**NUTRIENT OR SEDIMENT REDUCTION PURCHASE AGREEMENT**

**BETWEEN**

**_____**

**AND**

**THE PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY**

**CWPP CONTRACT # _____**

This Nutrient or Sediment Reduction Purchase Agreement is between the Pennsylvania Infrastructure Investment Authority ("PENNVEST"), a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, with an office at 607 South Drive, 5th Floor – West, Harrisburg, Pennsylvania 17120 and _____ (the "Contractor") an entity permitted to do business in the Commonwealth of Pennsylvania, with an address of .

On July 11, 2022, Act 54 of 2022 (July 11, 2022, P.L. 40, No. 54) ("Act 54 of 2022") was signed into law by Governor Wolf amending the Pennsylvania Fiscal Code and providing for the implementation of the Commonwealth's 2022-23 budget, among other things.

Section 1603-S of Act 54 of 2022 directed PENNVEST to establish the Clean Water Procurement Program ("CWPP") to provide for the purchase of verified nutrient or sediment reduction, as further defined under Act 54 of 2022 ("Verified Reductions"), through a competitive bidding process to the extent funds are available for the CWPP from the sources set forth in Section 1604-S of Act 54 of 2022. In 2022, the Commonwealth appropriated $22,000,000 for the CWPP.

On April 19, 2023, the PENNVEST Board of Directors approved the PENNVEST Clean Water Procurement Program Guidance ("CWPP Guidance") setting forth the rules and procedures necessary to administer the CWPP.

On July 11, 2024, Act 54 of 2024 (July 11, 2024, P.L. 550, No. 54) ("Act 54 of 2024") was signed into law by Governor Shapiro amending the Pennsylvania Fiscal Code and providing for the implementation of the Commonwealth's 2024-25 budget, among other things. Section 1712-A.2(d)(2) of Act 54 of 2024 directed that beginning in fiscal year 2024-25, twelve (12%) percent of funds deposited into the Clean Streams Fund shall be distributed to the CWPP annually for purchase of verified nutrient or sediment reductions.

On November 12, 2026, PENNVEST initiated a multi-award competitive sealed procurement solicitation seeking applicants interested in providing Verified Reductions.

On March 3, 2027, PENNVEST closed the application period for its multi-award solicitation.

In response to PENNVEST's solicitation, the Contractor submitted a responsive and responsible application.

After review and ranking of all submitted applications pursuant to the statutory criteria and PENNVEST's published guidance, the Contractor's application was selected for negotiations for the purchase of Verified Reductions.

Pursuant to Section 1606-S of Act 54 of 2022 and Section 517 of the Commonwealth Procurement Code, 62 Pa.C.S. § 517, PENNVEST has the authority to enter into this agreement for the purchase of Verified Reductions.

The parties, intending to be legally bound, agree as follows:

## A. PURCHASE OF VERIFIED REDUCTIONS

### 1. TRANSACTION SPECIFIC TERMS

Upon satisfaction of the following conditions, PENNVEST shall purchase from the Contractor Verified Reductions in the quantities and at the price(s) set forth in the Transaction Specific Terms, attached hereto as Exhibit A:

a. The Pennsylvania Department of Environmental Protection ("DEP") has approved through inspection, compliance audit, or other means the Contractor's compliance with its approved verification plan, as defined under Section 1602-S of Act 54 of 2022 (the "Verification Plan"),

b. The Contractor has certified to PENNVEST that it is in compliance with the provisions of Act 54 of 2022 and the terms and conditions of the CWPP Guidance as of the date of each disbursement of funds under this agreement, and

c. The Contractor has provided, to the satisfaction of PENNVEST, in its sole discretion, all documentation required by PENNVEST, including but not limited to, documentation necessary to verify the Contractor satisfied all PENNVEST reporting requirements under the CWPP, and achieved all performance targets set forth in the Verification Plan, which have been identified by the Contractor on the Project Management Plan contained in Exhibit B.

### 2. APPLICATION, CONTRACTOR'S RESPONSE AND STANDARD TERMS AND CONDITIONS

This agreement includes the following documents and all terms and conditions included in each Exhibit:

a. The CWPP multi-award competitive sealed application (the "Application"), attached as Exhibit C,

b. The Contractor's response to the CWPP multi-award competitive sealed application (the "Contractor's Response"), attached as Exhibit D,

c. The CWPP Standard Terms and Conditions (the "Standard Terms and Conditions"), attached as Exhibit E, and

d. The Contractor shall be subject to the representations in its Response and the terms and conditions of the Application and Standard Terms and Conditions until the Contractor delivers to PENNVEST all Verified Reductions required to be delivered under the Transaction Specific Terms in Exhibit A, and the Contractor performs and discharges all other obligations of the Contractor under this agreement.

3. ADDITIONAL DOCUMENTS

The Contractor shall execute and deliver such additional documents, certifications and other instruments as PENNVEST may reasonably require prior to disbursement of funds under this agreement.

## B. CONTRACTOR REPRESENTATIONS AND WARRANTIES

The representations and warranties made under this provision survive until the Contractor satisfies all obligations under this agreement. The Contractor represents and warrants to PENNVEST the following:

4. COMPLIANCE WITH CLEAN WATER PROCUREMENT PROGRAM GUIDANCE

The Contractor has complied with the terms and conditions of the CWPP Guidance in all actions taken through the date of execution of this agreement.

5. VERIFICATION PLAN; PROJECT MANAGEMENT PLAN

The Contractor has provided a copy of its Verification Plan to PENNVEST and submitted a summary of all performance targets set forth in the Verification Plan as more particularly set forth in the Project Management Plan in Exhibit B. The Project Management Plan identifies the business plan, implementation schedule and any other major milestones required to generate the Verified Reductions by the dates set forth in the Project Management Plan.

6. STATUS OF TITLE TO VERIFIED REDUCTIONS

The Contractor has or will have sufficient ownership or title in the Verified Reductions, and all leases, easements, rights of way, or other personal or real property interests necessary to generate the Verified Reductions, for the term of this agreement. The Contractor has not entered into a contract to sell the Verified Reductions to another party, and the Verified Reductions are free and clear of all liens, encumbrances, security interests or other equitable charges, except those in favor of PENNVEST as may be created under this agreement.

7. FORMATION; EXISTENCE; COMPOSITION

The Contractor is duly organized and existing under the laws of the Commonwealth of Pennsylvania, or is duly authorized to do business in the Commonwealth of Pennsylvania; has the power and authority to carry on its business as now conducted; has furnished correct and complete copies of its organizational documents to PENNVEST; and has provided a correct and complete list of the directors and officers with the legal authority to execute this agreement in the List of Officer and Directors attached as Exhibit F.

8. POWER AND AUTHORITY; AUTHORIZATION; ENFORCEABILITY

The Contractor has the full power, authority, and legal right to execute, deliver, and comply with this agreement and has taken all actions necessary or appropriate for the execution and delivery of and compliance with the agreement. The Contractor has delivered to PENNVEST copies of all documents demonstrating that the Contractor has the corporate authorization or authority to enter into the transaction with PENNVEST. This agreement constitutes valid and legally binding obligations of the Contractor enforceable against the Contractor in accordance with their respective terms.

9. OTHER APPROVAL

No consent, approval or other authorization of or by any court, administrative agency or other governmental authority is required in connection with the execution and delivery of or the performance of the Contractor's obligations under this agreement, except as previously disclosed to PENNVEST in writing.

10. CONFLICT; BREACH

The execution and delivery of and compliance with this agreement will not conflict with or result in a breach of any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or the organizational documents, or of any agreement or other document or instrument to which the Contractor is a party, and such action by the Contractor will not result in the creation or imposition of any lien, charge or encumbrance upon the Verified Reductions to be purchased under this agreement in favor of anyone other than PENNVEST.

11. LITIGATION

No action, suit or proceeding is pending or, to the knowledge of the Contractor, is threatened, against or affecting the Contractor or the Verified Reductions to be purchased under this agreement before or by any court, administrative agency or other governmental authority, which questions the validity of the transaction contemplated under this agreement, or which could result in a material adverse change in the financial condition or business of the Contractor, except as previously disclosed to PENNVEST in writing.

12. PROJECT FUNDING SOURCES

To the extent the Verified Reductions will be generated by Best Management Practices ("BMPs") or other approved practices to produce Verified Reductions as outlined in its Application that were funded by a local, state or federal public funding source, the Contractor has previously disclosed to PENNVEST in writing a breakdown of all funding sources associated with the BMPs or other approved practices.

13. PRIOR COMMONWEALTH TRANSACTIONS OR FUNDING

To the extent that the Contractor has previously entered into an agreement with PENNVEST, or any other Commonwealth agency, for the purchase or sale of Verified Reductions,

or to the extent the Contractor has previously received any project financing from PENNVEST, or another other Commonwealth agency, the Contractor is in compliance with all obligations under such prior agreements or funding documents and is not delinquent on its obligations, or in default of any provisions under such agreement or funding documents.

