

Draft of  
October 17, 2012

\$ \_\_\_\_\_  
**POWER AUTHORITY OF THE STATE OF NEW YORK**  
**2012 Subordinated Notes**

\_\_\_\_\_  
**NOTE PURCHASE AGREEMENT**  
\_\_\_\_\_

(Date of Closing or  
Sale)

POWER AUTHORITY OF THE  
STATE OF NEW YORK  
123 Main Street  
White Plains, New York 10601

Dear Ladies and Gentlemen:

The undersigned, New York State Environmental Facilities Corporation (the "Purchaser"), offers to enter into the following agreement with the Power Authority of the State of New York (the "Authority") relating to the \$\_\_\_\_\_ aggregate principal amount of the Authority's 2012 Subordinated Notes (the "Notes"). The offer made hereby is subject to acceptance by the Authority by execution of this Note Purchase Agreement and delivery thereof to the undersigned at or prior to 5:00 P.M., New York time, on the date first above written. Upon acceptance of such offer by the Authority, this Note Purchase Agreement will be binding upon the Authority and the Purchaser.

**1. Purchase and Sale**

In reliance on the representations and warranties of the Authority contained herein and subject to the satisfaction of the terms and conditions which can be performed at or prior to the Closing (as defined herein) set forth herein to which the obligations of the Purchaser are subject, the Purchaser will, purchase from the Authority, and the Authority will sell to the Purchaser, the Notes. The aggregate price to be paid by the Purchaser for the Notes is \$\_\_\_\_\_.

The Notes shall be as described in, and shall be issued pursuant to, the Resolution Authorizing Subordinated Notes, Series 2012 (Federally Taxable) (the "2012 Subordinated Note Resolution"), adopted on October 29, 2012, authorizing the issuance and sale of the Notes. The Bank of New York Mellon, New York, New York, has been appointed the Paying Agent (the "Paying Agent") pursuant to the 2012 Subordinated Note Resolution.

**2. Closing and Delivery**

The Closing will be held at such time and place on \_\_\_\_\_, 2012, or such other date as shall have been mutually agreed upon by the Purchaser and the Authority (the "Closing"). At the Closing the Authority will deliver, or cause to be delivered, to the Purchaser, the Notes, in fully registered form, bearing a CUSIP number, duly executed by the Authority, together with the other documents hereinafter mentioned, and the Purchaser, will accept such delivery and pay the purchase price of the Notes as set

forth in Section 1(a) hereof by delivering to the Authority a check or wire payable in Federal funds or other immediately available funds to the order of the Authority, in the amount of such purchase price.

The Notes will mature on the dates and in the principal amounts and bear interest at the interest rates shown below:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
----------------------	-------------------------	----------------------

Interest on the Notes will be payable semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_1, 2013. The Notes will be delivered in registered form and shall be registered in the name of Tice & Co., nominee of Manufacturers and Traders Trust Company, as custodian and trustee of the Purchaser and shall not be subject to redemption prior to maturity. The Notes shall be fully transferable in whole or in part by the Purchaser on the registry books of the Paying Agent as provided in the 2012 Subordinated Bond Resolution. [Address delivery of Notes through DTC, if applicable.]

### **3. Representations of the Authority**

The Authority acknowledges that the Notes will be sold to the Purchaser and that the Purchaser will purchase the Notes in reliance upon the representations and warranties set forth herein. Accordingly, the Authority represents and warrants to the Purchaser that:

(a) *Organization; Power.* The Authority is and will be at the Closing a duly organized and existing body corporate and politic constituting a corporate municipal instrumentality and political subdivision of the State of New York under the laws of the State of New York with the powers and authority set forth in the Power Authority Act of the State of New York, Title I of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the “Act”), and as such has and will have at the Closing the legal right to adopt and engage in the transactions contemplated by the General Resolution Authorizing Revenue Obligations adopted by the Authority on February 24, 1998, as amended and supplemented (the “General Resolution”) and the 2012 Subordinated Note Resolution and this Note Purchase Agreement.

