

AGREEMENT BETWEEN
THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
EAST OF HUDSON WATERSHED CORPORATION
CRO-574

THIS AGREEMENT, dated the 18 day of **January, 2019** by and between the **CITY OF NEW YORK**, a municipal corporation having its principal office at City Hall in the Borough of Manhattan, City and State of New York (“the City”), acting through the New York City Department of Environmental Protection (“NYCDEP”), and the **EAST OF HUDSON WATERSHED CORPORATION** (“EOHWC”), an independent locally-based and locally administered not-for-profit corporation, organized and existing under Section 1411 of the New York State Not-For-Profit-Corporation Law and having its principal office in Patterson, New York, the City and the EOHWC being collectively referred to as the “Parties”;

WHEREAS, the EOHWC is a not-for-profit corporation established to, among other things, administer, coordinate and implement the East of Hudson regional stormwater retrofit plan approved by the New York State Department of Environmental Conservation (“NYSDEC”), as more fully described herein; and

WHEREAS, the municipalities that are members of the EOHWC are subject to the terms and requirements of the Municipal Separate Storm Sewer Systems (“MS4”) SPDES General Permit No. GP-0-15-003 issued by the NYSDEC (“the MS4 Permit”); and

WHEREAS, among other things, the MS4 Permit requires those municipalities, as owners of MS4s located in watersheds that exceed their Total Maximum Daily Load (TMDL) to address watershed specific additional requirements to achieve specified pollutant load reductions and to implement stormwater retrofit projects; and

WHEREAS, the MS4 Permit supersedes SPDES General Permit No. GP-0-10-002, which required the EOHWC’s member municipalities to address heightened requirements for phosphorous reduction in the covered areas; and

WHEREAS, the Parties entered into an initial funding agreement entitled Funding Agreement between New York City Department of Environmental Protection and the East of Hudson Watershed Corporation, dated June 12, 2013 (the “2013 Funding Agreement”), pursuant to which the Parties agreed to take certain actions pertaining to implementation by the EOHWC of the Regional Retrofit Plan covering the first five year period of the MS4 Permit’s term; and

WHEREAS, under the 2013 Funding Agreement, Putnam County agreed to use Eight Million, Two Hundred Thousand Dollars (\$8,200,000) and Westchester County agreed to use Ten Million Dollars (\$10,000,000), for a total of Eighteen Million, Two Hundred Thousand Dollars (\$18,200,000) in monies previously provided by the City to Putnam County and Westchester County, respectively, under the 1997 New York City Watershed Memorandum of Agreement

(“Watershed MOA”) for the East of Hudson Water Quality Investment Program (“EOH Funds”) toward the design, construction, implementation and permanent operation and maintenance (“O&M”) of stormwater retrofit projects, including the administrative expenses associated therewith, as set forth in the Regional Retrofit Plan, subject to the provisions of Paragraphs 107 and 140 of the Watershed MOA, and the Inter-Municipal Agreements between DEP and Westchester County, and DEP and Putnam County regarding the East of Hudson Water Quality Investment Program annexed to the MOA as Attachments GG-1 and GG-5, respectively; and

WHEREAS, under the 2013 Funding Agreement, the EOHWC agreed to provide a report to DEP accounting for the receipt and disbursement of all EOH Funds provided to the EOHWC by Westchester and Putnam Counties; and

WHEREAS, the EOHWC estimates that approximately \$5,000,000 of EOH Funds will remain after completion of all projects that are part of the phosphorous reduction targets established for the first five year period of the MS4 Permit’s term, and

WHEREAS, the 2013 Funding Agreement is the controlling agreement with respect to the matters addressed therein, including, but not limited to, the reporting requirement set forth in Section 5.04 of that Agreement, which, pursuant to Section 10.04(A) of that Agreement, continues until all funds thereunder have been expended; and

WHEREAS, on December 28, 2017, the New York State Department of Health (NYSDOH”) issued the 2017 New York City Filtration Avoidance Determination (“FAD”), which requires, among other things, that NYCDEP:

“Execute and register a contract or contract amendment with the EOH Watershed Corporation to provide \$22 million to support the design and construction of stormwater retrofits in the EOH FAD Basins and in basins upstream and hydrologically connected to the Croton Falls Reservoir. A total of \$7 million shall be specifically committed to support stormwater retrofits within EOH FAD basins and \$15 million shall be specifically committed to support stormwater retrofits within basins upstream and hydrologically connected to the Croton Falls Reservoir or within EOH FAD basins.”

WHEREAS, the implementation of the stormwater retrofits pursuant to the MS4 Permit requires that each retrofit project have an O&M program consistent with the most current version of the New York State Stormwater Management Design Manual (January, 2015) or any subsequent guidance manual for local officials issued by NYSDEC; and

WHEREAS, the funding provided under this Funding Agreement is from the proceeds of tax-exempt revenue bonds issued by the New York City Municipal Water Finance Authority, and state law requires that such funds only be used for capital project related costs; and

NOW, THEREFORE, in consideration of the promises and the respective representations and agreements hereinafter contained, the Parties hereto agree as follows:

ARTICLE 1

GENERAL PROVISIONS

Section 1.01 Performance by EOHWC

The EOHWC will perform the “Work” hereinafter defined in Article 2 of this Agreement.

Section 1.02 FAD Retrofit Funds

“FAD Retrofit Funds” shall be any City funds remitted to the EOHWC pursuant to this Agreement and the 2017 FAD for the purposes of performing the services hereinafter set forth in Article 2 of this Agreement. In addition, FAD Retrofit Funds shall include earnings on City funds remitted to the EOHWC under this Agreement.

Section 1.03 Duration

- A. This Agreement shall be effective when signed by the Parties and registered by the City pursuant to Section 328 of the Charter of the City of New York (“Effective Date”). The City shall provide notice of the registration of this Agreement by ordinary mail to the EOHWC at the address designated in Section 13.03 of this Agreement, within fifteen (15) days of the date of registration.
- B. This Agreement shall terminate ten (10) years after the Effective Date. In the event all “Work” (as defined in Article 2) hereunder is not completed prior to the termination date, this Agreement shall be extended or renewed upon mutual agreement of the Parties upon the same terms and conditions. The renewal agreement shall become effective upon registration by the City pursuant to Section 328 of the Charter of the City of New York.
- C. Notwithstanding the Effective Date, EOHWC may commence performance of the Work on or after the date of issuance of the FAD. Such expenditures may include reimbursement of Putnam County and Westchester County EOH Funds for expenditures for activities eligible for funding under Section 2.01(B) of this Agreement and up to \$500,000 for expenditures for activities eligible for funding under Section 3.03(A) of this Agreement.

ARTICLE 2

DESCRIPTION OF THE WORK

Section 2.01 Eligible Projects and Activities

- A. The EOHWC shall grant, allocate, distribute, and administer the FAD Retrofit Funds (the “Work”) in accordance with the terms, conditions and procedures set forth in this Agreement. The FAD Retrofit Funds shall be used to support the design and construction of the stormwater retrofit projects identified in the EOHWC Regional Retrofit Plan approved by NYSDEC on September 27, 2016 or as amended and covering the additional phosphorous reduction targets established by the NYSDEC for the second five year retrofit period of the MS4 Permit, and in addition construction work associated with the stormwater retrofit project known as SE-POT-02 (“Stormwater Retrofit Projects”) in the Cross River Reservoir, West Branch, Boyd’s Corners and Croton Falls Reservoir basins (EOH FAD Basins¹) and in basins upstream and hydrologically connected to the Croton Falls Reservoir (i.e., Middle Branch, East Branch, Bog Brook, and Diverting (“Upstream Basins”). Of the total \$22 million provided to EOHWC under this Agreement, at least Seven Million Dollars (\$7,000,000) shall be specifically committed to support stormwater retrofits within the EOH FAD Basins. The remaining Fifteen Million Dollars (\$15,000,000) may be used in the EOH FAD Basins or the Upstream Basins.
- B. Principal and Earnings. The FAD Retrofit Funds and earnings thereon may be used solely to pay the costs of the following activities related to the implementation of the Regional Retrofit Plan, subject to additional eligible activities as set forth below in subparagraph C, and subject to the conditions and restrictions set forth below in subparagraph D:
1. The planning, design, environmental review, financing, permitting, acquisition of land and/or easements, bidding, construction, and installation of Stormwater Retrofit Projects, and the administrative expenses directly related thereto, required to implement the Regional Retrofit Plan in the EOH FAD Basins and Upstream Basins.
 2. Identification of projects in the EOH FAD Basins and Upstream Basins by EOHWC to be included in the NYSDEC-approved revisions of the Regional Retrofit Plan.
 3. Other costs reasonably related to supporting the design or construction of a Stormwater Retrofit Project in the EOH FAD Basins or Upstream Basins, but excluding general EOHWC administration costs. A list of costs that the Parties have determined are reasonably related to supporting the design and construction of a Stormwater Retrofit Project is attached hereto as Appendix C. Where a governmental employee or consultant performs work directly related to supporting the design or construction of a Stormwater Retrofit Project in the EOH FAD Basins and Upstream Basins, the

¹ For the purposes of this program, the Lake Gleneida and Lake Gilead watersheds are considered to be within the EOH FAD Basins.

employee's or consultant's labor costs, including, where applicable, direct salary and indirect personnel costs for pension, insurance and other fringe benefits, shall be eligible for funding under this Agreement. Where a governmental employee or consultant performs a general governmental function that is not directly related to supporting the design or construction of a Stormwater Retrofit Project in the EOH FAD Basins or Upstream Basins, the official's labor costs, including direct salary and indirect personnel costs for pension, insurance and other fringe benefits, shall not be eligible for funding under this Agreement.

