



**Environmental
Protection**

July 18, 2013

**Mary Beth Murphy
East of Hudson Watershed Corp.
c/o Town of Somers, Supervisor
335 Route 202
Somers, NY 10589**

*Carter H. Strickland, Jr.
Commissioner*

Mary F. Pazan
Assistant Commissioner
Agency Chief Contracting Officer
mpazan@dep.nyc.gov

59-17 Junction Boulevard
Flushing, NY 11373

T: (718) 595-3925
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Re: **ORDER TO COMMENCE WORK**
Contract **CRO-522: Hudson Stormwater
Retrofit Program.**

Dear Ms. Murphy:

Enclosed is one copy of the duly executed contract, dated **June 12, 2013** and registered with the Office of the Comptroller on **July 16, 2013** under registration number **CTC 826 20131428327**. The original contract amount is not to exceed **\$20,000,000.00**. The date for commencement of assigned work is **July 18, 2013**. The date to complete all related work is **July 16, 2018** a total of **1825 consecutive calendar days**. The contract is for the **Hudson Stormwater Retrofit Program**

The administration of this contract will be under the direction of **Nicholas Canaan** located at **465 Columbus Avenue, Valhalla, NY, (914) 742-2022**. All inquiries regarding this contract should be addressed to this office.

Very truly yours,

Mary F. Pazan

FUNDING AGREEMENT BETWEEN
THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
EAST OF HUDSON WATERSHED CORPORATION

THIS FUNDING AGREEMENT, dated the 12th day of June, 2013 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 plans approved by the New York State Department of Environmental Conservation ("NYSDEC"), as more fully described herein; and

WHEREAS, the Commissioner of NYCDEP (the "Commissioner") is charged with the duty of protecting the high quality of waters from which the City's water supply is drawn and preserving it from degradation for the purpose of protecting the health and general welfare of the consumers of this supply; and

WHEREAS, the members of the EOHWC are municipalities that lie wholly or partially within that part of the New York City water supply watershed that lies east of the Hudson River ("EOH Watershed"); 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-0-10-002 issued by the NYSDEC ("the MS4 Permit")¹ which, among other things, requires 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, pursuant to the MS4 Permit, NYSDEC has approved the regional stormwater retrofit plans of the Putnam County MS4 Coordinating Committee, the Croton Kensico

¹ For purposes of this Agreement, the term "the MS4 Permit" shall include any successor permit(s) issued by NYSDEC to the EOHWC's member municipalities in response to the decision of the Supreme Court, Westchester County in the matter of *Natural Resources Defense Council v. New York State Department of Environmental Conservation*, dated January 10, 2012, or any subsequent decisions on appeal in that matter, which contain requirements designed to attain compliance with the phosphorus reduction targets established by NYSDEC for the five year period covered by General Permit No. GP-0-10-002.

Watershed Intermunicipal Coalition, and the East of Hudson Sub-Committee of the Dutchess County MS4 Coordination Committee designed to attain compliance with the phosphorus reduction targets established by NYSDEC for the five year period from May 1, 2010 to April 30, 2015 (hereinafter said plans and any NYSDEC-approved revision, amendment or extension thereof are referred to as the "Regional Retrofit Plans"); and

WHEREAS, on December 24, 2010, NYSDEC issued a Water Supply Permit to the City ("2010 WSP") which requires, among other things, that, in order to foster continued partnership and cooperation in the protection of the City's water supply watershed, the City provide a total of up to Fifteen Million, Five Hundred Thousand Dollars (\$15,500,000.00) to the EOH Watershed communities to help fund the Regional Retrofit Plans; and

WHEREAS, the 2010 WSP also requires the City, consistent with the terms of the 2007 Filtration Avoidance Determination ("2007 FAD"), to make available Four Million, Five Hundred Thousand Dollars (\$4,500,000.00) ("the 2007 FAD funds") to the EOH Watershed communities to help fund the components of the Regional Retrofit Plans that are applicable to the Croton Falls and Cross River basins within the EOH Watershed and any upstream/hydrologically connected basins; and

WHEREAS, the implementation of the stormwater retrofits pursuant to the MS4 Permit requires that each retrofit project have a permanent operation and maintenance ("O&M") program consistent with the New York State Stormwater Management Design Manual (August 2010) 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

WHEREAS, Putnam County has agreed to use Eight Million, Two Hundred Thousand Dollars (\$8,200,000.00) and Westchester County has agreed to use Ten Million Dollars (\$10,000,000.00), for a total of Eighteen Million, Two Hundred Thousand Dollars (\$18,200,000.00) 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 O&M of stormwater retrofit projects, including the administrative expenses associated therewith, as set forth in the Regional Retrofit Plans, subject to the provisions of Paragraphs 107 and 140 of the Watershed MOA, and the Intermunicipal 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, the EOHWC has agreed to assume the obligation of Westchester and Putnam Counties, set forth in Attachments GG-1 and GG-5 to the MOA respectively, to provide a report to NYCDEP accounting for the receipt and disbursement of all EOH Funds provided to the EOHWC by Westchester and Putnam Counties; and