(b) *Action by the Authority.* The Authority has authorized by appropriate action (i) the issuance and sale of the Notes upon the terms herein and as set forth in the 2012 Subordinated Note Resolution, (ii) the execution, delivery, performance, acceptance, approval and receipt, as the case may be, of this Note Purchase Agreement and the 2012 Subordinated Note Resolution, and (iii) the taking of any and all such action as may be required to carry out, give effect to and consummate the transactions contemplated therein and herein.

(c) *Valid Obligations.* When delivered to and paid for by the Purchaser at the Closing in accordance with the provisions of this Note Purchase Agreement, the Notes will have been duly authorized, executed, issued and delivered and will constitute a valid, binding and enforceable obligation of the Authority in conformity with the Act and the 2012 Subordinated Note Resolution and will be entitled to the benefit and security thereof. Each of the General Resolution and the 2012 Subordinated Note Resolution have been duly and lawfully adopted by the Authority and each is in full force and effect and each is valid and binding upon the Authority and enforceable in accordance with their respective terms.

(d) *No Defaults.* The Authority is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any bond, debenture, note or other evidence of indebtedness of the Authority or any mortgage, deed of trust, indenture, resolution or other agreement or instrument pursuant to which indebtedness of the Authority was incurred. Neither the adoption of the 2012 Subordinated Note Resolution, the execution and delivery of this Note Purchase Agreement, the consummation by the Authority of the transactions contemplated thereby and hereby, nor the compliance by the Authority with the provisions thereof and hereof, will result in any breach of the terms, conditions or provisions of, conflict with, or constitute a breach of or a default (or any event which with the passage of time or the giving of notice, or both, would become a default) under (i) the Act, any currently effective resolution of the Authority, or any contract, agreement or instrument to which the Authority is a party, (ii) the constitution of the United States or of the State of New York, or (iii) any existing law, administrative regulation, court order or consent decree to which the Authority is subject.

(e) *Security.* Upon their due issuance and sale as contemplated herein, the Notes will be secured by and payable from certain monies of the Authority as provided in the 2012 Subordinated Note Resolution.

(f) *Financial Statements.* The audited financial statements dated March 27, 2012 present fairly the financial position of the Authority at December 31, 2010 and December 31, 2011 and the results of its operations and the changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding periods.

(g) *Litigation.* Except as set forth in the audited financial statements described in 3(f) hereof, there is no pending, or to the knowledge of the Authority threatened, legal, administrative or judicial proceeding to which the Authority is or would be a party: (i) contesting the official existence or powers of the Authority; (ii) contesting or affecting the authority for the issuance of the Notes, or seeking to restrain or enjoin the issuance or the delivery of the Notes; (iii) contesting or affecting, the validity of the Notes, the General Resolution, the 2012 Subordinated Note Resolution or this Note Purchase Agreement; (iv) seeking to restrain or enjoin the collection of the income or revenues available for or pledged to the Notes under the 2012 Subordinated Note Resolution; or (v) involving the possibility of any judgment or uninsured liability which may result in any material adverse change in the business, properties, assets or financial condition of the Authority.

(h) *Filings or Approvals.* All approvals, consents or orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to, or the absence of which would materially adversely affect, the lawful performance by the Authority of its obligations hereunder and under the 2012 Subordinated Note Resolution and the Notes have been obtained and are in full force and effect, [except for the approval of the Comptroller of the State of New York provided for in Section 1010-a of the Public Authorities Law of the State of New York. This is only needed if sale and closing are not on the same day.]

(i) *Additional Certificates.* Any certificates signed by any authorized officer of the Authority and delivered to the Purchaser pursuant to this Note Purchase Agreement shall be deemed a representation and warranty by the Authority to the Purchaser as to the statements made therein with the same effect as if such representation and warranty were set forth by the Authority herein.

#### 4. Conditions of the Purchaser's Obligations

The obligation of the Purchaser to purchase the Notes is subject to the fulfillment of the following conditions at or before the Closing. Should any of the following conditions not be fulfilled, the obligations of the Purchaser under this Note Purchase Agreement shall terminate and neither the Authority nor the Purchaser shall have any further obligations hereunder.

(a) The Authority's representations contained in Section 3 hereof shall be true, correct and complete as of the Closing and shall be confirmed at the Closing by certificates, signed by authorized officers of the Authority, in form and substance satisfactory to the Purchaser and its counsel.