4. Repayment of loan of EOH Funds to Putnam or Westchester County to the extent that the funds were used to implement the Stormwater Retrofit Project work that would have been otherwise eligible for FAD Retrofit Funds and earnings under this Agreement. Terms of the loan, including reporting requirements of the EOH Funds, shall be approved by NYCDEP in advance of any capital or interest portion of the loan becoming eligible for repayment under this Agreement.
- C. Earnings Only. Notwithstanding subparagraph B above, earnings on the FAD Retrofit Funds, but not the principal amount of the FAD Retrofit Funds, may also be used for the following purposes:
1. To pay operation and maintenance costs directly related to or resulting from a Stormwater Retrofit Project in the EOH FAD Basins and Upstream Basins constructed pursuant to the Regional Retrofit Plan funded with the FAD Retrofit Funds or earnings on such Funds;
 2. To pay general EOHWC administration costs that are not directly related to a Stormwater Retrofit Project in the EOH FAD Basins and Upstream Basins, to the extent that the EOHWC is engaged only in activities related to Stormwater Retrofit Project implementation in the EOH FAD Basins and Upstream Basins.
- D. Grants and Loans. Subject to the restrictions of this Section, the EOHWC may use the FAD Retrofit Funds and earnings on such funds to make grants and revolving loans to public and private entities to fund activities and costs set forth in Paragraphs B and C above. Any grants or loans made under this subparagraph shall include reporting requirements for the recipient adequate to ensure that the EOHWC can satisfy the reporting requirements set forth in Article 5 of this Agreement for all funds expended, whether through direct payments by the EOHWC or through grants or loans.
- E. In accordance with the City's capital eligibility criteria for fixed assets as set forth in the New York City Comptroller's Directives 10 and 30, no individual project with a total cost of less than \$35,000 and a useful life of less than five years may be funded with the principal of the FAD Retrofit Funds. For purposes of this subparagraph, the costs for an individual project may include all Principal eligible costs identified in Paragraph 2.01(B) above.
- F. Projects designed or constructed using the FAD Retrofit Funds may be credited to the

Regional Retrofit Plan and used by the EOHWC toward its members' efforts to comply with the requirements of the MS4 Permit. It is expressly acknowledged and agreed that the City shall have no further responsibility for the funding, approval, implementation, completion, or maintenance of any stormwater retrofit project identified in the Regional Retrofit Plan.

ARTICLE 3

PAYMENT GENERALLY

Section 3.01 Payment of FAD Retrofit Funds

- A. The City shall pay the EOHWC a total of Fifteen Million Dollars (\$15,000,000) (“Initial Payment”) within ninety (90) days of the Effective Date of this Agreement, after the EOHWC submits an invoice to NYCDEP, in the form attached hereto as Appendix A, and the EOHWC budgets for 2017 and 2018. The EOHWC shall use best efforts to submit the invoice within fifteen (15) days of receiving the notice of registration described in Section 1.03(A) of this Agreement. Payment shall be made in the form of an electronic funds transfer in proper amount to the designated account of the EOHWC. Of the Initial Payment, at least Seven Million Dollars (\$7,000,000) shall be specifically committed to support Stormwater Retrofit Projects within the EOH FAD Basins.
- B. The City shall pay the EOHWC the remaining balance of FAD Retrofit Funds within six months of receiving written notification from the EOHWC that the Initial Payment provided under this Agreement has been committed via binding agreements. The written notification shall be accompanied by an invoice in the form attached hereto as Appendix A. Payment shall be made in the form of an electronic funds transfer in proper amount to the designated account of the EOHWC. The total amount of funds provided by the City under this Agreement, shall not exceed Twenty Two Million Dollars (\$22,000,000).

Section 3.02 Payment Obligations

- A. All receipts and disbursements of FAD Retrofit Funds under this Agreement are subject to audit by the City or State and the EOHWC agrees to cooperate with any audit of the agreement undertaken by the City or State.
- B. The EOHWC shall ensure that all FAD Retrofit Funds advanced to it shall be used exclusively for eligible expenditures incurred in connection with projects and activities set forth in Article 2 of this Agreement.
- C. The City shall not be deemed, by virtue of making payments to the EOHWC, to have released the EOHWC from any claim or liability, or to have waived any right or rights of action under this Agreement.

- D. Promptly upon receipt of any FAD Retrofit Funds by the EOHWC, the EOHWC shall place such Funds in a separate dedicated account, bearing interest at market rates, in a bank located and authorized to do business in New York State. Any FAD Retrofit Funds invested by the EOHWC shall be invested in a manner consistent with the State Comptroller's guidelines for municipalities.
- E. Upon receipt by the EOHWC of FAD Retrofit Funds paid pursuant to this Agreement, the EOHWC agrees that it shall be deemed to have fully released the City from any and all claims, demands and causes of action whatsoever which the EOHWC has or may have against the City in connection with payment and/or expenditure of said funds under this Agreement. Nothing herein shall be deemed to waive any right the EOHWC may have to challenge a payment received from the City as final.
- F. Acceptance of payments shall be deemed satisfaction by the City of its funding obligations under Section 4.9 of the 2017 FAD and this Agreement.

Section 3.03 Payment of FAD Retrofit Funds from Bond Proceeds and Restrictions on Use

The City intends to provide FAD Retrofit Funds from the proceeds of tax- exempt revenue bonds issued by the New York City Municipal Water Finance Authority. Therefore, the following restrictions apply to the use of FAD Retrofit Funds:

- A. The principal amount of FAD Retrofit Funds may only be used to pay for costs specified in Section 2.01(B) where such costs were incurred on or after the date of issuance for the 2017 FAD. Notwithstanding the foregoing, up to \$500,000 of FAD Retrofit Funds may be used to support the design and construction of eligible Stormwater Retrofit Projects in the EOH FAD Basins, as outlined in in Section 2.01(B), where such costs were incurred after January 1, 2017.
- B. FAD Retrofit Funds may not be used to pay principal, premium or interest on bonds or other obligations issued to fund Stormwater Retrofit Projects, but such funds may be used to pay the principal on Bond Anticipation Notes (BANs) obtained by EOHWC member municipalities to finance the design or construction of eligible Stormwater Retrofit Projects in the EOH FAD Basins and Upstream Basins.
- C. Earnings on FAD Retrofit Funds may be used in the same manner and shall be subject to the same conditions as the principal amount of FAD Retrofit Funds, except as set forth in Section 2.01(C) of this Agreement.

Section 3.04 Budget Procedures

- A. On or before October 1 of each year during the term of this Agreement, the EOHWC shall submit to NYCDEP a copy of the plan update it submits to NYSDEC on or before October 1 identifying the retrofit projects it plans to accomplish in the following calendar year.

- B. The EOHWC will distribute to NYCDEP at the same time it distributes to its Board of Directors or committee members, all correspondence, meeting notices and materials for Board of Directors meetings, including, without limitation, proposed budgets and budget modifications, as well as materials distributed to the Board of Directors in anticipation of discussions held during Executive Sessions, and any materials distributed to Committee members in anticipation of committee meetings or planned discussions. The EOHWC will prepare a budget not less than annually.

Section 3.05 Conditions of Payment

- A. The EOHWC shall ensure that FAD Retrofit Funds advanced to it and interest earned on such funds are to be used for expenditures incurred in connection with Stormwater Retrofit Projects in the EOH FAD Basins and Upstream Basins, as set forth in this Agreement and in no event shall such funds be used other than for work performed under this Agreement.
- B. The EOHWC will employ generally accepted cash management practices established by the New York State Comptroller, to the extent applicable.
- C. If the EOHWC is in material breach of the terms of this Agreement and such breach is not cured within the time frames set forth in Section 10.01 below, in addition to any other rights or remedies available to it at law or in equity, the City shall be entitled to withhold payment of the Seven Million Dollars (\$7,000,000) identified in Section 3.01(B) of this Agreement to the EOHWC, in an amount that represents the cost to cure the breach and covering any reasonable damages resulting directly from such breach.
- D. This Agreement does not and is not intended to express any opinion as to the liability of the City or the EOH communities to pay for costs in complying with the MS4 Permit. This Agreement shall not be used as an admission or precedent in any other action, proceeding or document. The City maintains that the MS4 Permit heightened requirements are requirements of federal and State law and that responsibility for meeting those requirements rests with the East of Hudson Watershed communities and not with the City of New York. The members of the EOHWC maintain that the only reason the MS4 Permit contains heightened requirements for the EOH MS4 communities is that the surface waters are part of the New York City water supply system, and that the high cost of compliance with the heightened requirements above and beyond the normal cost of MS4 compliance must be borne by the City.
- E. This Agreement does not and is not intended to obligate the City to provide any funds beyond the funding specifically mandated by Section 4.9 of the 2017 FAD.

ARTICLE 4

INSURANCE

Section 4.01 Insurance

- A. Prior to entering into any agreements to disburse FAD Retrofit Funds, the EOHWC shall obtain insurance of the kind and amount set forth in Appendix B, attached hereto. EOHWC agrees to maintain such insurance in full force and effect during the term of this Agreement, and to otherwise comply with the requirements in Appendix B. The City, as a municipality, is self-insured.
- B. Except for contract employees covered by the insurance policies issued to the EOHWC, the EOHWC shall ensure that any consultant and/or contractor engaged by the EOHWC has insurance in a sufficient amount and scope to protect the interests of the City and the EOHWC, as provided in Appendix B attached hereto. The EOHWC shall submit to NYCDEP Certificates of Insurance for any consultant and/or contractors retained or engaged by the EOHWC for work in accordance with the terms of this Agreement. The City reserves the right to request any additional insurance to be obtained by the EOHWC from any consultant and/or contractor, beyond the insurance set forth in Appendix B, and the City acknowledges and agrees to pay the cost of any additional insurance it requests. The cost of any additional insurance requested by the City shall not alter the City's obligation to provide a maximum of Twenty-Two Million Dollars (\$22,000,000) in FAD Retrofit Funds to the EOHWC under the FAD.
- C. The City and the EOHWC shall be named as additional insureds on the general liability insurance policy for any consultant and/or contractor. The EOHWC shall enforce the insurance provisions of its contracts with consultants and/or contractors.

