liable after termination, and the Department retains the right to collect, any and all monies owed to the Department under this Grant.

19. This agreement embodies that whole agreement of the parties. There are no promises, conditions, or obligations referring to the subject matter, other than those contained herein or incorporated by reference.

20. The parties agree that the following named individuals are considered to be essential to the work being performed under this Agreement, and that they are designated as Key Personnel who shall be made available to the fullest extent required to carry out the work under this Agreement:

_____ (name)

_____ (phone, E-mail)

Should any of these individuals become unavailable during the term of this Agreement, the Grantee shall assign personnel of equivalent capability to the work. Prior written approval of the Department is required for any substitution of key personnel, which approval may be denied at the Department's sole discretion. If the Grantee is unable to provide substitute personnel acceptable to the Department, the Department may, at its option, terminate this Agreement, or require an equitable adjustment in the Grant to account for the loss of key personnel.

21. The parties designate the following named individuals as Agreement Representatives for the purpose of any notices required under this Agreement. The parties agree that each will promptly notify the other, in case of substitution of an Agreement Representative, or change in the Representative's contact information.

Department Representative (name)

_____ (phone, E-mail)

Grantee Representative (name)

_____ (phone, E-mail)

IN WITNESS THEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

GRANTEE

Witness

Grantee Name and Title

STATE OF MARYLAND
DEPARTMENT OF NATURAL
RESOURCES

Witness

Matthew J. Fleming, Director
Chesapeake and Coastal Service

THIS CHESAPEAKE AND ATLANTIC COASTAL BAYS 2010 TRUST FUND GRANT AGREEMENT FORM HAS BEEN APPROVED FOR FORM AND LEGAL SUFFICIENCY BY THE OFFICE OF THE ATTORNEY GENERAL FOR THE DEPARTMENT OF NATURAL RESOURCES. ANY ADDITION OR MODIFICATIONS TO, OR DELETIONS FROM, THIS FORM MUST BE APPROVED BY THE ATTORNEY GENERAL'S OFFICE BEFORE SIGNATURE OR PERFORMANCE OF ANY WORK.

Marianne E. Dise
Assistant Attorney General
Office of the Attorney General
Department of Natural Resources

April 2011