(b) On or prior to the Closing: (i) this Note Purchase Agreement, the General Resolution and the 2012 Subordinated Note Resolution shall each be valid, binding and in full force and effect; (ii) the Notes shall have been duly authorized, issued, executed and attested in accordance with the provisions of the 2012 Subordinated Note Resolution and the Act, and delivered; and (iii) the Authority shall have duly adopted and there shall be in force and effect such resolutions as, in the opinion of Bond Counsel, shall be necessary in connection with the transactions contemplated hereby.

(c) At or prior to the closing, the Purchaser and the Authority shall have received (i) an executed copy of the Acknowledgement of and Consent to Adjustment of the Payment Schedule For the Relicensing Settlement Agreement State Parks Greenway Fund, in form and substance satisfactory to the Authority, and delivered to the Authority by the New York State Office of Parks, Recreation and Historic Preservation and (ii) the approval of the Comptroller of the State of New York provided for in Section 1010-a of the Public Authorities Law of the State of New York shall have been received.

(d) At or prior to the Closing, unless otherwise agreed to by the Purchaser in writing, the Purchaser shall receive the following:

(i) The opinion of Hawkins Delafield & Wood LLP, as Bond Counsel, dated the date of the Closing and addressed to the Authority and the Purchaser, substantially in the form of Schedule I attached hereto.

(ii) An opinion of the Executive Vice President and General Counsel of the Authority, dated the date of Closing and addressed to the Purchaser, in form and substance as attached hereto as Schedule II.

(iii) A certificate executed by a duly authorized officer of the Authority, dated the date of the Closing, to the effect that there has been no material adverse change in the affairs or financial condition of the Authority since the date of the Authority's audited financial statements for the year ended December 31, 2011.

(iv) One copy of each of the General Resolution and the 2012 Subordinated Note Resolution duly certified by the Executive Vice President and General Counsel or Secretary of the Authority with the 2012 Subordinated Resolution being in substantially the form heretofore reviewed by the Purchaser.

(v) The Notes shall have received a rating in at least the second highest long term rating category without reference to gradations from at least one of Moody's Investors Service, Standard & Poor's Ratings Group or Fitch Ratings.

(e) At the Closing, the Purchaser shall receive such additional certificates, instruments or

opinions as Bond Counsel or counsel to the Purchaser may reasonably request to evidence the due authorization, execution, and delivery of the Notes and the adoption of the 2012 Subordinated Note Resolution, and the truth, accuracy and completeness as of the closing of the Authority's representations and warranties contained herein and in any of certificates or documents of Authority or officers of the Authority delivered pursuant thereto.

## **5. Events Permitting the Purchaser to Terminate**

[This will only be needed if the Closing date is different from the execution date]

The Purchaser may terminate its obligation to purchase the Notes at any time before the Closing if any of the following should occur:

(a) All of the ratings for the Notes shall have been lowered below the minimum ratings specified in Sections 4(d)(v) hereof, or withdrawn, by the applicable rating agency.

(b) If (i) a general suspension of trading in securities shall have occurred on the New York Stock Exchange, or (ii) there shall have occurred any outbreak or escalation of hostilities or any calamity or crisis, or (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred that, in the judgment of the Purchaser, is material and adverse and, in the case of any of the events specified in clauses (i)-(iii), such event singly or together with any other such events makes it, in the judgment of the Purchaser, so material and adverse as to make it impracticable to proceed with the delivery of the Notes on the terms and in the manner contemplated in this Note Purchase Agreement.

(c) A general banking moratorium shall have been declared by authorities of the United States or the State of New York.

(d) A stop order, release, regulation, or no-action letter by or on behalf of the United States Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall have been issued or made to the effect that the issuance or sale of the Notes hereby or any document relating to the issuance or sale of the Notes is or would be in violation of any provision of the federal securities laws at the Closing, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, and the Trust Indenture Act of 1939, as amended.