ARTICLE 5

RECORDS AND REPORTS

Section 5.01 General

The EOHWC shall forward to the City upon request a copy of any and all non-privileged written materials and documents that are prepared pursuant to this Agreement. The City shall have the right to use all non-privileged and non-confidential written materials, documents and information that are gathered or prepared pursuant to this Agreement for any purpose deemed appropriate by the City.

Section 5.02 Maintenance of Records

The EOHWC shall maintain complete and accurate records in readily accessible files on all of

its activities in connection with this Agreement. Such records shall include, but are not limited to, financial records detailing the receipt, management and disbursement of all funds provided by the City pursuant to this Agreement and the EOH Funds provided by Putnam and Westchester Counties, and minutes of meetings of the EOHWC. The EOHWC shall maintain all records relating to this Agreement for the longer of five (5) years after termination of this Agreement or seven (7) years after generation of the record.

Section 5.03 Audit and Inspection

- A. This contract is subject to audit by the State, including the State Comptroller, and by the City, including the City Comptroller, to the extent authorized by State and/or local law, including Section 93 of the New York City Charter.
- B. The EOHWC shall prepare and maintain documentation and justification in support of expenditures under this Agreement in accordance with generally accepted business practices and shall make such documentation available to the State, including the State Comptroller, and the City, including the City Comptroller, as they consider necessary.

Section 5.04 Regular Reports

- A. Annual Audited Financial Reports: Within ninety (90) days after the end of the last quarter of each EOHWC fiscal year, the EOHWC shall submit to the City an audited financial statement for the EOHWC for the preceding fiscal year, audited by an independent certified public accountant, which shall include an itemization of (i) all FAD Retrofit Funds expended under this Agreement, including receipts from the City, disbursements to third parties, and amounts EOHWC remains committed to pay pursuant to outstanding consultant, construction or other contracts; (ii) receipts, if any, of the EOHWC in repayment of FAD Retrofit Funds; (iii) the amount of FAD Retrofit Funds on hand with the EOHWC; and (iv) such other information as the City may reasonably require.
- B. Termination Audited Financial Reports: Within ninety (90) days after the termination of this Agreement, the EOHWC shall submit to the City an accounting of the FAD Retrofit Funds for the period from the closing date of the last financial reports submitted under Subsection (A), audited by an independent certified public accountant, which shall include an itemization of (i) all FAD Retrofit Funds expended under this Agreement, including cash receipts from the City and disbursements to third parties; (ii) the amount of FAD Retrofit Funds which the EOHWC remains committed to pay pursuant to outstanding consultant, construction or other contracts; (iii) receipts, if any, of the EOHWC in repayment of FAD Retrofit Funds; (iv) the amount of FAD Retrofit Funds on hand with the EOHWC; and (v) such other information as the City may reasonably require.
- C. Retrofit Reporting: Within thirty (30) days after the EOHWC submits the Annual Retrofit Report or any amended retrofit report to NYSDEC, the EOHWC shall submit a copy of such report to the City.

D. Annual Project Accounting Reports: On or before March 31 of each year, until the FAD Retrofit Funds and the EOH Funds provided by Putnam and Westchester Counties are expended, the EOHWC shall submit to NYCDEP a copy of the annual report it submits to NYSDEC on or before March 31 identifying its accomplishments implementing the Regional Retrofit Plan for the previous calendar year. Supplementing the foregoing report, on or before March 31 of each year until the FAD Retrofit Funds and the EOH Funds provided by Putnam and Westchester Counties are expended, the EOHWC shall submit to NYCDEP the following information on a project-by-project basis for the preceding year:

1. The estimated cost and the total funds actually spent to date on each Stormwater Retrofit Project;
2. The amount of FAD Retrofit Funds, and EOH Funds the EOHWC has spent on each Stormwater Retrofit Project and/or on administrative or O&M costs or any other use in the previous year, specifying whether from interest or principal;
3. The amount of FAD Retrofit Funds, and EOH Funds the EOHWC has committed to each Stormwater Retrofit Project in the previous year through binding agreements, specifying whether from interest or principal;
4. The geographic location of each Stormwater Retrofit Project, including identifying the watershed basin in which the project is located.

Section 5.05 Cost of Compliance

The costs incurred by EOHWC or its members of complying with the requirements of this Article 5, Records and Reports, are eligible expenses for payment from earnings on FAD Retrofit Funds and/or from the EOH Funds.

Section 5.06 Termination

The EOHWC acknowledges and agrees that all the provisions of this Article 5 shall survive the expiration or other termination of this Agreement.

ARTICLE 6

PERSONNEL

Section 6.01 Employees

- A. The EOHWC and the City agree that the EOHWC and its employees, agents, contractors and/or consultants, are independent contractors and not employees of the City, NYCDEP or any department, agency, or unit of the City. In accordance with its status as independent contractors, the EOHWC covenants and agrees that neither the EOHWC nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of

any department, agency, or unit thereof.

- B. The City shall not be responsible for the work, direction, compensation and personal conduct of the EOHWC's employees, agents, contractors and/or consultants while engaged under this Agreement.
- C. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the EOHWC, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the EOHWC or for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, workman's compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.
- D. The City shall not be responsible for any physical injuries or death to the EOHWC's agents, servants, or employees or to any other person or damage to any property sustained during the EOHWC's operations and work under this Agreement resulting from any act, omission, commission or error in judgment of any of the EOHWC's officers, members, trustees, employees, agents, servants, or independent contractors. The City shall not be responsible for the safety and protection of the EOHWC's employees.

Section 6.02 Worker's Compensation and Disability Benefits

The EOHWC shall secure worker's compensation insurance coverage for the benefit of, and keep insured during the life of this Agreement, its employees in compliance with the provision of the Workers' Compensation Law, inclusive of Disability Benefits. The EOHWC shall furnish NYCDEP with two (2) certificates of these insurance coverages.

Section 6.03 Unemployment Insurance

Unemployment Insurance coverage shall be obtained and provided by the EOHWC for its employees.

Section 6.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the EOHWC in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

Section 6.05 Equal Employment Opportunity

- A. The EOHWC agrees that it has not and will not engage in any unlawful discrimination based upon race, creed, color, religion, national origin, sex, age, mental or

physical disability, marital status, status with regard to public assistance, religious practice, presence of a service dog, sexual orientation, criminal conviction, (unless there is a direct relationship between one or more of the previous criminal offenses and the specific employment sought or held by the individual; or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public), pregnancy, domestic violence, military status, or predisposing genetic characteristics with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment. Before the EOHWC implements any of its duties or responsibilities hereunder, the EOHWC shall adopt an equal opportunity employment policy prohibiting such discrimination by the EOHWC.

- B. The EOHWC will state in all solicitations or advertisements for employees placed by or on behalf of the EOHWC that all qualified applicants will receive consideration for employment without unlawful discrimination and that it is an equal employment opportunity employer.
- C. The EOHWC shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments and policy.

ARTICLE 7

PROCUREMENT OF GOODS AND SERVICES

Section 7.01 Competitive Bidding of Work

- A. Unless otherwise specified, the EOHWC shall competitively bid all work, exclusive of professional services, not performed by the EOHWC that would be subject to public bidding in accordance with the provisions of Section 103 of the General Municipal Law which would apply if the EOHWC were a municipal corporation and shall comply with the terms thereof.
- B. The EOHWC shall develop a professional consultant procurement policy and procedures which it will follow to obtain professional services. The policy and procedures shall require that for all professional service contracts in the amount of Twenty Five Thousand Dollars (\$25,000) or more, the EOHWC shall solicit proposals from at least three (3) prospective consultants qualified under the laws of the State of New York to perform the proposed work, except that three (3) proposals shall not be required when selecting a governmental agency.

Section 7.02 Consultants and Other Contractors:

- A. A contract (the “Contract”) between the EOHWC and a consultant or other contractor (the “Contractor”) to perform work to be paid with FAD Retrofit Funds shall include the following

provisions:

1. A requirement that the Contractor perform all work in accordance with the terms of this Agreement;
2. A requirement that the Contractor perform all acts to be performed under the Contract in compliance with all applicable federal, State and local laws, rules, regulations and orders, including that all projects, facilities or other measures funded with FAD Retrofit Funds requiring review and approval by NYCDEP under the Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources (“Watershed Regulations”) (10 NYCRR Part 128, Title 15, RCNY Chapter 18) or required to be designed, constructed or implemented in accordance with standards set forth in the Watershed Regulations, be submitted for such review and approval and be designed, constructed, and implemented in accordance with the Watershed Regulations;
3. A requirement that Contractors for construction exceeding Twenty Five Thousand Dollars (\$25,000) provide a performance and completion bond in the full amount of the bid to secure the successful completion of all work, and a payment bond to insure that all materialmen and laborers are paid for work performed with FAD Retrofit Funds;
4. A requirement that Contractors have liability insurance in sufficient amount and scope to protect the interests of the City and the EOHWC, as provided in Appendix B.
5. A statement and a requirement that Contractors agree to indemnify the City and assume liability for injuries on the same basis identified in this Agreement, pursuant to Article 11;
6. A requirement that Contractors agree to and comply with a budget, a scope of work, a progress schedule for completion of the work within specified milestones and payment schedule which is dependent upon completion of the work within the specified period of performance;
7. A representation and warranty that no payment, gift or thing of monetary value was made, given or promised to a EOHWC officer, director, or employee to obtain the Contract or any other agreement with the City or the EOHWC;
8. A statement and requirement that nothing contained in the Contract shall impair the rights of the City under this Agreement or the Watershed MOA;
9. A requirement that the EOHWC or the City shall have the right from time to time to conduct random, unannounced inspections of the work performed under the Contract to determine whether such work is being performed in accordance with the terms of the Contract, except that, where work is being performed on private property, the EOHWC and the City shall provide reasonable notice of such inspections or conduct them during

normal business hours;

10. A statement and requirement that nothing contained in the Contract shall create any contractual relationship between the Contractor and the City; and

11. A requirement that the Contractor not engage in any unlawful discrimination in hiring employees under the Contract.

B. The EOHWC shall enforce the foregoing provisions of its Contracts.

C. The EOHWC shall require Contractors performing public work within the meaning of Section 220 of the New York State Labor Law pay not less than the prevailing wage to laborers, workmen and mechanics performing such public work and comply with all other applicable provisions of Section 220 of the Labor Law. The EOHWC shall also require such Contractors to maintain records evidencing their compliance with this Subsection.

