

FUNDING AGREEMENT

between

TOWN OF STERLING

and

**NEW YORK STATE
ENVIRONMENTAL FACILITIES CORPORATION**

Project Number CO.72
Dated as of October 31, 2020

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This Funding Agreement (“Agreement”), dated as of the date set forth on the cover page, is between the Town of Sterling (the “Recipient”) and the New York State Environmental Facilities Corporation (the “Corporation”).

WHEREAS, New York State has made funding available to the Corporation to support municipal water quality infrastructure programs.

WHEREAS, on the basis of Recipient’s approved funding application, supplemental material, and the representations, warranties and covenants set forth in this Agreement, the Corporation proposes to make funding available to the Recipient in accordance with Article III of this Agreement, to fund costs incurred by the Recipient in connection with the Project, and the Recipient desires to receive such funding upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and the representations, covenants and agreements herein set forth, the Recipient and the Corporation, each binding itself, its successors and assigns, promise, covenant and agree as follows:

ARTICLE I GENERAL PROVISIONS

Section 1.1 Definitions.

Unless stated otherwise, each capitalized term used in this Agreement has the meaning specified for it in **Exhibit B**.

Section 1.2 Effective Date and Term.

This Agreement is effective and enforceable as of the date on the cover page following its execution by the Recipient and the Corporation, and it will remain in full force and effect until 5 pm on October 31, 2023, unless extended by written agreement of the parties.

Section 1.3 Exhibits and Appendices Incorporated.

All exhibits and appendices to this Agreement are incorporated into, and made a part of, this Agreement.

Section 1.4 Amendments.

This Agreement may not be amended except by an instrument in writing signed by each of the parties.

Section 1.5 Applicable Law.

This Agreement is governed by and construed in accordance with the laws of New York State.

Section 1.6 Consent to Jurisdiction.

To the fullest extent permitted by law, the Recipient consents to the initiation of any proceedings to enforce the terms of this Agreement in any court of competent jurisdiction and, if applicable, agrees not to assert the defense of sovereign immunity in any such proceedings.

Section 1.7 No Warranty Regarding Condition, Suitability or Cost of Project.

The Corporation makes no warranty, express or implied, as to the work required by the Project or that it will be suitable for the Recipient's purposes or needs, or that the funding provided under this Agreement will be sufficient to pay the costs of the Project. The Recipient is solely responsible to plan, design, and build the Project properly, and to cause the Project to be operated and maintained effectively for its useful life, as required by laws, regulations, permits and good management practices. The Recipient acknowledges and agrees that the Corporation is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other Project documents. Nothing in this section prohibits the Recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

Section 1.8 Notices.

All notices or other communications under this Agreement must be sufficiently given, and will be deemed given, when delivered in writing to the address or e-mail of the identified party or parties set forth below, or to such other address, facsimile number, or e-mail as the appropriate party may hereafter designate by notice in writing given to the others.

(a) Corporation:

New York State Environmental Facilities Corporation
Attn.: Maureen Coleman
625 Broadway
Albany, New York 12207-2997
Maureen.coleman@efc.ny.gov

(b) Recipient:

At the address specified on the signature page of this Agreement.

Section 1.9 Severability.

If any provision of this Agreement is 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.

**ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE RECIPIENT**

As of the date set forth on the cover page, the Recipient represents and warrants as follows:

Section 2.1 Description of the Project.

The Project description stated in **Exhibit A** is an accurate description of the scope of activities to be funded, in whole or in part, with the funding provided to Recipient under this Agreement.

Section 2.2 Estimate of Costs.

The Estimated Project Costs as shown in **Exhibit C** represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Project.

Section 2.3 General Representation.

All documentation and information provided to the Corporation in connection with this Agreement is

accurate in all respects, and Recipient acknowledges that the Corporation is executing this Agreement and providing funding in reliance upon the accuracy of such documentation and information.

Section 2.4 Environmental Review, Permits and Authorizations.

The Recipient has obtained or will obtain all necessary approvals required to undertake the Project. The Recipient further represents that to the extent required it has complied with the State Environmental Quality Review Act, Section 14.09 of the State Historic Preservation Act, and all other applicable federal, state and local laws, ordinances and regulations.