WHEREAS, it is the understanding and intent of the parties that, all the activities of the EOHWC to administer, coordinate and implement the Regional Retrofit Plans, pursuant to the specific terms and conditions of this Funding Agreement set forth below, are within the intent of and eligible for funding from the Twenty Million Dollars (\$20,000,000.00) to be conveyed to the EOHWC under Special Condition 34 of the 2010 WSP and the Eighteen Million, Two Hundred Thousand Dollars (\$18,200,000.00) of EOH Funds used for retrofit projects or conveyed to the EOHWC by Putnam County and Westchester County;

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 services hereinafter set forth in Article 2 of this Funding Agreement.

Section 1.02 Stormwater Retrofit Funds

"Stormwater Retrofit Funds" shall be any City funds remitted to the EOHWC hereunder for the purposes of performing the services hereinafter set forth in Article 2 of this Funding Agreement. In addition, Stormwater Retrofit Funds shall include earnings on City funds remitted to the EOHWC.

Section 1.03 Duration

A. This Funding 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 Funding 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 Funding Agreement shall terminate five (5) years after the Effective Date. In the event all work hereunder is not completed prior to the termination date, this Funding 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, Stormwater Retrofit Funds may be expended by the EOHWC with respect to any work described in Article 2 hereof occurring on or after January 1, 2011. 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) and reimbursement of Putnam County for expenditures for activities eligible for funding under 2.01(F).

ARTICLE 2

DESCRIPTION OF THE WORK

Section 2.01 Eligible Projects and Activities

A. The Stormwater Retrofit Funds shall be used by the EOHWC to implement the stormwater retrofit projects identified in the Regional Retrofit Plans ("Stormwater Retrofit Projects"). Only projects located within the EOH Watershed shall be eligible for funding under this Funding Agreement.

B. Principal and Earnings. The Stormwater 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 Plans, 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 Plans.
2. Identification of projects by EOHWC to be included in the NYSDEC-approved revisions of the Regional Retrofit Plans.
3. Other costs reasonably related to project implementation, but excluding general EOHWC administration costs that are not directly related to a Stormwater Retrofit Project. Where a governmental employee or consultant performs work directly related to project implementation, the 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 Funding Agreement. Where a governmental employee or consultant performs a general governmental function that is not directly related to project implementation, 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 Funding Agreement.

C. Earnings Only. Notwithstanding subparagraph B above, earnings on the Stormwater Retrofit Funds, but not the principal amount of the Stormwater 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 constructed pursuant to the Regional Retrofit Plan funded with the Stormwater Retrofit Funds or earnings on such Funds;
2. To pay general EOHWC administration costs that are not directly related to a Stormwater Retrofit Project, to the extent that the EOHWC is engaged only in activities related to Stormwater Retrofit Project implementation.

Appendix C attached to this Agreement provides additional guidance 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.

D. Grants and Loans. Subject to the restrictions of this Section, the EOHWC may use the Stormwater 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 Funding Agreement for all funds expended, whether through direct payments by the EOHWC or through grants or loans.

E. In addition, at the sole discretion of the EOHWC, up to \$200,000 of the Stormwater Retrofit Funds may be used to prepare a report analyzing the potential opportunities for phosphorus reduction in stormwater runoff on lands owned by the City in the EOH Watershed, including the calculation of the total possible phosphorus reduction, the drainage area captured and treated, the estimated cost of such reduction, a description of the retrofit projects on City lands, and a timetable for possible implementation of such projects.

The Parties acknowledge that any proposal to site a stormwater retrofit project on City lands will require a separate review and approval process by the City.

F. Up to Fifty Thousand Dollars (\$50,000.00) of the Stormwater Retrofit Funds may be used for reimbursement of costs associated with the establishment of the EOHWC to administer and coordinate compliance with the MS4 Permit. Such funds may also be used to reimburse a municipality that is a member of the EOHWC if such municipality provided funding to pay the costs of establishing the EOHWC after December 24, 2010.

G. 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 or a useful life of less than five years may be funded with the principal of the Stormwater 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.