Section 7.03 Background Investigation Compliance for Contracts

A. The EOHWC agrees and covenants to hire only responsible consultants and Contractors with respect to any work to be performed hereunder and paid for with FAD Retrofit Funds.

B. A responsible person or firm is one who or which, in the EOHWC's reasonable opinion, has the capability in all respects to fully perform the contract requirements, including appropriate licenses where applicable, and the business integrity to justify the award of public tax dollars.

Section 7.04 Business Integrity

A. For purposes of this Section the following definitions apply:

1. "Affiliate" shall mean an entity in which the parent of the proposed Contractor owns more than 50 percent voting stock or an entity in which a group of principal owners which owns more than 50 percent of the proposed Contractor also owns more than 50 percent of the voting stock.

2. "Contract" shall mean any contract for the procurement of labor, materials, equipment or services paid for, in whole or in part with FAD Retrofit Funds.

3. "Covered Contract" shall mean a Contract (except for an award to an entity as described in Section 99-r of the General Municipal Law or any Federal or local governmental agency) in the amount of \$250,000 or more with a Contractor, or which is valued at \$250,000 or more when aggregated with the value of all other contracts funded with funds provided by the City awarded to the same Contractor during the immediately preceding twelve month period. In determining whether a Contract is a Covered Contract, the

EOHWC shall be entitled to rely on a certificate of the subject Contractor, except where the EOHWC has actual knowledge that a Contract is a Covered Contract.

4. "Principal Owner" shall mean an individual, partnership, joint venture or corporation which holds a ten percent (10%) or greater ownership interest in a proposed Contractor.
 5. "Contractor" shall mean any person or entity which enters into a Contract with the EOHWC.
- B. A Covered Contract shall not be awarded to persons or entities other than "Eligible Contractors." An "Eligible Contractor" for purposes of this Section is a Contractor that has a satisfactory record of business integrity. A Contractor shall be deemed to lack the requisite record of business integrity if any of the following criteria are met within or during the period commencing ten (10) years prior to completion of the City Vendor Information Exchange System ("VENDEX") questionnaire and continuing through the date of determination:
1. Criminal conduct in connection with government contracts or the conduct of business activities involving: a) the infliction, attempted infliction, or threat of death, intentional personal injury, or intentional property damage, in connection with involvement in a pattern of racketeering, labor racketeering, extortion, obstruction of justice, or other comparable crimes; b) bribery, fraud, bid rigging, embezzlement, theft, perjury, forgery, or other comparable crimes; c) serious moral turpitude, fundamental lack of integrity, or a pattern or practice of a knowing disregard for the law so as to call into question the integrity of the proposed Contractor; or (d) conspiracy to do any of the above acts. Evidence of such conduct shall consist of (A)(1) a judgment of conviction, (2) a pending criminal indictment, or (3) a formal grant of immunity in connection with a criminal prosecution, in each case of a proposed Contractor, any director or officer, any principal, and any employee primarily responsible for contracting procedures, or any holder of five percent (5%) or more of the shares or equity of the proposed Contractor, or any affiliate or subsidiary of the proposed Contractor; or (B) any ongoing criminal investigation by a law enforcement agency in which the proposed Contractor, any director or officer, any principal, employee primarily responsible for contracting procedures, or any holder of five percent (5%) or more of the shares or equity of the proposed Contractor, or any affiliate of the proposed Contractor is a target.
 2. An actual determination by a person or entity which has jurisdiction of a willful noncompliance with the prevailing wage requirements of Section 220 of the Labor Law by the proposed Contractor or any affiliate thereof.
 3. An actual determination by a person or entity which has jurisdiction of a significant willful violation of the Workers' Compensation Law, including, but not limited to, the failure to maintain required workers' compensation or disability coverage.
 4. An actual determination by a person or entity which has jurisdiction of a submission by

the proposed Contractor to a government agency of a false or misleading statement on a uniform questionnaire or other form in connection with a bid or proposal for, or award of, a contract or request for approval of a Contractor.

5. A conviction or judgment of civil liability against the Proposed Contractor for fraud in connection with a bid or proposal for or award of a contract or request for approval of a Contract.
 6. Debarment or current suspension of the proposed Contractor for reasons of business integrity from consideration for the award of contracts with a government, governmental entity or public authority pursuant to any procedure enacted by statute or adopted by regulation providing for notice and hearing.
 7. Arrears for more than one year on income, sales or payroll taxes.
- C. Before any Covered Contract is awarded to a Contractor, the EOHWC proposing to award the Covered Contract shall require the proposed Contractor to complete the appropriate VENDEX questionnaire on-line via the City's Procurement and Sourcing Solutions Portal ("PASSPort"), or such revised standard VENDEX questionnaire as the City provides from time to time. The EOHWC shall also require that the proposed Contractor submit the completed VENDEX questionnaire to NYCDEP electronically. Within thirty-five (35) days of receiving the VENDEX questionnaire, the City may provide a report indicating whether any of the criteria of Subsection (B) are met, including an explanation of the non-confidential evidence that such criteria are met. If the report states in fact that such criteria are met, the Contractor will be deemed not to be an Eligible Contractor unless the City and the EOHWC determine that the Contractor possesses a satisfactory record of business integrity.
- D. Even if the Contractor does not meet the criteria set forth in Subsection (B), the City may provide the EOHWC within thirty-five (35) days of receipt of a request from EOHWC, information which may be relevant to the question of whether a proposed Contractor for a Covered Contract has a satisfactory record of business integrity. Before awarding the Covered Contract, the EOHWC shall receive and consider such information provided by the City. If, after receiving and considering such information, the EOHWC intends to proceed to award the Covered Contract to such Contractor, before making such award, the EOHWC shall respond in writing to any such information provided by the City.
- E. If no report referred to in Subsection (C) or no information referred to in Subsection (D) is received from the City within the thirty-five (35) day period following the later of: i) NYCDEP's receipt of a request from EOHWC; or ii) the submission of a VENDEX questionnaire as provided in Subsection (C), the Contractor may be deemed to be an Eligible Contractor for purposes of this Section.
- F. The City shall not use this Section as a means of restricting the selection or approval of an Eligible Contractor over another Eligible Contractor, or the decision that one project be

undertaken instead of another. The report shall be based solely on the criteria set forth in Subsection (B) and shall not be based on other factors including, without limitation, financial resources, technical qualifications, experience, organization, material, equipment, facilities, personnel resources and expertise, a satisfactory record of performance, the existence of accounting and auditing procedures, or compliance with requirements for the utilization of small, minority-owned and women-owned businesses as Contractors; provided that the City shall be entitled to review and rely upon any facts and circumstances relevant to the criteria set forth in Subsection (B).

- G. In addition to and not in limitation of the indemnification provision in Article 11, at the EOHWC's request, the City shall defend, indemnify and hold harmless the EOHWC, its officers, agents and employees from and against any liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of a determination with respect to a Covered Contract pursuant to this Section, including, the requirements that Contractors complete and submit the VENDEX questionnaire and meet the criteria in Subsection (B); the report or other information provided by the City to the EOHWC; and any other dissemination of the information provided by the City necessary to comply with this Section. The EOHWC agrees to cooperate with and provide reasonable assistance to the City in defending any actions or claims which the City has undertaken to defend pursuant to this Subsection.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

Section 8.01 Status and Authority of the EOHWC

The EOHWC represents and warrants that:

- A. The EOHWC is and will continue to be a locally based and administered not-for-profit corporation duly organized under Section 1411 of the New York State Not-For-Profit Corporation Law, validly existing and in good standing under the laws of the State of New York.
- B. The EOHWC has all requisite power and authority to execute, deliver and perform this Agreement.
- C. The EOHWC has supplied the City with current copies of its certificate of incorporation and by-laws, and will update these if they are amended during the term of this Agreement.
- D. This Agreement has been duly authorized by all necessary action on the part of the EOHWC and has been duly executed and delivered by the EOHWC and, assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of the

EOHWC.

- E. The execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under the EOHWC's certificate of incorporation or by-laws, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the EOHWC is bound, or to the knowledge of the EOHWC, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the EOHWC or any of its activities or properties.
- F. Acceptance of any FAD Retrofit Funds hereunder shall be deemed at such time a reaffirmation of the representations and warranties hereof.

Section 8.02 Authority of the City

The City represents and warrants that:

- A. The City has all requisite power and authority to execute, deliver and perform this Agreement. NYCDEP is a validly authorized and existing agency of the City, with full right and power to execute, deliver and perform its obligations under this Agreement.
- B. The execution, delivery and performance by the City and NYCDEP of this Agreement are within the powers of the City and NYCDEP, and upon registration of this Agreement pursuant to Section 328 of the City Charter, will have been duly authorized by all necessary action on the part of the City, and will require no action by or in respect of, or filing with, any governmental body, agency or official. Upon registration of this Agreement pursuant to Section 328 of the City Charter, the City also represents that the City and NYCDEP will have complied with all applicable laws in connection with the execution, delivery and performance of this Agreement.
- C. This Agreement will, when executed by the City and registered by the City pursuant to Section 328 of the City Charter, and assuming due execution and delivery by the EOHWC, constitute the valid and binding agreement of the City and NYCDEP, enforceable in accordance with its terms.
- D. The execution and delivery of this Agreement by the City and NYCDEP, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any provision of applicable law, charter, ordinance or regulation or, to the extent of the City's knowledge, of any material agreement, judgment, injunction, order, decree or other instrument binding upon the City or NYCDEP.

