

**EASEMENT AND INSTALLATION AGREEMENT
FOR STORMWATER RETROFIT PROJECT
KENT-MB-1000**

THIS AGREEMENT, is made and entered into the _____ day of _____, 2024, by and between **EAST OF HUDSON WATERSHED CORPORATION** ("EOHWC"), a not-for-profit local development corporation having its principal office at 2 Route 164, Patterson, New York 12563; **E.B.S.E. LLC**, a New York limited liability company, with offices at 1699 Route 6, Suite 1, Carmel, NY 10512 ("Owner") and the **TOWN OF KENT**, having its town offices at 25 Sybil's Crossing, Kent Lakes, New York (the "Municipality"). EOHWC, the Municipality and Owner are collectively referred to as the "Parties."

WHEREAS, EOHWC is assisting its member municipalities, of which the Town of Kent is one, in complying with the New York State Department of Environmental Conservation (NYSDEC) Municipal Separate Storm Sewer Systems Permit effective May 1, 2010 (MS4 Permit) by the design and installation of stormwater retrofit projects approved by NYSDEC; and

WHEREAS, Owner desires to cooperate with the effort to reduce stormwater runoff carrying potential contamination into surface waters of the State and thereby to assist the Municipality in complying with the MS4 Permit;

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

Section 1. Owner is the fee owner of certain premises located in the Town of Kent, County of Putnam and State of New York having tax grid number 22-2-16, 22.42-1-20, and 22.58-2-58, being the same property conveyed by Deed from Lou Pozza and Anthony Perna dated October 17, 2022 and recorded in the Putnam County Clerk's office on October 27, 2022 in Liber 2295 of Deeds at Page 206, Instrument No. 9452-2022, and more fully described in Exhibit "A" (the "Property").

Section 2. EOHWC shall undertake for the benefit of the Municipality with the permission and consent of Owner hereby granted, and in accordance with the terms and provisions hereof and of the Permanent Drainage Easement to be executed contemporaneously with this Agreement, the stormwater retrofit project set forth in the Project Description appended hereto as Exhibit "B" ("Stormwater Retrofit Project"), subject to the terms of this agreement. At the sole cost of the Owner, Insite Engineering, Surveying & Landscape Architecture, P.C. or other third party professional engineer selected by Owner and satisfactory to EOHWC, shall prepare design and construction documents complying in all respects with EOHWC's retrofit design requirements, to prepare a description and map of the easement areas, to prepare permit applications, and to prepare construction documents for bid purposes, with such engineer providing all documents and certifications for the benefit of EOHWC and the Municipality. Such engineer shall be required to execute and comply with an agreement satisfactory to EOHWC to indemnify and

insure EOHWC and the Municipality with the NYC DEP listed as additional insured and to permit EOHWC and Municipality to rely on their documents and certifications. Upon completion of design to the satisfaction of EOHWC, approval of all required permits, approval of the project by NYS DEC, and approval by the EOHWC Board, EOHWC may undertake construction of the Stormwater Retrofit Project. Construction inspection shall be performed by a professional engineer engaged by EOHWC. EOHWC will use reasonable efforts to complete construction within three (3) years of the execution of the contract, and within 24 months of the completion of design and approvals but this shall not be deemed to be a time of the essence requirement.

Section 3. Owner hereby grants and conveys unto EOHWC, its successors and assigns and to the Municipality, (i) a temporary easement over, across and within the premises described in Exhibit "A" hereto, for the purpose of installing and constructing the Stormwater Retrofit Project ("Construction Easement Area"), and (ii) a temporary and permanent drainage easement over, across and within the premises described in Exhibit "C" annexed hereto, for the purpose of installing, constructing, operating, maintaining, repairing and replacing, as necessary, the Stormwater Retrofit Project all in accordance with stormwater best management practices. The temporary and permanent easement premises are referred to collectively as the "Easement Premises." A map of the Easement Premises is annexed hereto at Exhibit "E". Without limiting anything in Sections 3 or 4, access over the Property by EOHWC and the Municipality shall not be less than for the time during which the Stormwater Retrofit Project is needed to satisfy the MS4 Permit.

Section 4. Pursuant to a Permanent Drainage Easement entered into between the Owner and EOHWC and the Municipality dated as of the date hereof, the Owner has granted and conveyed unto EOHWC, its successors and assigns, a permanent drainage easement upon, over, under and across the portion of the Property shown at Exhibit E and described in Exhibit "C" hereto ("Permanent Easement Area"), for the purpose of installing, constructing, operating, maintaining, repairing and replacing, as necessary, the Stormwater Retrofit Project, including, but not limited to, all work needed to comply with the MS4 Permit, and all future work required to maintain and repair the Stormwater Retrofit Project components.

Section 5. [Intentionally Omitted.]

Section 6. EOHWC's and the Municipality's access to the Easement Area shall be unrestricted during normal business hours and, upon reasonable notice, during non-business hours and shall include, without limitation, unrestricted access, egress and ingress over the Property during the temporary easement period and thereafter over the access area depicted in Exhibit "E", in each case to and across all improvements, structures and facilities thereon.