Section 2.02 Special Conditions for 2007 FAD Funds

A. As set forth in Section 3.01(C) of this Funding Agreement, the City will transfer up to Four Million, Five Hundred Thousand Dollars (\$4,500,000.00) of the funds designated under the terms of the 2007 FAD for East of Hudson stormwater grants to the EOHWC to be used for implementation of Stormwater Retrofit Projects under the Regional Retrofit Plans. The principal amount of the 2007 FAD funds and earnings thereon are eligible to be spent on the projects and activities set forth in Section 2.01(B) above. Earnings on the 2007 FAD funds, but not the principal amount of these funds, are also eligible to be spent on the projects and activities set forth in Section 2.01(C) above. Pursuant to the 2007 FAD, these funds are also subject to the following additional conditions:

1. They shall only be available to fund Stormwater Retrofit Projects located in the Croton Falls and Cross River basins within the East of Hudson Watershed and any upstream/hydrologically connected basins. The hydrologically connected basins and controlled lakes include Middle Branch, West Branch, East Branch, Boyd Corners, Bog Brook, Diverting, Lake Gleneida, and Lake Gilead.
2. They are subject to a programmatic match of at least 50 percent, which may be achieved by spending matching funds of an equal value on separate projects located in the basins identified in subparagraph 1. Stormwater Retrofit Funds may be used to satisfy this matching requirement.
3. Projects completed using these funds may be credited to the appropriate Regional Retrofit Plans and used by the EOHWC toward its members' efforts to comply with the requirements of the MS4 Permit.

ARTICLE 3

PAYMENT GENERALLY

Section 3.01 Payment of Stormwater Retrofit Funds

A. The City shall pay the EOHWC the initial payment of Ten Million Dollars (\$10,000,000.00) within ninety (90) days of the Effective Date of this Funding Agreement, after the EOHWC submits an invoice to DEP, in the form attached hereto as Appendix A, and the EOHWC budget for 2011 and 2012. 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 Funding Agreement. Payment shall be made in the form of an electronic funds transfer in proper amount to the designated account of the EOHWC.

B. The total amount of funds paid by the City shall not exceed Fifteen Million, Five Hundred Thousand Dollars (\$15,500,000.00), plus the 2007 FAD funds identified in Paragraph C below. As set forth in Special Condition 34 of the 2010 WSP, Five Million, Five Hundred Thousand Dollars (\$5,500,000.00) of that total shall be made available within

six months of receiving written notification from the EOHWC that the first Ten Million Dollars (\$10,000,000.00) provided under this Funding Agreement has been committed via binding agreements. Commitment of the 2007 FAD funds identified in Paragraph C below shall not count towards this requirement. Payment shall be made in the form of an electronic funds transfer in proper amount to the designated account of the EOHWC.

C. The City shall pay the EOHWC up to Four Million, Five Hundred Thousand Dollars (\$4,500,000.00) from the 2007 FAD funds within ninety (90) days of the Effective Date of this Funding Agreement. Payment shall be made in the form of an electronic funds transfer in proper amount to the designated account of the EOHWC. In the alternative, DEP may process and award a FAD grant for a Regional Retrofit Plan prior to the Effective Date by applying the program rules then in effect for such application. The amount of any grant so awarded shall be deducted from the payment transmitted to the EOHWC under this paragraph.

Section 3.02 Payment Obligations

A. All receipts and disbursements of Stormwater Retrofit Funds under this Funding 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 Stormwater 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 Funding 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 Funding Agreement.

D. Promptly upon receipt of Stormwater 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 Stormwater 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 Stormwater 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 in satisfaction by the City of its funding obligations under Special Condition 34 of the 2010 WSP to help fund the first five year plan for the stormwater retrofit program to be implemented under the heightened

requirements for phosphorus reduction applicable to the EOH Watershed communities.

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

The City intends to provide Stormwater 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 Stormwater Retrofit Funds:

- A. The principal amount of Stormwater Retrofit Funds may only be used to pay for costs specified in Sections 2.01(B) and 2.01(E) where such costs were incurred on or after January 1, 2011, except that, as set forth in Section 2.01(F) of this Funding Agreement, up to Fifty Thousand Dollars (\$50,000.00) of the Stormwater Retrofit Funds may be used for reimbursement of costs associated with the establishment of the EOHWC to administer and coordinate compliance with the MS4 Permit, and such funds may also be used to reimburse a municipality that is a member of the EOHWC if such municipality provided funding to pay the costs of establishing the EOHWC after December 24, 2010.
- B. Stormwater 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 EOH municipalities to finance eligible Stormwater Retrofit Projects in the EOH Watershed.
- C. Earnings on funds provided by the City under this Funding Agreement may be used in the same manner and shall be subject to the same conditions as the principal amount of Stormwater Retrofit Funds, except that such earnings may also be used to pay for general EOHWC administration costs not directly related to a Stormwater Retrofit Project and eligible O&M costs of Stormwater Retrofit Projects 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 Funding 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 DEP at the same time it distributes to its Board of Directors all meeting notices and materials for Board of Directors meetings, including, without limitation, proposed budgets and budget modifications. The EOHWC will prepare a budget not less than annually.

Section 3.05 Conditions of Payment

- A. The EOHWC shall ensure that Stormwater Retrofit Funds advanced to it and interest earned on such Funds are intended to be used for expenditures incurred in connection with Stormwater Retrofit Projects to be implemented under this Funding

Agreement and in no event shall such funds be used other than for work performed under this Funding 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 Funding 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 Five Million, Five Hundred Thousand Dollars (\$5,500,000.00) identified in Section 3.01(B) of this Funding 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 Funding 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 Funding 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 EOH 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.

ARTICLE 4

INSURANCE

Section 4.01 Insurance

A. Prior to entering into any agreements to disburse Stormwater Retrofit Funds, the EOHWC shall obtain insurance of the kind and amount set forth in Appendix B, attached hereto. 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 Funding 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 reduce the City's obligation to pay a maximum of Fifteen Million, Five Hundred Thousand Dollars (\$15,500,000.00) in Stormwater Retrofit Funds to the EOHWC under the 2010 WSP, nor the obligation under the 2007 FAD to pay a maximum of Four Million, Five Hundred Thousand Dollars (\$4,500,000.00) to the EOH Watershed communities to help fund stormwater retrofits in the Croton Falls and Cross River basins within the East of Hudson Watershed and any upstream/hydrologically connected basins.

C. The City of New York, including its officials and employees, 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 Funding 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 Funding 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 Stormwater Retrofit Funds expended under this Funding Agreement, including receipts from the City and disbursements to third parties; (ii) the amount of Stormwater 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 Stormwater Retrofit Funds; (iv) the amount of Stormwater Retrofit Funds on hand with the EOHWC; and (v) such other information as the City may reasonably require.

B. Termination Audited Financial Reports: Within ninety (90) days after the termination of this Funding Agreement, the EOHWC shall submit to the City an accounting of the Stormwater 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 Stormwater Retrofit Funds expended under this Funding Agreement, including cash receipts from the City and disbursements to third parties; (ii) the amount of Stormwater 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 Stormwater Retrofit Funds; (iv) the amount of Stormwater 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 Stormwater 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 stormwater retrofit plan for the previous calendar year. Supplementing the foregoing report, on or before March 31 of each year until the Stormwater 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 project;
2. The amount of Stormwater Retrofit Funds, FAD funds and EOH Funds

the EOHWC has spent on each 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 Stormwater Retrofit Funds, FAD funds and EOH Funds the EOHWC has committed to each project in the previous year through binding agreements, specifying whether from interest or principal; and
4. The geographic location of each project, including identifying whether the project is located in the Croton Falls and Cross River basins within the East of Hudson Watershed and/or any upstream/hydrologically connected basins.

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 Stormwater Retrofit Funds and/or from the EOH Funds.

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 Funding Agreement.

C. Nothing in this Funding 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 Funding 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 Funding 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 Funding 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 Funding 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 Funding 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, national origin, sex, age, disability, marital status or sexual orientation 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 based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or 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 (\$25,000.00) 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 Stormwater Retrofit Funds shall include the following provisions:

1. A requirement that the Contractor perform all work in accordance with the terms of this Funding 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 Stormwater Retrofit Funds requiring review and approval by NYCDEP under the Watershed Regulations 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 (\$25,000.00) 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 Stormwater 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 Funding 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 an 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 Funding 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 based upon race, creed, color, national origin, sex, age, disability, marital status or sexual orientation.
- 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 Stormwater 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 of the 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 Stormwater Retrofit Funds.
3. "Covered Contract" shall mean a Contract of One Hundred Thousand Dollars (\$100,000.00) or more with a Contractor, or which is valued at One Hundred Thousand Dollars (\$100,000.00) 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, 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 at least thirty-five (35) days before the Covered Contract is awarded to the following address:

New York City Department of Environmental Protection
59-17 Junction Boulevard
18th Floor
Flushing, New York 11373
Attention: Agency Chief Contracting Officer

The City shall provide the EOHWC with the name of a contact person for the City who shall provide information during regular business hours as to whether the City has received a particular VENDEX questionnaire and the status of the City's review of such questionnaire. Within five (5) business days of receiving a VENDEX questionnaire, the City shall notify the EOHWC if the VENDEX questionnaire is not complete. If the City fails to notify the EOHWC within such five (5) business day period, the VENDEX questionnaire shall be deemed complete. 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 determinethat 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 with information within the thirty-five (35) day period set forth in Subsection (C) 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 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, attorneys 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.

H. Notwithstanding anything in this Section, contracts entered into by the EOHWC or an EOH Municipality that is a member of the EOHWC between January 1, 2011 and the effective date of this Agreement need not go through the procedures identified in subparagraph C above, so long as the EOHWC can demonstrate that the contractor would meet all of the requirements set forth in subparagraph B above.

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 Funding 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 Funding Agreement.
- D. This Funding 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 Funding 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 Stormwater 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 Funding 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 Funding Agreement.

B. The execution, delivery and performance by the City and NYCDEP of this Funding Agreement are within the powers of the City and NYCDEP, and upon registration of this Funding 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 Funding 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 Funding Agreement.

C. This Funding 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 Funding 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 Funding 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 Stormwater 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 funding 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 Stormwater Retrofit Funds shall participate in any decision relating to this Funding 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 the implementation of the Stormwater Retrofit Projects. 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 Funding 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 Funding 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 Funding 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 Funding Agreement upon written notice to the defaulting Party. If a material breach of the Funding Agreement cannot be cured within thirty (30) days, the Funding 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 Funding Agreement pursuant to this Section, nothing herein shall relieve the City of its obligation under the 2010 Water Supply Permit to provide up to Fifteen Million, Five Hundred Thousand Dollars (\$15,500,000.00) for the purposes set forth in Special Condition 34 of the 2010 Water Supply Permit.

Section 10.02 Additional Remedies for City Default

A. If the EOHWC substantially prevails in an action against the City to enforce this Funding 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 Funding Agreement and this Funding 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 Sections 2.01 and 3.01. Any such interest shall be paid into the Stormwater 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 Stormwater Retrofit Fund.

Section 10.03 Force Majeure

A. In the event the City cannot comply with the terms and conditions of this Funding 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 Funding Agreement and further provided that the City makes its best efforts to provide for alternate arrangements to fulfill the terms and conditions of this Funding Agreement.

B. In the event the EOHWC cannot comply with the terms and conditions of this Funding 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 Stormwater Retrofit Funds for the purposes set forth in Section 2.01.

Section 10.04 Rights Upon Termination of Funding Agreement

Upon termination of this Funding 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 Funding Agreement and the EOHWC shall not incur any further obligation pursuant to this Funding Agreement. The EOHWC shall be entitled to receive or retain Stormwater Retrofit Funds in a manner consistent with this Funding Agreement to pay obligations necessarily incurred by the EOHWC in accordance with this Funding Agreement pursuant to contracts entered into in good faith prior to termination pursuant to Section 10.01. In addition, upon expiration of this Funding Agreement, the EOHWC may retain Stormwater Retrofit Funds previously paid to the EOHWC and shall use such Funds in compliance with this Funding Agreement. The Annual Project Accounting Reports required under Section 5.04(D) shall continue to be submitted to NYCDEP until all of the Stormwater Retrofit Funds and the EOH Funds provided by Putnam and Westchester Counties have been expended.

B. If this Funding Agreement is terminated for cause prior to the Expiration Date, the EOHWC shall account for and return to NYCDEP or the City all unallocated Stormwater Retrofit Funds which have been paid to the EOHWC pursuant to this Funding Agreement within thirty (30) calendar days, for reallocation consistent with the terms of the 2010 WSP. Funds shall be considered allocated if they have been committed to a project through binding agreements.

C. The EOHWC shall submit, within ninety (90) calendar days, the reports required pursuant to Subsection 5.04.

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 Funding Agreement, where such injury or damage is the result of the indemnifying Party's negligence or willful tort occurring while working on activities relating to this Funding 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 Funding 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 Funding Agreement.

ARTICLE 13

MISCELLANEOUS PROVISIONS

Section 13.01 Assignment or other Disposition of the Funding Agreement

The EOHWC agrees not to assign, transfer, convey, sublet or otherwise dispose of this Funding Agreement or any part thereof, or of its right, title, or interest therein, or its power to execute such Funding 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 Funding Agreement.

Section 13.02 Modification

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

Section 13.03 Notifications

Unless otherwise expressly provided in this Funding 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 DEP:

New York City Department of Environmental Protection
465 Columbus Avenue
Valhalla, New York 10595
Attention: Deputy Commissioner
Bureau of Water Supply, Quality and Protection
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
P.O. Box 176
Patterson, NY 12569
Attention: President
Telecopier No.: (845) 319-6391

with a copy to:

George Rodenhausen, Esq.
Rapport Meyers, LLP
20 Spring Brook Park
Rhinebeck, NY 12572
Fax: (845) 473-7790

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 Funding 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 Program Term they will provide each other promptly with all documentation, reports, and information which may be necessary to carry out their respective obligations under this Funding Agreement. Nothing in this Funding 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 Funding 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 Funding Agreement. In the event any claim is made or any action brought in any way relating to the Funding 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 Funding Agreement, nor shall Stormwater Retrofit Funds be used for such purpose.

B. Nothing in this Funding 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 Funding 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 Funding Agreement.

B. This Funding 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 Funding Agreement to be executed by their duly authorized representatives.

The New York City Department of
Environmental Protection

By


Carter H. Strickland, Jr.

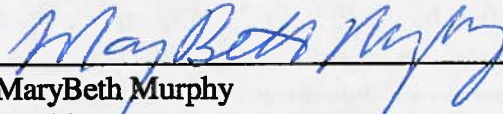
Assistant

Commissioner

MARY F. PAZAN

The East of Hudson Watershed Corporation

By



MaryBeth Murphy
President

**APPROVED AS TO FORM AND CERTIFIED
AS TO LEGAL AUTHORITY**

Acting Corporation Counsel of
The City of New York

CORPORATION COUNSEL CONTRACT APPROVAL

Agency DEP

E-PIN 82612S0022001

Contractor EAST OF HUDSON WATERSHED CORPORATION

Approved as to form

Certified as to legal authority

Electronically Signed By HOWARD FRIEDMAN

Date 08/24/2012 17:06

Acting Corporation Counsel

ACKNOWLEDGMENT

STATE OF NEW YORK)

: ss.

COUNTY OF QUEENS)

On this 12th day of June, 2013, before me personally came MARY F. PAZAN
Strickland, Jr., to me known, who being by me duly sworn did depose and say that he is the Acco
Assistant 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.

Melissa S. Siegel
Notary Public

MELISSA S. SIEGEL
Notary Public, State of New York
No. 02S 4332255
Qualified in Queens County
Commission Expires July 31, 2013

ACKNOWLEDGMENT

STATE OF NEW YORK)
 : ss.
COUNTY OF *Westchester*)

On this 11 day of June, 2012³, before me personally came MaryBeth Murphy, 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.



Notary Public

PATRICIA KALBA
Notary Public ~~State of~~ New York
No. 01KA6080158
Qualified in Westchester County
My Commission Expires Sept. 9, 2014

APPENDIX A
Form of Invoice

INVOICE NO. _____

To: New York City Department of Environmental Protection
Watershed Lands and 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
Flushing, New York 11373
Attn: General Counsel

From: President, East of Hudson Watershed Corporation
P.O. Box 1761
Patterson, NY 12569

Re: Funding Agreement between the New York City Department of Environmental
Protection and the East of Hudson Watershed Corporation dated _____, 201__

Invoice Date: _____, 201__

Contract No.: _____

Amount: \$ _____

Remit To: President, East of Hudson Watershed Corporation
P.O. Box 176
Patterson, NY 12563

Electronic Funds Transfer Account # _____

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 ("NYCDEP"), 59-17 Junction Boulevard, 19th Floor, Flushing, New York 11373-5108, Attention: DEP General Counsel. A copy of each insurance certificate shall also be sent to: DEP, 71 Smith Avenue, Kingston, New York 12401, 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.)
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(X) Employer's Liability	Statutory (<u>See</u> Section 1.01.2.)
-----------------------------	---

(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

(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

The following coverage must be provided:

(X) Comprehensive Form	(X) Owned	(X) Hired	(X) Non-Owned
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(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, 9th Floor, Corona, New York 11373-5108, Attention: DEP General Counsel. A copy of each insurance certificate shall also be sent to: DEP, 71 Smith Avenue, Kingston, New York 12401, 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.)
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(X)	Employer's Liability	Statutory (<u>See</u> Section 1.01.2.)
-----	----------------------	---

(X)	Commercial General Liability CG 00 01 (ed. 10/01) 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

(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

The following coverage must be provided:

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

(See Section 1.01.4.)

(X) Other Insurance:

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) or 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 on the Contract, the Contractor shall procure Worker's Compensation Insurance in accord with the laws of the State of New York on behalf of all employees who are to provide labor or service under the Contract. One certificate of such insurance or authority for self-insurance shall be furnished to DEP's General Counsel at the address shown above and one certificate shall be furnished to DEP's Community Planning office at the address shown above.

1.01.2 Employer's Liability Insurance:

Before performing any work on the Contract, Contractor shall procure Employer's Liability Insurance affording compensation for all employees providing labor or services for whom worker's compensation coverage is not a statutory requirement. One certificate of such insurance shall be furnished to DEP's General Counsel at the address shown above and one certificate shall be furnished to DEP's Community Planning office at the address shown above.

Certificates confirming renewals of insurance shall be presented not less than 30 (thirty) days prior to the expiration date of coverage until all operations under the subject contract are deemed completed.

1.01.3 Commercial General Liability:

Before commencing work on the Contract, the Contractor shall procure a commercial general liability insurance policy issued by a New York admitted carrier through a New York Licensed

resident broker in the Contractor's name and naming the City of New York, including its officials and employees as additional insured (using ISO endorsement CG 20 10) and endorsed to cover liability assumed by the Contractor under the indemnity provisions of the Contract. This insurance policy must be maintained during the life of the Contract and shall protect the City, the Contractor and his/her subcontractors performing work on the Contract from Claims for property damage and/or bodily injury which may arise from operations under the Contract, whether such operations are performed by him/herself or anyone directly or indirectly employed by him/herself. One certificate of such insurance, together with copies of all endorsements as pertain to the requirements of the subject Contract, shall be furnished to DEP's General Counsel at the address shown above and one certificate shall be furnished to DEP's Community Planning office at the address shown above.