Section 8.03 Conflict of Interest

- A. The EOHWC represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or

indirectly, in any contracts, except contracts between the EOHWC and a government, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided.

- B. The EOHWC further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest in any contracts which would or may conflict in any manner or degree with the performance or rendering of the services herein provided shall be employed by it or receive any of the FAD Retrofit Funds to be paid to the EOHWC by the City.
- C. An employee, officer, director or member of the EOHWC, upon learning that any project proposed for from hereunder will directly benefit himself/herself or a member of his/her family (parents, grandparents, siblings, children, or grandchildren), or will directly benefit any firm which he/she or any of the foregoing persons holds a financial interest, shall disclose his/her association to the Board of Directors of the EOHWC and refrain from participating in any consideration, review or approval of the project at issue.
- D. No elected official or other officer or employee of the City or NYCDEP, nor any person whose salary is payable, in whole or in part, from the City Treasury, or from FAD Retrofit Funds shall participate in any decision relating to this Agreement which affects her/his personal interest or the interest of any corporation, partnership or association other than the City or NYCDEP, in which he/she is, directly or indirectly, interested.
- E. The EOHWC shall maintain a conflict of interest policy that provides that no officer, employee or director of the EOHWC shall use or attempt to use his/her position with the EOHWC to obtain any personal financial gain, contract, privilege or other advantage from performing the Work. The conflict of interest policy shall also provide that any officer, employee or director of the EOHWC shall fully disclose to the EOHWC any financial or other interest in any proposed contract to be awarded or approved by the EOHWC before any discussion of such matter or vote regarding such matter, shall absent himself or herself from, and shall not participate in any discussion or vote concerning such matter, and shall not seek to use personal influence in connection with the Board of Directors' consideration of such matter. Nothing in this Section, however, shall prohibit an elected official of an East of Hudson Watershed municipality or employee of the City from using his/her position with the EOHWC to obtain a gain, contract, privilege or other advantage for the benefit of the municipality represented by such official or of the City provided that any benefit conferred on such official or employee personally by virtue of such action is similar to the benefit conferred on other eligible residents of the municipality.
- F. The conflict of interest policy shall further provide that no officer, employee or director of the EOHWC shall assume a position as director, officer or employee with, or acquire a financial interest in any firm or corporation which is awarded a contract by the EOHWC.
- G. For purposes of the EOHWC's conflict of interest policy, a conflict of interest will be deemed

to exist if the officer, director, or employee of the EOHWC has, or the officer's, director's or employee's immediate family has, or is considering acquiring, a position with, or an ownership or other financial interest in, any person or firm holding, bidding for, or proposed to be awarded a contract to be awarded hereunder.

ARTICLE 9

APPLICABLE LAWS, RULES, AND REGULATIONS

Section 9.01 Severability

If any provision of this Agreement or its application shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications hereof shall not in any way be affected or impaired.

Section 9.02 Compliance with the Law

The EOHWC agrees that all acts to be performed by it in connection with this Agreement shall be performed in compliance with all applicable federal, State and local laws, rules, regulations and orders.

ARTICLE 10

DEFAULT, SUSPENSION OR TERMINATION

Section 10.01 Defaults

If either Party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than thirty (30) days after written notice of such default is received by the defaulting Party from the non-defaulting Party, such non-defaulting Party may (in addition to any other rights or remedies available at law or in equity) suspend work or terminate this Agreement upon written notice to the defaulting Party. If a material breach of the Agreement cannot be cured within thirty (30) days, the Agreement shall not be suspended or terminated pursuant to this Section if the breaching Party commences appropriate actions to cure the breach prior to the end of the thirty (30) days and diligently prosecutes the actions necessary to cure the breach. Notwithstanding the suspension or termination of this Agreement pursuant to this Section, nothing herein shall relieve the City of its obligation under Section 4.9 of the FAD to provide Twenty-Two Million Dollars (\$22,000,000) for the purposes set forth in Section 4.9 of the FAD.

Section 10.02 Additional Remedies for City Default

- A. If the EOHWC substantially prevails in an action against the City to enforce this Agreement, the City will pay the EOHWC its reasonable attorney's fees which have been actually incurred.

- B. If the City fails to make a payment to the EOHWC within thirty (30) days of the date such payment became due and owing under this Agreement and this Agreement was valid and enforceable on the date such payment became due and owing, the City shall pay the EOHWC interest on such missed payment from the date such payment became due and owing until the date such payment is actually made. Interest shall be payable at an annual rate equal to the prime lending rate used by Chase Manhattan Bank, New York, New York, or its successor, as of the date the payment became due and owing, plus two percent (2%), compounded annually. Such interest shall be in addition to, and not in lieu of, other damages, including consequential damages (other than the costs of borrowing to replace funds not received from the City) and interest, the EOHWC may be entitled to under the common law and statutes of New York State, including the Civil Practice Law and Rules. Such interest shall also be in addition to, and shall not reduce, the City's payment obligations under Section 3.01. Any such interest shall be paid into the FAD Retrofit Fund for which payment was missed and shall be used in the same manner, and subject to the same restrictions as other funds in such FAD Retrofit Fund.

Section 10.03 Force Majeure

- A. In the event the City cannot comply with the terms and conditions of this Agreement because of an act of God, war, terrorism, strike or other condition as to which conduct the City was not the proximate cause, the City's performance hereunder may be excused or delayed provided the City notifies the EOHWC in writing within thirty (30) days of obtaining knowledge of such condition and requests an appropriate extension of the relevant terms and conditions of this Agreement and further provided that the City makes its best efforts to provide for alternate arrangements to fulfill the terms and conditions of this Agreement.
- B. In the event the EOHWC cannot comply with the terms and conditions of this Agreement because of an act of God, war, strike or other condition as to which conduct the EOHWC was not the proximate cause, the EOHWC's performance hereunder may be excused or delayed provided the EOHWC notifies the City in writing within thirty (30) days of obtaining knowledge of such condition and requests an appropriate extension of the relevant terms and conditions of this Agreement and further provided that the EOHWC uses best efforts to provide for alternate arrangements to fulfill the terms and conditions of this Agreement. Nothing in this Subsection shall excuse the EOHWC from using FAD Retrofit Funds for the purposes set forth in Section 2.01.

Section 10.04 Rights Upon Termination of Agreement

Upon termination of this Agreement, whether by expiration of its term or otherwise, the following procedures shall be followed:

- A. The City shall stop making any further payments to the EOHWC pursuant to this Agreement and the EOHWC shall not incur any further obligation pursuant to this Agreement. The EOHWC shall be entitled to receive or retain FAD Retrofit Funds in a manner consistent with

this Agreement to pay obligations necessarily incurred by the EOHWC in accordance with this Agreement pursuant to contracts entered into in good faith prior to receiving a notice of termination pursuant to Section 10.01.

- B. If this Agreement is terminated for cause prior to the Expiration Date, the EOHWC shall account for and return to NYCDEP or the City all unallocated FAD Retrofit Funds which have been provided to the EOHWC pursuant to this Agreement, within thirty (30) calendar days, for reallocation consistent with the terms of the FAD. Funds shall be considered allocated if they have been committed to a project through binding agreements entered into in good faith before receiving a notice of termination.
- C. The EOHWC shall submit, within ninety (90) calendar days of termination, the reports required pursuant to Subsection 5.04.
- D. If there is a balance available of FAD Retrofit Funds allocated to the EOHWC upon satisfaction of its obligations covering the second five year period of the MS4 Permit's term, the EOHWC agrees to transfer to the NYCDEP that portion of said funds not disbursed.

ARTICLE 11

INDEMNIFICATION

Section 11.01 Indemnification.

The Parties agree to indemnify each other and save each other harmless from all claims, liabilities, losses or expenses of every character whatsoever relating to or arising out of this Agreement, where such injury or damage is the result of the indemnifying Party's negligence or willful tort arising from any activities relating to this Agreement. In the event such injury or damage is caused by the combined negligence of the Parties, each Party shall be responsible for its relative culpability. Any costs incurred by the City pursuant to this Section shall be in addition to and shall not reduce the City's obligations under Section 3.01.

ARTICLE 12

INVESTIGATIONS

Section 12.01 Cooperation with Governmental Investigations

The EOHWC and the City agree to cooperate fully and faithfully with any investigation, audit or inquiry relating to the subject matter of this Agreement conducted by a New York State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.

Any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

ARTICLE 13

MISCELLANEOUS PROVISIONS

Section 13.01 Assignment or other Disposition of the Agreement

The EOHWC agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title, or interest therein, or its power to execute such Agreement to any person, company or corporation without the previous written consent of NYCDEP, except that the foregoing provision shall not prohibit the EOHWC from retaining and employing Contractors to assist in performing services hereunder subject to the limitations and restrictions on Contractors set forth in Article 7 of this Agreement.

Section 13.02 Modification

This Agreement may not be modified or amended except by an instrument in writing signed by both of the Parties hereto. This Agreement may not be modified or amended orally.

Section 13.03 Notifications

Unless otherwise expressly provided in this Agreement, any notice from one Party to the other required or permitted to be given hereunder shall be in writing and shall be delivered by hand, or by certified mail, return receipt requested, or by facsimile transmission followed by delivery by hand, by certified mail, return receipt requested, or by overnight mail, to the following addresses:

If to NYCDEP:

New York City Department of Environmental Protection
465 Columbus Avenue
Valhalla, New York 10595
Attention: BWS Community Planning
Telecopier No.: (914) 742-2027

with a copy to:

New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373
Attention: General Counsel
Telecopier No.: (718) 595-6543

If to the EOHWC:

East of Hudson Watershed Corporation
2 Route 164
Patterson, NY 12563

Either Party may change the address to which notice to such Party shall be sent by sending written notice of such change to the other Party.

Section 13.04 No Third Party Beneficiary

This Agreement between the EOHWC and the City is not intended to create any benefit or interest in any third party.

Section 13.05 Cooperation

Both parties acknowledge and agree, that during the term of the MS4 Permit, as may be amended from time to time, they will provide each other promptly with all documentation, reports, and information which may be necessary to carry out their respective obligations under this agreement. Nothing in this Agreement shall be deemed as consent by either Party to provide documents protected by, or to waive, the attorney/client privilege or the attorney work product privilege.

Section 13.06 Claims or Actions Against the City

- A. No director, officer, employee, agent or other person authorized to act on behalf of the City shall have any personal liability in connection with this Agreement or any failure of the City to perform its obligations hereunder.
- B. The EOHWC shall report to NYCDEP in writing within seven (7) days of the initiation by the EOHWC or the service on the EOHWC of any legal action or proceeding in connection with or relating to this Agreement. In the event any claim is made or any action brought in any way relating to the Agreement herein (except an action brought by the EOHWC against the City or by the City against the EOHWC), the EOHWC shall diligently render to NYCDEP and/or the City without additional compensation, any and all reasonable and necessary assistance which NYCDEP and/or the City may require of the EOHWC to prosecute or defend against such claim or action.

Section 13.07 Political and Lobbying Activity

- A. The EOHWC shall not engage in any partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office and otherwise attempt to influence legislation as part of or in connection with this Agreement, nor shall FAD Retrofit Funds be used for such purpose.
- B. Nothing in this Agreement shall prevent the EOHWC from applying for, or obtaining any, financial assistance through grants, loans or other forms of financial aid from any federal, State,

local or City agencies, or private or charitable organizations.

Section 13.08 Miscellaneous

- A. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The Parties consent to the jurisdiction of the Supreme Court of the State of New York for disputes arising from this Agreement.
- B. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

The New York City Department of
Environmental Protection

By  _____

Vincent Sapienza
Commissioner

East of Hudson Watershed Corporation

By  _____

Peter Parsons
President

APPROVED AS TO FORM AND CERTIFIED
AS TO LEGAL AUTHORITY

Acting Corporation Counsel of
The City of New York

ACKNOWLEDGMENT

STATE OF NEW YORK)
 : ss.
COUNTY OF QUEENS)

Elisa Velazquez

On this the 18 day of Jan, 2019, before me personally came ~~Vincent Sapienza~~ *Elisa Velazquez*, to me known, who being by me duly sworn did depose and say that ~~he~~ *she* is the Commissioner of the Department of Environmental Protection of the City of New York, the individual described herein and who executed the foregoing instrument, and that he signed his name thereto as authorized by said municipal corporation.

Naomi Burrus

Notary Public

NAOMI BURRUS
Notary Public, State of New York
No. 01BU6304146
Qualified in Queens County
Commission Expires May 27, 2022

ACKNOWLEDGMENT

STATE OF NEW YORK)
 : ss.
COUNTY OF DUTCHESS)

On this 8th day of January, 2019 before me personally came Peter Parsons, to me known, who being by me duly sworn did depose and say that s/he is the President of East of Hudson Watershed Corporation, the individual described herein and who executed the foregoing instrument, and that s/he signed his/her name hereto as authorized by the Board of Directors of said Corporation.

Linda D. Matera

Notary Public

LINDA D MATERA
Notary Public, State of New York
Registration No. 01MA6381157
Qualified in Dutchess County
My Commission Expires September 24, 2022

INVOICE NO. CRO-574-001

To: New York City Department of Environmental Protection
BWS Community Planning
465 Columbus Avenue, Suite 270
Valhalla, New York 10595
Attn: EOH Community Planning

Cc: New York City Department of Environmental Protection
Bureau of Legal Affairs
59-17 Junction Boulevard
Corona, New York 11368
Attn: General Counsel

From: Peter Parsons, President, East of Hudson Watershed Corporation
2 Route 164, Suite 2
Patterson, NY 12563

Re: Agreement between the New York City Department of Environmental Protection and
the East of Hudson Watershed Corporation dated January 8, 2019

Invoice Date: January 8, 2019

Contract No.: CRO-574 East of Hudson Stormwater Retrofit Program

Amount: \$15,000,000.00 (FAD)

Remit To: Peter Parsons, President, East of Hudson Watershed Corporation
2 Route 164 Suite 2
Patterson, NY 12563

Electronic Funds Transfer:

M&T Bank, 60 June Road, North Salem, NY 10560

914-669-5114

ABA Routing #: 022000046

FBO: Account #15004216729511



Peter Parsons, President
East of Hudson Watershed Corporation

APPENDIX B
Insurance
Specifications

I. Insurance Coverages Required to be Maintained by East of Hudson Watershed Corporation (Agreement, Article 4)

Notes: Insurance indicated by (X) is required.

Insurance certificates, policies, and endorsements shall be sent to the New York City Department of Environmental Protection (“DEP”), 59-17 Junction Boulevard, 17th Floor, Flushing, New York 11373-5108, Attention: DEP ACCO. A copy of each insurance certificate shall also be sent to: DEP, 465 Columbus Avenue, Valhalla, New York 10595, Attention: Community Planning.

(X)	Worker’s Compensation	Statutory per New York State law without regard to jurisdiction (<u>See</u> Section 1.01.1 below.)
(X)	Employer’s Liability	Statutory (<u>See</u> Section 1.01.2.)
(X)	Disability Benefits	Statutory per New York State law (<u>See</u> Section 1.01.1 below.)

(X)	Commercial General Liability CG 00 01 (ed. 10/02) or equivalent Combined Single Limit - Bodily Injury and Property Damage	\$2,000,000 per occurrence \$2,000,000 products/completed operations aggregate \$4,000,000 general aggregate \$25,000 maximum deductible
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(See Section 1.01.3 for additional requirements.)

(X)	Automobile Liability: CA 00 01 (ed. 6/92) or equivalent. Combined Single Limit - Bodily Injury and Property Damage	\$500,000 each occurrence
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The following coverage must be provided:

(X) Comprehensive Form (X) Owned (X) Hired (X) Non Owned

(See Section 1.01.4).

II. Insurance Coverages Required to be Maintained by Consultants/Subcontractors Retained by East of Hudson Watershed Corporation (Agreement, Articles 4 and 7)

Notes: Insurance indicated by (X) is required.

Insurance certificates, policies, and endorsements must be sent to the New York City Department of Environmental Protection (“DEP”), 59-17 Junction Boulevard, 17th Floor, Corona, New York 11373-5108, Attention: DEP ACCO. A copy of each insurance certificate shall also be sent to: DEP, 71 Smith Avenue, Kingston, New York 12401, Attention: Community Planning.

(X) Insurance for Professional Services Consultants and Contractors:

All contracts for professional engineering services for design, engineering surveys, and/or construction management shall require that the consultant maintain and present evidence of a professional Errors and Omissions policy with a U.S. domiciled company providing limits of not less than \$1 Million per claim, \$1 Million aggregate, and a deductible or self-insured retention not to exceed \$25,000 per claim.

III. General Provisions Applicable to Insurance Coverages:

These provisions are applicable to both the insurance coverages required to be maintained by East of Hudson Watershed Corporation under the Agreement to which the Appendix is annexed, and the insurance coverages required to be maintained by any consultant/contractor/subcontractor engaged or retained by East of Hudson Watershed Corporation. In each case, the reference to “Contractor” shall mean the party required to maintain insurance coverage, and the reference to “Contract” shall mean either the Agreement (in the case of East of Hudson Watershed Corporation) of the contract pursuant to which the consultant, contractor or subcontractor is providing services (in the case of a consultant, contractor or subcontractor).

Section 1.01

1.01.1 Worker’s Compensation Insurance:

Before performing any work under the Contract, the Contractor shall maintain Workers’ Compensation Insurance and Disability Benefits Insurance in accordance with the laws of the State of New York.

1.01.2 Employer’s Liability Insurance:

Before performing any work under the Contract, the Contractor shall maintain Employer's Liability Insurance in accordance with the laws of the State of New York.

1.01.3 Commercial General Liability:

The Contractor shall maintain commercial general liability insurance covering claims for property damage and/or bodily injury, including death, and personal and advertising injury, which may arise from any of the operations under the Agreement with coverage at least as broad as the coverage provided by the latest edition of ISO Form CG 00 01. Such insurance policy shall not include an exclusion, whether by exception, exclusion, endorsement, script or other modification, (except those in ISO Form CG 00 01) unless approved in writing by DEP, including but not limited to exclusions of any of the following attributes: (i) contractual liability insuring the contractual obligations of the insured; (ii) employer's liability coverage for liability assumed by the Contractor under an "insured contract"; (iii) coverage for claims arising under New York Labor Law; (iv) independent contractors; (v) explosion, collapse and underground (XCU); and (vi) the applicability of Commercial General Liability Insurance coverage to the City, including its officials and employees, as Additional Insured in respect of liability arising out of claims against the Additional Insured by employees of Contractor. The Contractor shall maintain coverage for the City of New York, including its officials and employees, as additional insured that is at least as broad as the latest edition of ISO Form CG 20 26, and if construction is performed as part of the services, ISO Form CG 20 37. ISO Form 20 37 shall be maintained at least three years after completion of the Contract work. Such commercial general liability insurance shall be primary and non-contributory, "occurrence" based rather than "claims-made." The policy shall include a waiver of the right of subrogation with respect to all insureds named therein. Additional insured endorsements provided by any entity other than EOHWC shall not include a privity of contract requirement.