## **6. Notices**

All notices, demands and formal actions hereunder will be in writing, mailed, telegraphed or delivered to:

The Authority: Power Authority of the State of New York  
123 Main Street  
White Plains, New York 10601  
Attention: Brian McElroy, Treasurer

The Purchaser: New York State Environmental Facilities Corporation  
625 Broadway  
New York, New York 12207  
Attention: Matthew Driscoll, President

## **7. Expenses**

All costs and expenses of the Authority in connection with the authorization, issuance, sale and delivery of the Notes and other items herein specified to be delivered to the Purchaser shall be paid from the proceeds of the Notes. All expenses of the Purchaser, including specifically the fees and expenses of counsel to the Purchaser, shall be paid from the proceeds of the Notes.

## **8. No Advisory or Fiduciary Role**

The Authority acknowledges and agrees that (i) the purchase of the Notes pursuant to this Note Purchase Agreement is an arm's-length commercial transaction between the Authority and the Purchaser; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Purchaser is and has been acting solely as a principal and is not acting as the agent, advisor, fiduciary or Municipal Advisor (as defined in Section 15B of the Securities and Exchange Act of 1934, as amended) of the Authority; (iii) the Purchaser has not assumed an advisory or fiduciary responsibility in favor of the Authority with respect to the sale of the Notes or the discussions, undertakings and procedures leading thereto (irrespective of whether the Purchaser provided other services or is currently providing other services to the Authority on other matters) and the Purchaser has no obligation to the Authority with respect to the sale of the Notes hereby except the obligations expressly set forth in this Note Purchase Agreement; and (iv) the Authority has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

## **9. Miscellaneous**

(a) No recourse shall be had for the payment of the principal of or interest on the Notes or for any claim based thereon, on the 2012 Subordinated Note Resolution, or on this Note Purchase Agreement against any member, officer or employee of the Authority or any person executing the Notes or this Note Purchase Agreement.

(b) The Purchaser is acquiring the Notes for its own account and not with a view to or for resale in connection with any distribution of all or any part of the Notes. The Authority agrees that if the Purchaser determines in the future to sell all or a portion of the Notes and so advises the Authority, the Authority shall, within 30 days of receipt of written notice of such determination, provide the Purchaser with its then most recent audited annual financial statements and unaudited six months' financial statements to the extent the same are not on file with the Electronic Municipal Market Access ("EMMA") system maintained by the Municipal Securities Rulemaking Board, or any successor system, together with either (i) a certificate of the Authority to the effect that there has not been any material adverse change in the financial condition of the Authority since the date of its most recent audited or unaudited financial statements or (ii) a description of the reasons the Authority is not able to furnish such certificate.

(c) This Note Purchase Agreement may be executed by anyone or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all of such counterparts shall together constitute one and the same instrument. This Note Purchase Agreement will inure to the benefit of and be binding upon the parties and their successors, and will not confer any rights upon any other person. This Note Purchase Agreement shall not be binding until executed by the parties hereto. All representations and agreements by the Authority and the Purchaser in this Note Purchase Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any of the Purchaser and shall survive the delivery of any payment for the Notes. This Note Purchase Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Section headings have been inserted in this Note Purchase Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not part of this Note

Purchase Agreement and will not be used in the interpretation of any provisions of this Note Purchase Agreement.

NEW YORK STATE ENVIRONMENTAL  
FACILITIES CORPORATION,  
as Purchaser

By: \_\_\_\_\_  
Name: Matthew J. Driscoll  
Title: President

Accepted as of the date first set forth above

POWER AUTHORITY OF THE STATE OF NEW YORK

By: \_\_\_\_\_  
Name: Brian McElroy  
Title: Treasurer

**FORM OF OPINION OF BOND COUNSEL**

[LETTERHEAD OF EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL]

[Date of Closing]

New York State Environmental  
Facilities Corporation

Ladies and Gentlemen:

Reference is made to Section 4(d)(ii) of the Note Purchase Agreement, dated \_\_\_\_\_, 2012 (the “Note Purchase Agreement”), for the 2012 Subordinated Notes (the “Notes”), by and between the Power Authority of the State of New York (the “Authority”) and the New York State Environmental Facilities Corporation, and the Resolution Authorizing Subordinated Notes, Series 2012 (Federally Taxable) , ( the “2012 Subordinated Note Resolution”).

As Executive Vice President and General Counsel of the Authority, I have examined and relied on originals or copies certified or otherwise identified to my satisfaction of such documents, instruments or corporate records, and have made such investigations of law, as I have considered necessary or appropriate for the purposes of this opinion.

Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the 2012 Subordinated Note Resolution and, if not defined therein, in the General Resolution Authorizing Revenue Obligations adopted by the Authority on February 24, 1998, as amended and supplemented (the “General Resolution”).

I am of the opinion that:

1. The Authority is a body corporate and politic constituting a corporate municipal instrumentality of the State of New York (the “State”) duly created by and validly existing under the Act, with the right, power and authority to execute, deliver and perform its obligations under the Note Purchase Agreement, to adopt the 2012 Subordinated Note Resolution and to issue the Notes thereunder (collectively, the “Authorized Documents”).

2. The execution and delivery of, and the performance by the Authority of its obligations under, the Purchase Agreement and the performance by the Authority of its obligations under the Notes have been duly authorized by proper corporate proceedings of the Authority. Each of the General Resolution and the 2012 Subordinated Note Resolution have been duly and lawfully adopted by the Authority and each is in full force and effect and each is valid and binding upon the Authority and enforceable in accordance with their respective terms.

3. The Notes are Subordinated Indebtedness within the meaning of the General Resolution and is payable from the Trust Estate, provided that such payments are subject and subordinate to the payments to be made with respect to the Obligations and Parity Debt, as provided for in the General Resolution. The Notes do not constitute obligations, debts or liabilities of the State of New York, and the Authority has no power of taxation or power to pledge the credit of the State of New York.

4. The Authority is not in any material respect in violation of, breach of or default under the Act,

or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Authority or any of its activities, or any indenture, mortgage, deed of trust, resolution, note agreement or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property or assets is bound, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Notes or the Note Purchase Agreement, and compliance with the provisions on the Authority's part contained therein, do not and will not conflict with, or constitute on the part of the Authority a violation of, breach of or default under any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Authority or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property or assets is bound, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Authority or under the terms of any such law, regulation or instrument, except as provided by the Notes or the Authorized Documents.

5. There is no litigation or other proceeding pending or, to the best of my knowledge, threatened in any court, agency or other administrative body (either State or Federal) restraining or enjoining the issuance, sale or delivery of the Notes, or in any way questioning or affecting (i) the issuance, sale and delivery of the Notes, (ii) the proceedings under which the Notes are to be issued, (iii) the validity of any provision of the Notes, the 2012 Subordinated Note Resolution or the Note Purchase Agreement, (iv) the pledge by the Authority effected under the 2012 Subordinated Note Resolution, or (v) the legal existence of the Authority. There is no litigation or other proceeding pending to which the Authority is a party or, to the best of my knowledge, threatened against it, and, to the best of my knowledge, there is no other litigation or proceeding pending or threatened in any court, agency or other administrative body (either State or Federal) which could have a material adverse effect on the transactions contemplated by the 2012 Subordinated Note Resolution and the items pledged under the 2012 Subordinated Note Resolution.

6. The Authority is not in default in any material respect under the terms of the General Resolution or the 2012 Subordinated Note Resolution.

7. All authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities required for, or the absence of which would materially adversely affect, (i) the execution, issuance and performance by the Authority of the Notes, and (ii) the execution, delivery and performance by the Authority of the Note Purchase Agreement and the performance by the Authority of the 2012 Subordinated Note Resolution, have been obtained or effected.

The obligations of the Authority under the Notes, the Note Purchase Agreement and the 2012 Subordinated Note Resolution and the enforceability thereof are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights. The enforceability of such obligations is subject to applicable general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

I have rendered the opinions expressed herein based on facts and circumstances existing, and applicable laws, rules, regulations, court decisions, and governmental and regulatory authority determinations in effect, on the date hereof. I assume no obligation to update or supplement this letter to reflect any change to, or the occurrence, issuance or adoption of, any fact, circumstances, laws, rules, or regulations, or any decision of any court or other body or governmental or regulatory authority. This opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated herein.

This opinion is solely for your information and assistance and is not to be used, circulated, quoted or otherwise referred to, except that reference to this opinion may be made in any list of closing documents pertaining to the issuance of the Notes or in such closing documents.

Very truly yours,

---

Name:

Title: