

**WATER RESOURCE RESTORATION SPONSORED PROJECT
PERFORMANCE AGREEMENT**

PERFORMANCE AGREEMENT (hereinafter the "Agreement"), entered into between the Iowa Department of Natural Resources, an agency of the State of Iowa, (hereinafter the "Department"), and

Name: _____
Address: _____
Address: _____
City, State, Zip: _____
Phone: _____
E-Mail Address: _____
Contact Person: _____

(hereinafter the "Borrower").

WHEREAS, the Department and the Iowa Finance Authority are jointly designated to administer the Water Pollution Control Works, also known as the Clean Water State Revolving Fund (CWSRF) pursuant to Iowa Code sections 455B.291 to 455B.299, 16.131 to 16.133A and the federal Water Pollution Control Act (Clean Water Act); and

WHEREAS, pursuant to Iowa Code section 455B.199 the Department has jurisdiction to administer the water resource restoration sponsored projects program; and

WHEREAS, the water resource restoration sponsored projects program is implemented pursuant to 567 Iowa Administrative Code chapter 92; and

WHEREAS, the Borrower proposes to construct _____

Water Resource Restoration Sponsored Project (hereinafter called the "Project"); and

WHEREAS, the Project includes _____

located _____ ; and

WHEREAS, the Borrower shall ensure that the Project is constructed in accordance with the applicable practice(s) design checklist and the plans and specifications as approved by the Department on (**DATE of Eligibility Letter**), and the construction contract documents entered into by the Borrower, and all attached as Attachment A to this Agreement; and

WHEREAS, the Borrower agrees to maintain the Project in accordance with the maintenance plan as reviewed by the Department and accepted/signed by the Borrower on (**DATE signed**), and attached as Attachment B to this Agreement; and

WHEREAS, the Department shall notify the Iowa Finance Authority that the Borrower is eligible for additional funding of an amount not to exceed \$_____ for the Project through an amendment to the Borrower's associated Clean Water State Revolving Fund loan agreement (**Loan#**) in the original/estimated amount of \$, for a total estimated loan amount of \$; and

WHEREAS, this Agreement shall be applicable to all loans associated with the Project and will be incorporated by reference into all loan agreements of loans associated with the Project; and

WHEREAS, any changes to the contract documents and/or maintenance plans referenced above must be submitted to the Department for review and/or approval,

NOW, THEREFORE, in consideration of the mutual promises exchanged above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department and the Borrower hereto mutually agree as follows:

I. Default

The Borrower is in default of the Agreement upon the occurrence of one or more of the below conditions which include the following:

1. Construction of the Project is not completed within the timeframe identified in Attachment A or Department approved change orders that amend the timeframe identified in Attachment A;
2. The Project is not constructed in accordance with the approved plans and specifications of Attachment A, or does not meet applicable practice design standard(s) which were the basis for the approved plans and specifications;
3. The Project is not maintained in accordance with Attachment B;
4. The Project practice(s), which have not met their identified useful life (as identified in Attachment B), no longer function as originally intended due to lack of maintenance, removal, modification of, or damage to the Project that was not repaired; or
5. The Project is utilized for a purpose that would make it no longer eligible for SRF Sponsored Project funding under State or Federal regulations.

II. Actions

In the event that the Borrower is in default of the Agreement as defined above, the Department shall by written notice inform the Borrower that they are in default with the Agreement; and the Department may take one or more of the following actions:

1. Grant the Borrower an extension of time to correct deficiencies and/or to complete the Project through the issuance of a change order as an amendment to Attachment A or other applicable action;
2. Instruct the Borrower to complete work necessary to correct deficiencies of practices not constructed to the approved plans and specifications in Attachment A and/or any change orders approved by the Department that amend Attachment A, or that do not meet the applicable practice design standard(s) which were the basis for the approved plans and specifications;
3. Instruct Iowa Finance Authority to withhold further disbursements related to the Project until actions necessary to remedy deficiencies have been completed and approved by the Department;
4. Instruct the Borrower to perform the required maintenance identified in Attachment B;
5. Instruct the Borrower to repair any damage to the Project that impairs or prevents the Project practices from functioning properly; or
6. In the event the actions in items 1-5 would be ineffective given the circumstances of the default, or in the event the Department took any action detailed in items 1-5 or took any other action under item 7 and the Borrower failed to remedy the default, instruct the Iowa Finance Authority to increase the interest rate of any associated Clean Water State Revolving Fund loan agreement(s) such that the entire amount disbursed to the Borrower for the Project or an amount prorated according to the proportion of remaining years of useful life to the total years of useful life of the Project practice(s) in default is repaid to the Clean Water State Revolving Fund; or
7. Take any other action deemed necessary by the Department that will allow the Borrower to remedy the default and/or allow the Department or the Iowa Finance Authority to recoup previously dispersed funding for the Project, so long as the action does not increase the SRF funding provided for the Project and is allowed under law or rule. The Department may only take this action if the actions in items 1-5 would be ineffective

given the circumstances of the default, or in the event the Department took any action detailed in items 1-5 and the Borrower failed to remedy the default.

III. Other

By signing this Agreement, the Borrower expressly agrees to any amendment of any loan agreement of a loan associated with the Project that the Iowa Finance Authority deems necessary to fulfill an instruction by the Department in items 3, 6, and/or 7 of the Actions section of this Agreement. However, this clause shall not be construed as in any way limiting the right of the Borrower to contest that it is in default of this Agreement.

Nothing in this Agreement shall be construed as limiting the rights, powers, options, or remedies of the Iowa Finance Authority to collect a debt or take any other action related to a loan agreement for any loan.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed on their behalf by their duly authorized officers all as of the Dated Date.

BORROWER NAME

BY: _____
Name, Title

DATE: _____

IOWA DEPARTMENT OF NATURAL RESOURCES

BY: _____
Kayla Lyon, Director

DATE: _____