1.01.4 Automobile Liability:

Contractor will provide the City with evidence of insurance covering liability arising out of ownership, maintenance or use of any owned, non-owned and hired vehicles to be used in connection with the Agreement. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

1.01.5 General Requirements for Insurance:

- A. The insurance required for the Agreement shall be maintained with insurers that may lawfully issue such policies and have an A.M. best rating of at least "A-/VII," a Standard & Poor's rating of at least A, a Fitch Ratings rating of at least A-, a Moody's Investors Service rating of at least A3, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Office of the New York City Corporation Counsel unless prior written approval is obtained from the Office of the New York City Corporation Counsel.
- B. All insurance contributing to satisfaction of the insurance requirements set out in this Appendix shall not be modified materially, terminated, or canceled by the Contractor without prior written approval of DEP.
- C. All insurance policies (except professional liability insurance, workers' compensation/employer's liability insurance, and disability benefits insurance) shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

- D. The Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of the requirements of this Appendix and shall be solely responsible for the payment of all deductibles or self-insured retentions to which such policies are subject, whether or not the City of New York is an insured under the policy.
- E. There shall be no self-insurance program with regard to any insurance required under this Agreement unless approved in writing by DEP. Any such self-insurance program shall provide the City, including its officials and employees, with all rights that would be provided by traditional insurance required under this Appendix B, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies.
- F. The City's limits of coverage for all types of insurance required hereunder shall be the greater of (i) the minimum limits set forth above in this Appendix B or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.
- G. The Contractor may satisfy its insurance obligations hereunder through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
- H. Unless waived by DEP, policies of insurance provided pursuant to this Agreement, other than professional liability insurance and disability benefits insurance, shall include a waiver of the right of subrogation with respect to the City of New York, including its officials and employees.

1.01.6 Proof of Insurance:

- A. Prior to or upon execution of this Agreement, and as required by N.Y. Workers' Compensation Law §§57 and 220(8), the Contractor shall submit proof of Contractor's workers' compensation insurance and disability benefits insurance (or proof of a legal exemption) to DEP in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:
 - a. C-105.2 Certificate of Workers' Compensation Insurance;
 - b. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
 - c. Request for WC/DB Exemption (Form CE-200);
 - d. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
 - e. Other proof of insurance in a form acceptable to DEP.
- B. For each type of insurance required by this Agreement except for Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file proof of insurance submit within ten (10) days of award of this Agreement or such other time as may be specified by DEP:
 - a. A Certificate of Insurance on a form acceptable to the DEP, a duly executed Certification of Insurance Broker or Agent (available on the website of the New York State Department of Financial Services at http://www.dfs.ny.gov/insurance/insurers/certificates/NYC_Certification_Form_5.7).

[15.pdf](#)), and the endorsement or policy provision containing the required coverage of the City, including its officials and employees, as an additional insured.

-OR-

- b. A copy of the complete insurance policy(ies) as certified by an authorized representative of the issuing insurance carrier.
- C. The Contractor shall submit documentation confirming renewals of insurance to DEP prior to the expiration date of coverage of policies required under this Agreement. Such documentation shall comply with the requirements concerning proof of insurance in paragraphs (A) and (B) above.
- D. The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to the Agreement upon the demand for such policy by DEP or the Office of the New York City Corporation Counsel.
- E. Acceptance by DEP of proof of insurance does not excuse the Contractor from maintaining policies consistent with all provisions of this Agreement or from any liability arising from its failure to do so.
- F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under Agreement shall expire or be cancelled or terminated for any reason, the Contractor may be declared to be in default for failure to maintain required insurance. The Contractor shall forward a copy of such notice to both New York City Department of Environmental Protection, 59-17 Junction Boulevard, 17th Floor, Flushing, New York 11373-5108, Attn: ACCO, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

1.01.7 Miscellaneous:

- A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under any liability insurance policy maintained in accordance with this Agreement, the Contractor shall provide the insurer with timely notice thereof on behalf of the City, including its officials and employees. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including their respective officials and employees as Additional Insured" and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, including its officials and employees, for all losses, judgments, settlements and expenses,

including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City, including its officials and employees.

- B. Apart from damages or losses covered by Workers' Compensation Insurance, Employers' Liability Insurance, Disability Benefits Insurance, and Commercial Automobile Liability Insurance, the Contractor waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.
- C. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Agreement, the Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.
- D. The Contractor's failure to maintain any of the insurance required by this Agreement shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.
- E. If the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list the City, including its officials and employees, as an additional insured. For Commercial General Liability insurance, such coverage must be at least as broad as the most recently issued ISO Form CG 20 26, and if construction is performed as part of the services, ISO Form CG 20 37.

APPENDIX C

This appendix is intended to provide guidance to the Parties on costs of implementing the Regional Retrofit Plan which are eligible for payment from the principal of the Stormwater Retrofit Funds, costs which are eligible for payment from the earnings on the Stormwater Retrofit Funds, and costs which are not eligible for payment from principal of, or earnings on, the Stormwater Retrofit Funds.

Costs Reasonably Related to Project Implementation and Therefore Eligible for Funding With Stormwater Retrofit Funds and Earnings

Project Selection and Design

Preparation of RFPs for engineering services for design of Stormwater Retrofit Projects, whether for all projects to be installed in a given year or for individual projects or groups of projects.

Advertising of RFPs, distribution of documents, review and evaluation of proposals and award of engineering contract for Stormwater Retrofit Projects.

Engineering review of specific Stormwater Retrofit Projects in the first five year Regional Retrofit Plans to determine phosphorus reduction efficacy.

Responses to NYSDEC technical reviews and comments on specific Stormwater Retrofit Projects in the first five year Stormwater Retrofit Plans.

Engineering design of specific Stormwater Retrofit Projects.

Negotiating right of access to or ownership of lands needed for implementation of Stormwater Retrofit Projects, including legal costs, title search, title insurance, filing fees and the cost of acquisition.

Documentation of the proper O&M program, including the equipment, personnel, tasks and schedules, that will be necessary to ensure the Stormwater Retrofit Project does not decline in efficacy or fail to perform as expected.

Construction

Preparation of bid notice and bid documents, publication of same, distribution of documents, conduct bid opening, review and evaluation of bids after opening, award of contracts.

Permitting and construction of individual stormwater retrofits included in the Regional Retrofit Plans, including compliance with SEQRA.

Construction management, whether performed by EOHWC staff or retained engineering firm or construction management firm.

Preparation of as-built drawings of all completed Stormwater Retrofit Projects, and documentation of project fulfillment, including GPS identification of all facilities.

Construction inspection of sites for Stormwater Retrofit Projects before, during and after construction to assure compliance with Contract requirements and Regional Stormwater Plans

Related Administrative Tasks

Management of invoices, expenses and payments to contractors, including legal fees associated with each of the above activities.

Pro rata allocation of staff time and expenses (including benefits) required for each of the above activities.

Attendance by staff, consultants and legal counsel, as required, at public hearings or public meetings with community groups or municipalities as needed to implement specific Stormwater Retrofit Projects.

Oversight by staff and consultants, as needed, of all site selection, design and construction of Stormwater Retrofit Projects, including contract administration, scheduling, reimbursements, payroll, notices, telephone calls, messages, rentals and other oversight costs related to specific Stormwater Retrofit Projects.

Costs Not Eligible for Funding from Stormwater Retrofit Funds But Eligible for Funding from Earnings on Stormwater Retrofit Funds

The following are illustrative costs of the stormwater retrofit program which are not eligible for payment using Stormwater Retrofit Funds under the Funding Agreement, but which are eligible for payment using earnings on the Stormwater Retrofit Funds.

Planning

Preparing modifications to regional stormwater retrofit program for submission to NYSDEC.

Engineering review to determine priority of Stormwater Retrofit Projects, optimal sequencing of project implementation, given limited resources, and potentially reprioritizing Stormwater Retrofit Projects in the first five year Regional Retrofit Plans.

Reporting

Preparation and submission of the annual audited financial report and the annual project accounting report to NYCDEP.

Pro rata allocation of staff time and expenses (including benefits) and consultant fees required for the preparation of all reports required by Article 5 of the Agreement, as provided in Section 5.05.

Operation and Maintenance

Prepare and implement policies and procedures for O&M Budget.

Perform O&M for the retrofits constructed using capital funds under the Agreement.

Costs Not Eligible for Funding from Capital Stormwater Retrofit Funds or from Earnings on Stormwater Retrofit Funds

Planning

Merging of the Dutchess, Putnam and Westchester County Stormwater Management Programs into one regional stormwater management program. Requires filing with, and approval by NYSDEC.

Development of watershed modeling to demonstrate compliance with TMDL reductions required under the MS4 Permit.

Preparing the list of stormwater retrofit projects to be implemented in Years 6 through 10, including field evaluations for stormwater retrofit program.

Preparing an annual report to NYSDEC on the stormwater retrofit practices implemented in the previous year and the coming year's planned stormwater retrofit practices

General Administration

Solicitation of grants and other additional sources of funding for the MS4 program.

Acting as a clearing house for EOHWC member municipalities' MS4 program.

Providing general administrative support to the EOHWC or EOH Coalition.