The policy shall contain no exclusions or endorsements which are not acceptable to the City and shall be of a form and by an insurance company acceptable to the City.

Commercial General Liability - Endorsements and Exclusions

The following endorsements are required to be made on the policy:

- (a) Notice: shall be addressed to the Commissioner of the Department of Environmental Protection, c/o DEP General Counsel, 59-17 Junction Boulevard, 19th Floor, Flushing, New York 11373-5108.
- (b) Notice of Cancellation of Policy: The Policy shall not be canceled, terminated, modified or changed by the Company unless thirty (30) days' prior written notice is sent to DEP, Attention: General Counsel
- (c) The following shall also be added as additional insureds:
East of Hudson Watershed Corporation

1.01.4 Automobile Liability:

Contractor will provide the City with evidence of insurance covering all owned, non-owned and hired vehicles to be used in connection with the contract. If on a "schedule autos" basis, Contractor shall present the schedule of insured autos, including the vehicles to be used for operations under the Contract.

1.01.5 Insurance Agreement:

- (a) The Contractor is required to obtain and to maintain insurance outlined in this Appendix.
- (b) The insurance required for the Contract must be on forms acceptable to NYCDEP and offered by insurers acceptable to NYCDEP. The insurance for all New York Contractors must be issued by New York authorized carriers except as approved by NYCDEP's General Counsel and in any event must comply with all requirements of New York State laws and regulations and meet the standards of the forms set forth in Section 1.01 above. Insurance for non-New York Contractors must be through insurers and sureties admitted and authorized in the state of headquarters of the Contractor, have an A.M. best rating of

A or better and meet the standards for forms set forth in the above. Additionally, all requirements as to forms set forth in New York State law and regulations apply without regard to jurisdiction as standards of coverage.

- (c) Where circumstances warrant, the NYCDEP may, at its discretion subject to acceptance by the New York City Law Department and/or the Office of the New York City Comptroller, accept letters of credit or custodial accounts in lieu of specific insurance requirements. The letter of credit must be on form prescribed by NYCDEP and payable at a New York City office of a bank approved by NYCDEP.
- (d) The Contractor agrees that all insurance contributing to satisfaction of the insurance requirements set out in this Appendix shall not be modified, terminated, or canceled by the Contractor without prior written approval of the Department of Environmental Protection.
- (e) The Contractor shall be solely responsible for payment of all deductibles and premiums for insurance contributing to satisfaction of the requirements of this Appendix and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New York is an insured under the policy.
- (f) Claims made policies will be accepted only for professional liability and such other risks as are authorized by the New York State Insurance Department. All such policies contributing to satisfaction of the requirements of the Appendix shall have an extended reporting period option or automatic coverage of not less than two years. If provided as an option, the Contractor agrees to purchase the extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.
- (g) The Contractor shall promptly notify NYCDEP's General Counsel within 24 (twenty four) hours of any accidents arising in the course of operations under the contract causing bodily injury or property damage and shall cooperate fully with NYCDEP in providing all such records and information as may be requested by the NYCDEP's General Counsel in anticipation of claims against the City which may arise from the accident. A complete report of the accident shall be made within five (5) business days on such form as may be provided by NYCDEP's General Counsel.
- (h) The Contractor or his engineer may apply to NYCDEP's General Counsel for approval of higher deductible based on financial capacity and quality of the carrier affording coverage.

1.01.6 Forms of Insurance Certificates:

Insurance certificates shall conform to the following:

- (a) Certificates must be issued by the insurance company using the "ACORD" forms issued by its brokers, except for Worker's Compensation coverage where the contractors must

provide Form C-105.2 issued by an insurance carrier or Form U-26.3 issued by the New York State Insurance Fund.

- (b) Certificates must unconditionally grant to New York City Department of Environmental Protection thirty (30) calendar days' notice of cancellation or non-renewal. "Endeavor" or other qualifying language is not acceptable.
- (c) All additional insureds required by this Appendix shall be listed as such.
- (d) The authorized representative of the insurance company executing the certificate(s) must indicate his/her title.
- (e) Original executed certificates must be delivered to NYCDEP.

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 Funding 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 Funding 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 project 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 program.

Acting as a clearing house for EOH Watershed Corporation member's MS4 program.

Providing general administrative support to the EOH Watershed Corporation and EOH Coalition.