14. BANKRUPTCY; INSOLVENCY

The Contractor has not applied for or consented to the appointment of a receiver, conservator, trustee or liquidator for itself or any of its property; admitted in writing its inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been adjudicated as bankrupt or insolvent or filed a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; and no action has been taken by it for the purpose of effecting any of the prior conditions. No order, judgment or decree has been entered by any court of competent jurisdiction approving a petition seeking reorganization of the Contractor or all or a substantial part of the assets of the Contractor, or appointing a receiver, conservator, sequestrator, trustee or liquidator of it or any of its property.

## C. CONTRACTOR COVENANTS

All representations and warranties stated in Section B that continue to apply to the Contractor's performance under this agreement are incorporated into this Section as if restated in their entirety. In addition, the Contractor covenants to the following until the Contractor's obligations have been satisfied in full:

15. DELIVERY OF VERIFIED REDUCTIONS

The Contractor shall deliver or cause to be delivered all Verified Reductions in accordance with the Project Management Plan in Exhibit B. The Contractor shall deliver Verified Reductions on or before the scheduled delivery date set forth in Exhibit B unless PENNVEST expressly approves an extension of the delivery date in writing. The Contractor shall provide the applicable registration identification numbers to PENNVEST at the time of delivery, if applicable.

The Contractor shall take all steps necessary to manage and oversee the production and delivery of Verified Reductions in accordance with the Project Management Plan in Exhibit B, and the Contractor shall be responsible for ensuring that it will be able to deliver the applicable quantity and type of Verified Reductions as set forth in the Transaction Specific Terms in Exhibit A. The Contractor shall construct or implement the BMPs or other approved practices to produce Verified Reductions as outlined in the Contractor's Response as set forth in Exhibit D. The Contractor may not, without the express written consent of PENNVEST, make any material changes to the nature or type of BMPs, or other approved practices, implemented to produce Verified Reductions.

To the extent the Contractor provides a partial delivery of Verified Reductions, the Contractor will be entitled only to payment for the proportionate share of Verified Reductions delivered.

16. COMPLIANCE WITH CLEAN WATER PROCUREMENT PROGRAM GUIDANCE

The Contractor shall comply with the terms and conditions of the CWPP Guidance until all obligations under this agreement have been satisfied in full.

17. PROJECT MANAGEMENT PLAN; PERFORMANCE TARGETS

The Contractor shall at least quarterly submit to PENNVEST periodic updates on its compliance with the performance targets identified on the Project Management Plan in Exhibit B.

18. MAINTENANCE OF EXISTENCE

The Contractor shall take all actions required to maintain the Contractor's existence as an entity duly organized and existing under the laws of the Commonwealth of Pennsylvania, or authorized to do business in the Commonwealth. The Contractor shall promptly advise PENNVEST of the nature of any changes in its organizational documents after any such changes are made, and the Contractor shall not change its organizational documents in any manner that would adversely affect performance of any obligation under this agreement, without in each case obtaining the prior written approval of PENNVEST, which shall not be unreasonably withheld or delayed.

19. MERGER; DISSOLUTION

The Contractor shall not be a party to any merger or consolidation or sell all or substantially all of its assets without the prior written consent of PENNVEST, which upon receipt of all requested information shall not be unreasonably withheld or delayed. The Contractor shall not enter into any dissolution or liquidation proceedings.

20. CONTROL; OWNERSHIP OF VERIFIED REDUCTIONS

The Contractor shall not transfer, directly or indirectly, voluntarily or involuntarily, control or ownership of the Verified Reductions, without the prior written approval of PENNVEST, except as may otherwise be required by court order, and no lien, encumbrance or security interest shall be created or permitted to exist in favor of any third party with respect to the Verified Reductions.

21. FINANCIAL CONDITION

If the Contractor suffers a material adverse change in its financial condition which may jeopardize the Contractor's ability to perform its obligations under this agreement, the Contractor shall notify PENNVEST immediately.