**ARTICLE III
AGREEMENT TO PROVIDE FUNDING**

Section 3.1 Agreement to Provide Funding for Project Costs.

(a) Subject to the conditions and in accordance with the terms of this Agreement, the Corporation shall provide funding to the Recipient for the Project in an aggregate amount not to exceed the lesser of 95% of actual Project costs or FOUR HUNDRED SIXTEEN THOUSAND ONE HUNDRED AND 00/100 DOLLARS (\$416,100.00), which amount represents 95% of the Estimated Project Costs. The Recipient agrees to provide at least 5% of the Project costs as its matching contribution. The Recipient acknowledges that the Corporation may withhold 5% of the amount requested from each disbursement request as the Recipient's matching contribution.

(b) To receive a disbursement of financial assistance for Project costs, the Recipient shall submit to the Department no more frequently than once per month a disbursement request in the form of **Exhibit D**. Disbursement requests should be sent to the following e-mail address: Redigrant@efc.ny.gov.

(c) Each such disbursement request must include sufficient documentation to demonstrate that the Recipient has incurred the Projects costs for which the disbursement is requested. Satisfactory documentation may include, but is not limited to, signed copies of payment vouchers or invoices, cancelled checks, details of current indirect cost and fringe benefits rates, copies of all sub-agreements, executed change orders, and payroll records tabulations of allowable costs incurred to date.

(d) Within 15 days after receipt of a complete disbursement request, the Department shall approve or disapprove, in whole or in part, the payment of such request, and shall provide written notice of the approval or disapproval to the Recipient and the Corporation. If the Department approves a disbursement request, the Department shall specify the amount of the disbursement approved to be paid by the Corporation to the Recipient and sign the disbursement request form in the space provided on the disbursement request form. Upon receipt by the Corporation of the Department's signed approval of a disbursement request, the Corporation shall disburse financial assistance to the Recipient in the amount approved by the Department via check.

(e) The Corporation shall have no obligation to make disbursements more frequently than once every month. Notwithstanding anything herein to the contrary, proceeds will not be disbursed to the Recipient for costs of construction of the Project, other than planning and design, unless and until the plans and specifications for the Project have been approved or accepted by the Department and the Recipient has submitted to the Corporation all items requested in such approval and complied with any other conditions of such approval.

Section 3.2 Source of Funding; Nature of Obligation.

The Corporation shall provide funding to the Recipient pursuant to this Agreement solely from appropriated moneys made available to it for such purpose. The Corporation has no obligation to make any

disbursements and no obligation shall be incurred by the State or the Corporation in excess of the moneys made available for that purpose. The Corporation will retain custody and control over the appropriated funds which will only be made available to the Recipient upon submission to the Corporation of documentation of incurred Project costs and approval thereof by the Corporation.

ARTICLE IV COVENANTS

Section 4.1 Project Compliance.

The Recipient shall complete the Project (or cause the Project to be completed) in compliance with all applicable federal, State and local laws and regulations and this Agreement, to ensure the availability of the Project for its intended purposes and to protect water quality and ensure the safety of the public and public health.

Section 4.2 Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities (“EEO”) for Minority Group Members and Women.

The Corporation and the Recipient acknowledge the importance of providing business participation opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”) and equal employment opportunities (“EEO”) for minority group members and women in the performance of contracts and subcontracts for the Project (hereinafter referred to as “Contracts” and “Subcontracts”). Accordingly, the Corporation encourages the Recipient, and the Recipient agrees to encourage contractors and subcontractors, to comply with the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 for Contracts and Subcontracts with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

(a) *Equal Employment Opportunities.* The Corporation encourages the Recipient, and the Recipient will encourage contractors and subcontractors performing work pursuant to Contracts or Subcontracts, to undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO refers to the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) *Business Participation Opportunities for MWBEs.* The Corporation encourages the Recipient, and the Recipient will encourage contractors and subcontractors performing work pursuant to Contracts or Subcontracts, to make good faith efforts to promote and assist the participation of MWBEs on Contracts and Subcontracts. The directory of New York State Certified MWBEs can be found at: <https://ny.newnycontracts.com>. The Recipient will provide information on any MWBE participation on Contracts and Subcontracts to the Corporation on an MWBE Utilization Plan prior to or at the time of final disbursement under this Agreement. The Recipient will also provide information on any payments made to MWBEs for work performed on Contracts and Subcontracts to the Corporation prior to or at the time of final disbursement under this Agreement.