**Amendment of Letter Agreement Concerning Reporting Requirements and Eligible General
Administrative Costs for Certain East of Hudson Water Quality Improvement Program
Funds, dated April 2012**

MaryEllen Odell
Putnam County Executive
Putnam County Office Building
40 Gleneida Avenue, 3rd Floor
Carmel, New York 10512

Robert P. Astorino
Westchester County Executive
Michaelian Office Building
148 Martine Ave
White Plains, NY 10601

June 2016

This letter amends the above referenced Letter Agreement dated April 2012 ("April 2012 Letter Agreement") between the New York City Department of Environmental Protection ("DEP"), the County of Putnam ("Putnam"), and the County of Westchester ("Westchester" and together with Putnam, the "Counties") concerning certain earnings on monies previously provided by the City of New York to the Counties, respectively, under the 1997 New York City Watershed Memorandum of Agreement ("Watershed MOA"), including without limitation, the certain agreements by and between DEP and Westchester, and by and between DEP and Putnam, dated as of January 21, 1997 (the "Program Agreements") for the East of Hudson Water Quality Investment Program Fund ("EOH WQIP Fund").

The April 2012 Letter Agreement memorialized terms of the understanding that Putnam would be disbursing \$8.2 million and Westchester would be disbursing \$10 million from the EOH WQIP Fund (together, the "EOH Funds") to the East of Hudson Watershed Corporation ("EOHWC") toward the design, construction, implementation, operation, and maintenance of stormwater retrofit projects, including associated administrative expenses, "as set forth in the first five year Regional Retrofit Plans of the Putnam County MS4 Coordinating Committee ('PCMS4CC') and the Croton Kensico Watershed Intermunicipal Coalition (together the 'MS4 Stormwater Retrofit Program Plan'), approved by the New York State Department of Environmental Conservation ("NYSDEC")."

Recognizing that the EOHWC might expand its activities beyond implementation of the first five year MS4 Stormwater Regional Retrofit Program Plan, the April 2012 Letter Agreement included the following prohibition on use of the EOH Funds: "The parties do not consider the following anticipated costs of the EOHWC to be general administrative costs that could be reasonably allocated for payment with the EOH Funds under the existing [Right of Objection] RoO letters: Costs associated with drafting the second five-year retrofit plan, such as preparing the list of stormwater retrofit project to be implemented in Years 6 through 10, including field evaluations for the Stormwater Retrofit Program."

Since the April 2012 Letter Agreement was signed, the EOH Funds described therein have been disbursed to EOHWC, and NYSDEC has approved consolidation of the above referenced County retrofit plans into a single five year Regional Stormwater Retrofit Plan for Putnam, Westchester, and Dutchess Counties ("Regional Plan"). It is DEP's understanding that EOHWC is nearing completion of design and construction of all stormwater retrofit projects needed to achieve compliance with the phosphorus reduction required in the first five year Regional Plan, and that it expects to have a projected balance of EOH Funds on hand when all such stormwater retrofit projects are completed. The EOH Coalition has requested that the April 2012 Letter Agreement be amended to permit use of the projected balance of EOH Funds toward the design, construction, implementation, operation, and maintenance of stormwater retrofit projects, including administrative expenses associated therewith, identified within the second five year Regional Plan.

DEP and the Counties understand that disbursement of EOH Funds to the EOHWC is subject to the notification procedures outlined in Section 140 of the Watershed MOA. Pursuant to paragraph 107(c) of the MOA, Westchester issued a right-of-objection letter (the "RoO") to the requisite MOA parties for the disbursement for the first five year plan on September 30, 2011, and Putnam issued the RoO to the requisite MOA parties for the first five year plan on August 22, 2011. No objections to either letter were received during the applicable timeframe.

Pursuant to paragraph 107(c) of the MOA, Westchester issued its RoO on March 7, 2016 to the requisite MOA parties for use of the projected balance of EOH Funds toward the design, construction, implementation, operation, and maintenance of stormwater retrofit projects, including administrative expenses associated therewith, identified within the second five year Regional Plan, and Putnam issued its RoO on May 6, 2016, to the requisite MOA parties for the same proposed use. No objections to either letter were received during the applicable timeframe.

DEP hereby amends the April 2012 Letter Agreement to eliminate the restriction on use of the EOH Funds to the first five-year Regional Plan in order to allow the EOH Funds projected to remain on hand upon completion of the first five-year Regional Plan to be used toward the design, construction, implementation, operation, and maintenance of stormwater retrofit projects, including administrative expenses associated therewith, identified within the second five-year Regional Plan. A stormwater retrofit project that results in a phosphorus reduction beyond the initial MS4 requirement of 459.5 kg/yr shall be considered a project completed under the second five year Regional Plan. All other provisions of the Letter Agreement remain in full force and effect and will be applicable to the first and second five year Regional Plans.

Please indicate agreement by signing in the space indicated below and returning one fully executed copy to DEP.

Signed,

Paul V. Rush, P.E., Deputy Commissioner, Bureau of Water Supply
New York City Department of Environmental Protection

 Date: 6/30/16

Agreed and Accepted:

MaryEllen Odell, Putnam County Executive

 Date: 7.12.16

Robert P. Astorino, Westchester County Executive

 Date: 8/3/16