2017 FAD

New York City Filtration Avoidance Determination

Prepared By

New York State Department of Health

in consultation with

United States Environmental Protection Agency

December 2017

2017 Surface Water Treatment Rule Determination for
New York City's Catskill/Delaware Water Supply System

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Acronyms

AOC	Administrative Order on Consent
BMPs	Best Management Practices
CAP	<i>Cryptosporidium</i> Action Plan
CATUEC	Catskill Aqueduct Upper Effluent Chamber
CDUV	Catskill/Delaware Ultraviolet Facility
CCE	Cornell Cooperative Extension
CE	Conservation Easement
CFI	Continuous Forest Inventory
CFR	Code of Federal Regulations
CREP	Conservation Reserve Enhancement Program
CSBI	Catskill Streams Buffer Initiative
CT	Concentration-Time (chlorine contact time)
CWC	Catskill Watershed Corporation
DDBPR	Disinfection and Disinfectant Byproducts Rule
EOH	East-of-Hudson
EOHWC	East-of-Hudson Watershed Corporation
FAD	Filtration Avoidance Determination
FBO	Flood Buy-Out
FEMA	Federal Emergency Management Agency
FIRMs	Flood Insurance Rate Maps
GIS	Geographic Information System
HAA5	Haloacetic Acids (sum of five)
IESWTR	Interim Enhanced Surface Water Treatment Rule
LAP	Land Acquisition Program
LFHMP	Local Flood Hazard Management Program
LT2	Long Term 2 Enhanced Surface Water Treatment Rule
MAP	Forestry Management Assistance Program
MCL	Maximum Contaminant Level
MGD	Million Gallons per Day
MOA	New York City Watershed Memorandum of Agreement
MOU	Memorandum of Understanding
NPS	Nonpoint Source
NYC	New York City
NYCDEP	New York City Department of Environmental Protection
NYCRR	New York [State] Codes, Rules, and Regulations
NYS	New York State
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
O&M	Operations and Maintenance
OST	Operations Support Tool
PFM	Precision Feed Management
PHL	Public Health Law
RWBT	Rondout West Branch Tunnel
SAP	Streamside Acquisition Program
SDWA	Safe Drinking Water Act
SEQRA	State Environmental Quality Review Act
SOEM	New York State Office of Emergency Management
SMP	Stream Management Program
SMP	Stream Management Implementation Grant Program
SPDES	State Pollutant Discharge Elimination System

2017 FAD

SWPPP	Stormwater Pollution Prevention Plan
SRP	Septic Repair Program
SWTR	Surface Water Treatment Rule
TAP	Turbidity Action Plan
TCR	Total Coliform Rule
TTHM	Total Trihalomethanes
USEPA	United States Environmental Protection Agency
USGS	United States Geological Survey
UV	Ultraviolet
WAC	Watershed Agricultural Council
WAP	Watershed Agricultural Program
WDRAP	Waterborne Disease Risk Assessment Program
WECC	Watershed Enforcement Coordination Committee
WIG	Watershed Inspector General
WFP	Whole Farm Plan
WOH	West-of-Hudson
WPS	Wetlands Protection Strategy
WR&Rs	Watershed Rules and Regulations
WSP	Water Supply Permit
WWTP	Wastewater Treatment Plant
WQIP	Water Quality Investment Program

2017 Filtration Avoidance Determination

Executive Summary

Since 1993, New York City (“the City”) has met the requirements of the 1989 Surface Water Treatment Rule (SWTR) and, after 1998, the Interim Enhanced SWTR (IESWTR). This has allowed the City to avoid filtering its Catskill/Delaware water supply. The conditions that the City must meet to maintain filtration avoidance are described in the City’s Filtration Avoidance Determination (FAD).

The first FAD was issued by the United States Environmental Protection Agency (USEPA) in 1993, with USEPA issuing subsequent FADs in 1997, 2002, and 2007. The 2007 FAD required the City to undertake a ten-year land acquisition program and included specific commitments to activities in other programs for the first five years. After the 2007 FAD was issued, USEPA transferred primacy for regulatory oversight of the City’s FAD to the New York State Department of Health (NYSDOH). In May 2014, NYSDOH, in consultation with USEPA, issued the Revised 2007 FAD, which defined the City’s requirements for the remaining period of the 2007 FAD. In accordance with NYSDOH’s certification of the 2007 FAD, the next FAD was scheduled to be issued in 2017.

This 2017 FAD supersedes the Revised 2007 FAD and will remain effective until a further determination is made, currently scheduled for July 2027. As the primacy agency, NYSDOH has authority to determine whether the City’s Watershed program provides adequate protection of the City’s water supply, pursuant to the SWTR/IESWTR and/or other avoidance criteria in the SWTR/IESWTR. If NYSDOH were to determine that the City was not adequately protecting the Catskill/Delaware water supply, NYSDOH also has authority to require the City to filter the water from that water supply.

4.9 East-of-Hudson Nonpoint Source Pollution Control Program

The East-of-Hudson Nonpoint Source (NPS) Pollution Control Program has been developed to reduce inputs of pathogens and nutrients from sanitary sewers, septic systems, and stormwater to the EOH FAD Basins (Boyd’s Corner, West Branch, Cross River, and Croton Falls Reservoirs). The program addresses this concern through the continued implementation of the WR&Rs, involvement in project reviews, and inspection and maintenance of existing stormwater management facilities. The City also supports a grant program to fund the design and construction of stormwater retrofits in the EOH FAD basins.

The goals for the EOH NPS Pollution Control Program under the 2017 FAD are to:

- Maintain EOH Stormwater Facilities.
- Complete construction of two stormwater remediation retrofits remaining from the Revised 2007 FAD.
- Support the EOH Stormwater Retrofit Grant Program.
- Facilitate the preliminary planning of community wastewater solutions for areas in the EOH FAD basins where poorly functioning individual septic systems have the potential to impact water quality.
- Support the EOH Septic Repair Program in the four EOH FAD Basins, Lake Gleneida basin, and the basins upstream/hydrologically connected to Croton Falls Reservoir, as program capacity allows.
- Inspect sanitary sewers.

The City’s EOH NPS Pollution Control Program is described in Section 2.3.9 of the *New York City Department of Environmental Protection Long-Term Watershed Protection Plan* (December 2016).

The 2017 FAD requires the City to implement the EOH NPS Pollution Control Program in accordance with the milestones below.

Activity and Reporting Requirements

Activity	Due Date
Maintenance of DEP’s EOH Stormwater Facilities.	Ongoing
Complete construction of two stormwater retrofit projects: <ul style="list-style-type: none"> • Maple Avenue (Cross River) • Drewville Road (Croton Falls) 	9/30/2020

<p><u>EOH Stormwater Retrofit Grant Program</u></p> <p>Execute and register a contract or contract amendment with the EOH Watershed Corporation to provide \$22 million to support the design and construction of stormwater retrofits in the EOH FAD Basins and in basins upstream and hydrologically connected to the Croton Falls Reservoir. A total of \$7 million shall be specifically committed to support stormwater retrofits within EOH FAD basins and \$15 million shall be specifically committed to support stormwater retrofits within basins upstream and hydrologically connected to the Croton Falls Reservoir or within EOH FAD basins.</p>	<p>9/30/2019</p>
<p>Continue to make City lands available for stormwater retrofit projects constructed by the EOH Watershed communities so long as the City determines that the projects will not pose a threat to water quality or City operations related to the water supply.</p>	<p>Ongoing</p>
<p><u>EOH Community Wastewater Planning Assistance Grants</u></p> <p>Execute and register a contract with the Environmental Facilities Corporation (EFC), or any other organization approved by NYSDOH, to develop and administer a grant program that will provide \$3 million for preliminary planning for community wastewater solutions for areas in the EOH FAD basins where poorly functioning individual septic systems have the potential to impact water quality. The grant program will require that municipalities who apply for this funding will complete preliminary planning studies within four years from issuance of the 2017 FAD.</p> <p>Based on preliminary studies conducted by NYSDEC, wastewater planning assistance grants will be made available to municipalities (“identified municipalities”) in which the following areas have been identified to have the potential to impact water quality from septic systems: areas surrounding Lake Waccabuc, Lake Truesdale, and Lake Kitchawan in the Cross River Reservoir basin; and Palmer Lake, Lake Gilead, Lake Casse, Lake View Road, and Mud Pond Brook in the Croton Falls Reservoir basin. Funds may be used by identified municipalities to finance engineering studies and report generation to assist those municipalities in evaluating wastewater treatment options/solutions that they could undertake to mitigate water quality impacts. The generated reports are intended to be used by the municipalities to appropriately plan and determine costs for the identified wastewater solution project so that municipalities may seek financing through State or federal funding sources, including but not limited to the 2017 Clean Water Infrastructure Act.</p>	<p>12/31/2019</p>

<p><u>EOH Septic Repair Program (SRP)</u></p> <ul style="list-style-type: none"> • The City shall contract with EFC to provide funding to support the repair, replacement, or connection to a WWTP for at least 35 residential septic systems per year in the four EOH FAD basins, including Lake Gleneida basin. • Revise contract with EFC for the EOH SRP to allow eligibility of septic systems located within basins upstream or hydrologically connected to Croton Falls Reservoir. Implementation of the program will be prioritized, with priority given to septic systems in the EOH FAD basins, including Lake Gleneida basin, and expanding within the basins upstream or hydrologically connected to Croton Falls Reservoir as program rules dictate and program capacity allows. • Continue to provide technical assistance in support of EOH septic management programs. • Review strategies used to inform potential SRP participants of the program’s availability. Propose ways to improve education and outreach to enhance participation in the program. • Conduct an assessment of the SRP to determine whether funding for at least 35 systems per year is appropriate to meet demand from eligible EOH communities. Funding made available for this program may be increased or decreased based on this assessment. 	<p>Ongoing</p> <p>12/31/2018</p> <p>Ongoing</p> <p>3/31/2018</p> <p>3/31/2022</p>
<p><u>Video Sanitary Sewer Inspection</u></p> <ul style="list-style-type: none"> • Video Sanitary Sewer Inspection of four EOH CAT/DEL basins. • Complete mapping of new sewer areas (if any). • Complete inspection of targeted areas. • Identify potential defects. • Notify entities responsible for remediation of identified deficiencies. 	<p>3/31/2021</p>

2017 FAD

Report Description	Due Date
Report on implementation of two EOH stormwater retrofit projects (Maple Avenue and Drewville Road).	Quarterly until completed (3/31, 6/30, 9/30, 12/31)
Report on review of strategies used to inform potential SRP participants of the program's availability.	3/31/2018
Report on assessment of funding for the SRP	3/31/2022
<p>Report on program implementation in the FAD Annual Report:</p> <ul style="list-style-type: none"> • Maintenance of EOH Stormwater Facilities • Stormwater retrofit projects • EOH NPS Stormwater Retrofit Grant Program • EOH Community Wastewater Planning Assistance Program • EOH Septic Repair Program, including education and outreach efforts • Video Sanitary Sewer Inspection 	Annually, 3/31