## D. LIMITATION OF LIABILITY

### 22. PENNVEST'S LIABILITY TO CONTRACTOR

The Contractor has determined the number and value of Verified Reductions it has or will have available for sale. PENNVEST has not had and shall not have any responsibility whatsoever for the process by which the Contractor intends to generate Verified Reductions. PENNVEST's sole function is that of a purchaser of Verified Reductions and the only consideration passing from the Contractor to PENNVEST is the Verified Reductions set forth in the Transaction Specific Terms in Exhibit A, in accordance with and subject to the terms of this agreement. Neither the Contractor nor any other person shall have any right to rely on any procedures required by PENNVEST under this agreement, such procedures being solely for the protection of PENNVEST. The Contractor assumes all risks of the acts or omissions of PENNVEST and PENNVEST shall not be liable to the Contractor or any other person for PENNVEST's acts or omissions in the performance of this agreement, except that PENNVEST shall be obligated to pay the Contractor for Verified Reductions delivered to PENNVEST in accordance with the terms of this agreement.

### 23. PENNVEST'S LIABILITY TO THIRD PARTIES

The rights and benefits of this agreement will not inure to the benefit of any third party unless PENNVEST provides express written consent to any assignment of such rights and benefits.

## E. EVENT OF DEFAULT

### 24. RIGHTS AND REMEDIES

PENNVEST shall, upon the occurrence of any event of default under this agreement, in addition to any other rights or remedies available to it under this agreement, or at law or in equity, have the right to immediately exercise any or all of the following rights and remedies, as it deems necessary or appropriate:

a. Declare any Verified Reductions not yet delivered to PENNVEST and due and payable under the Project Management Plan, attached as Exhibit B, to be immediately due and payable in full,

b. Suspend any payment scheduled to be delivered to the Contractor, and

c. Suspend the Contractor from further participation in the PENNVEST CWPP.

## F. MISCELLANEOUS

### 25. TERMINATION

This agreement terminates on the earlier of a) the date of final disbursement of funds in accordance with the Project Management Plan, in Exhibit B, unless otherwise approved by PENNVEST, or b) ten years after the date of this agreement.

26. INTEGRATION AND MERGER

The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this agreement, the parties did not rely upon oral or written statements or representations not contained within the document itself.

27. ELECTRONIC SIGNATURES

This agreement may be signed electronically in accordance with the Pennsylvania Electronic Transactions Act, Act 69 of 1999, 73 P.S. § 2260.301 et seq.

28. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered constitutes the entire agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

The parties, through their authorized representatives, have signed this agreement on the dates appearing below.

**PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY**

_____

Robert H. Boos Date
Executive Director

_____

BY: Date

Title:

Federal Tax ID#:

**APPROVED AS TO FORM AND LEGALITY**

_____

Shawn W. Weis Date
Chief Counsel
Pennsylvania Infrastructure
Investment Authority

# EXHIBIT A
# TRANSACTION SPECIFIC TERMS

**Description of Project that will Generate the Verified Reductions:**

**Maximum Contract Amount: $**

**Description of Verified Reductions to be Purchased by PENNVEST:**

PENNVEST shall purchase from Contractor up to the maximum amount of Verified Nitrogen Reductions, at the associated price per pound, set forth below. The purchase of each pound of Verified Nitrogen Reduction shall include the purchase of the associated Verified Phosphorus and Sediment Reductions. The Contractor shall not be entitled to additional compensation for associated Verified Phosphorus and Sediment Reductions, nor will they be purchased separately or independently.

| Verified Reductions | Price Per Pound | Maximum Amount to be Purchased | Maximum Contract Amount |
|---|---|---|---|
| Verified Nitrogen Reductions and the associated Verified Phosphorus and Sediment Reductions | $ | _____ lbs of Verified Nitrogen Reductions and associated Verified Phosphorus and Sediment Reductions | $ |

# EXHIBIT B
# PROJECT MANAGEMENT PLAN

| | Completion Date |
|---|---|
| **Start Construction** | |
| **Complete Construction** | |
| **Submit Verification of Reductions to DEP** | |
| **Delivery of Verified Reductions to PENNVEST & Request for Payment** | |

# EXHIBIT C
# PENNVEST CLEAN WATER PROCUREMENT PROGRAM MULTI-AWARD COMPETITIVE SEALED APPLICATION

# EXHIBIT D
# CONTRACTOR'S REPONSE TO THE PENNVEST CLEAN WATER PROCUREMENT PROGRAM MULTI-AWARD COMPETITIVE SEALED APPLICATION

# EXHIBIT E
# STANDARD TERMS AND CONDITIONS

# EXHIBIT F
# LIST OF OFFICERS AND DIRECTORS

| Name | Title | E-mail Address | Phone # |
|---|---|---|---|
| | | | |
| | | | |