Section 4.3 Business Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses (“SDVOB”).

The Corporation and the Recipient acknowledge the importance of providing business participation opportunities for New York State certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”) in the

performance of contracts and subcontracts for the Project (hereinafter referred to as “Contracts” and “Subcontracts”). Accordingly, the Corporation encourages the Recipient, and the Recipient agrees to encourage contractors and subcontractors, to comply with the provisions of New York State Executive Law Article 17-B and 9 NYCRR Part 252 for Contracts and Subcontracts with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. The Corporation encourages the Recipient, and the Recipient will encourage contractors and subcontractors performing work pursuant to Contracts or Subcontracts, to make good faith efforts to promote and assist the participation of SDVOBs on Contracts and Subcontracts. The directory of New York State Certified SDVOBs can be found at: <https://ogs.ny.gov/Veterans/default.asp>. The Recipient will provide information on any SDVOB participation on Contracts and Subcontracts to the Corporation on a SDVOB Utilization Plan prior to or at the time of final disbursement under this Agreement. The Recipient will also provide information on any payments made to SDVOBs for work performed on Contracts and Subcontracts to the Corporation prior to or at the time of final disbursement under this Agreement.

Section 4.4 Use of Funding.

The Recipient shall use the funding provided pursuant this Agreement solely for Project costs in accordance with this Agreement and shall reimburse the Corporation if it fails to do so. The Recipient shall not use materials, equipment, or personnel paid for with funding pursuant to this Agreement for any activity other than those provided for under this Agreement.

Section 4.5 Prevailing Wage Requirements.

The Recipient shall comply, in all applicable respects, with the prevailing wage requirements under Article 8 of the Labor Law.

Section 4.6 Procurement.

The Recipient shall comply with all federal, State and local laws and regulations pertaining to any procurement for contracts whose payment obligations are to be satisfied with funding provided pursuant to this Agreement. The Recipient shall not enter into a contract or subcontract with any party deemed to be ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b. In addition, the Recipient shall not enter into a contract or subcontract with any party deemed to be ineligible to submit a bid under Executive Law § 316.

Section 4.7 Project Approvals.

The Recipient shall obtain all necessary approvals from all governmental agencies requisite to the completion of the Project and shall comply with any requirements and/or conditions included in such approvals.

Section 4.8 Payment of Additional Project Costs.

The Recipient shall complete the Project and pay any Project costs in excess of the funding provided pursuant to this Agreement, and the Recipient shall not be entitled to any reimbursement or funding therefor from the Corporation.

Section 4.9 Non-Discrimination Requirements.

Pursuant to Article 15 of the Executive Law (also known as the New York State Human Rights Law), and all other State and federal statutory and constitutional non-discrimination provisions, the Recipient

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed and delivered as of the date first written above.

TOWN OF STERLING

I certify that I am authorized to sign this Agreement and that I have been duly and formally delegated or designated as the authorized signatory and have the authority to agree to all of the terms and conditions of this Agreement.

By: Joan Kelley
Joan Kelley
Supervisor

Notice Address:

Town of Sterling
Attn: Supervisor
1290 State Route 104A
Sterling, NY 13156

**NEW YORK STATE
ENVIRONMENTAL FACILITIES CORPORATION**

By: [Signature]

EXHIBIT A
PROJECT DESCRIPTION
Recipient: Town of Sterling
Project Number: CO.72

This project involves the installation of water main and a new water tower on Schoolcraft Road as part of a new water district in the Town of Sterling. The Project is further defined in detail by the engineering report entitled "Town of Sterling Preliminary Engineering Report for Proposed Water District #2 in the Town of Sterling Cayuga County, New York" dated July 2019, as may be, updated, amended, and approved by the NYS Department of Environmental Conservation and the NYS Department of Health.

EXHIBIT B
DEFINITIONS
Recipient: Town of Sterling
Project Number: CO.72

Capitalized terms used in this Agreement, unless otherwise defined herein, have the meanings set forth in this **Exhibit B**.

“Agreement” means this Funding Agreement, as it may be amended and supplemented in accordance with the terms hereof.

“Authorized Person” means the person so authorized to act on behalf of the Recipient in connection with execution of this agreement and the submittal of disbursement request forms.

“Corporation” means the New York State Environmental Facilities Corporation established under the New York State Environmental Facilities Corporation Act, constituting Title 12 of Article 5 of the Public Authorities Law and Chapter 43-A of the Consolidated Laws of the State of New York, as from time to time amended and supplemented., and any entity which may succeed to its rights and duties.

“Department” means the New York State Department of Department of Health.

“Estimated Project Costs” means the projected costs of the Project that are eligible for funding, as set forth in **Exhibit C**.

“Project” means the project described in **Exhibit A**.

“Recipient” means the Town of Sterling.

“State” means the State of New York.

EXHIBIT C
ESTIMATED PROJECT COSTS
Recipient: Town of Sterling
Project Number: CO.72

Total Estimated Project Cost	\$438,000.00
Grant Amount	\$416,100.00

EXHIBIT D
DISBURSEMENT REQUEST FORM
Recipient: Town of Sterling
Project Number: CO.72

REQUEST NO. _____

Dated as of _____, 20__

I, the undersigned and Authorized Person of the Recipient, hereby certify and agree as follows:

1. All representations and warranties of the Recipient as set forth in Article II of the Funding Agreement dated as of October 31, 2020, between the Corporation and the Recipient (the "Agreement") are still valid and effective as of today's date.
2. This request is being delivered pursuant to the Agreement. All capitalized terms used but not defined herein have the respective meanings set forth in the Agreement.
3. The Corporation is hereby requested to make a disbursement under the Agreement in the amount of \$ _____ for Project costs.
4. The Recipient has determined that such Project costs are reasonable, necessary, and allocable to the Project under generally accepted governmental accounting standards.
5. This disbursement, if made, together with any prior disbursements made under the Agreement, will not exceed the total amount of funding available pursuant to the Agreement and will not exceed 95% of Estimated Project Costs.
6. The Recipient hereby represents and warrants that it is not in breach of the Agreement, that it has performed all of the covenants and agreements that it is required to perform under the Agreement, that the making of the payment requested has been duly authorized by the Recipient, and that no change in circumstances has occurred, or will occur upon the making of the payment hereby requested, which would constitute a breach under the Agreement.
7. Based upon information provided by the Recipient's engineer for the Project, as applicable, all amounts requested hereunder are for eligible Project costs which have not been included in any previous disbursement, and have not been previously paid using the proceeds of any other third-party source of funding.
8. If disbursement is requested for payment for costs of construction: The Recipient has obtained all licenses, permits or other approvals required as of the date hereof to undertake the Project, or to cause the Project to be undertaken.
9. The Recipient has complied with all applicable public bidding requirements in connection with the Project including, but not limited to, the requirements of General Municipal Law Section § 101.
10. The Recipient has encouraged the participation of MWBEs and SDVOBs on contracts and subcontracts for the Project. The Recipient has provided the Corporation with information on any MWBE and SDVOB participation, by submission of an MWBE and/or SDVOB Utilization Plan as applicable, and any payments made to MWBEs and SDVOBs.

11. The Corporation will mail all checks to the below address:

Town of Sterling
Attn: Supervisor
1290 State Route 104A
Sterling, NY 13156

Please update your mailing address below if the mailing address listed above is incorrect.

Date: _____

TOWN OF STERLING

By: _____
Joan Kelley
Supervisor

DEPARTMENT USE ONLY

The Department of Health has reviewed the Recipient's Disbursement Request and any accompanying invoices or documentation of costs incurred, and approves the request in the amount of:

\$ _____.

(Signature of Authorized Representative)

(Date)

Name: _____

Title: _____