Section 7. EOHWC shall procure all necessary approvals and permits for the construction and installation of the Stormwater Retrofit Project and shall have sole and exclusive supervision and control of the construction of all improvements upon the Easement Area, including the selection of materials and contractors. The cost of engineering drawings and specifications through bid stage shall be borne by the

Owner. Owner agrees, upon request, to cooperate with EOHWC in obtaining such licenses and permits. For the avoidance of doubt, the obligation of owner for engineering costs through bid stage does not include any responsibility for construction and installation of the Stormwater Retrofit Project, including EOHWC's construction inspections and the completion of the as built survey for the Stormwater Retrofit Project. .

Section 8. EOHWC shall not at any time permit or suffer any lien to be attached to the Easement Area in connection with any construction work undertaken by contract with EOHWC, and, if attached, shall within thirty (30) days cause the same to be discharged and released of record or otherwise. EOHWC shall obtain at its expense or require all contractors retained to do such work to carry the forms of insurance set forth in Exhibit "D" and shall provide copies of evidence of insurance upon reasonable request.

Section 9. EOHWC and the Municipality shall each indemnify and hold harmless Owner from and against any and all claims, demands, suits and actions, and any liabilities, losses, damages, and/or judgments which may arise therefrom, as well as against any fees, costs, charges or expenses which Owner incurs in the defense of any such claims, demands, suits, actions or similar such demands made or filed by any party (hereinafter "Claims"), arising or resulting from (1) EOHWC's or the Municipality's respective breach of its obligations under this Agreement, (2) any injury or damage to persons or property arising from, out of or incident to EOHWC's or the Municipality's respective exercise or failure to exercise any of its rights or obligations hereunder, and (3) the negligence, gross negligence or willful misconduct of EOHWC or the Municipality or any of their respective agents or contractors, in any way related to the subject matter of this Agreement. Notice of any Claim subject to this indemnification shall be given within two years after the date on which the Claim accrues. Excluded from the provisions of this section are liabilities, losses, damages and/or judgments solely arising from, out of or incident to the negligence, gross negligence or willful misconduct of Owner.

Owner shall indemnify and hold harmless EOHWC and the Municipality from and against any and all claims, demands, suits and actions, and any liabilities, losses, damages, and/or judgments which may arise therefrom, as well as against any fees, costs, charges or expenses which EOHWC or Municipality incurs in the defense of any such claims, demands, suits, actions or similar such demands made or filed by any party (hereinafter "Claims"), arising or resulting from (1) Owner's breach of its obligations under this Agreement, (2) any injury or damage to persons or property arising from, out of or incident to Owner's exercise or failure to exercise any of its rights or obligations hereunder, and (3) the negligence, gross negligence or willful misconduct of Owner or any of their agents or contractors, in any way related to the subject matter of this Agreement. Notice of any Claim subject to this indemnification shall be given within two years after the date on which the Claim accrues. Excluded from the provisions of this section are liabilities, losses, damages and/or judgments arising from, out of or incident to the negligence, gross negligence or willful misconduct of EOHWC or Municipality, respectively.

Section 10. The Municipality shall have the obligation for the benefit of EOHWC, and EOHWC shall have the right, but not the obligation, to maintain, repair, alter, add to or reconstruct the Stormwater Retrofit Project within the Easement Area as often and whenever it deems proper in accordance with sound engineering practices, and the Owner shall not obstruct or impede EOHWC or the Municipality in the exercise of that right. All structures and improvements created hereunder shall belong to the EOHWC

and the Owner shall not remove or terminate the Stormwater Retrofit Project during the useful life of the project without the express written consent of EOHWC and the Municipality. The Owner shall have the obligation to at all times properly operate and maintain the Stormwater Retrofit Project in accordance with the applicable New York State Department of Environmental Conservation regulations, standards and guidelines, and in accordance with the then current operation and maintenance manual approved by EOHWC.

Section 11. Owner shall obtain a current survey of the Easement Area, made and certified by a licensed surveyor and certified to EOHWC and Municipality and their title company, showing the location, area, boundaries, topography and dimensions of the Easement Area and Stormwater Retrofit Project, the relevant location thereof with respect to streets or highways, and the location or proposed location of utility lines.

Section 12. Owner agrees not to make any claims against EOHWC, or the Municipality, or any other person associated with the EOHWC's activities as permitted under this Agreement for, or by reason of, any inconvenience or interference with the Owner's present or future use, occupancy or enjoyment of the Easement Area or the present or future use, occupancy or enjoyment of any person claiming under or through the Owner, including, without limitation, successive owners, tenants, invitees, guests, licensees or others, as a result of the activities permitted under this Agreement.

Section 13. EOHWC and the Municipality and their respective agents and contractors shall conduct all work activities on the Easement Area in a workmanlike manner and in accordance with prevailing industry practices, standards and procedures, as reasonably required by the MS4 Permit.

Section 14. This Agreement shall be effective when fully executed by the Parties and shall terminate when the Stormwater Retrofit Project is no longer needed to satisfy the MS4 Permit.

Section 15. This Agreement may be assigned by EOHWC to the Municipality upon completion of the construction work, including the stabilization work post construction, in the sole discretion of EOHWC with the consent of the Municipality, in which event the Municipality shall assume all rights, benefits, responsibilities and obligations of EOHWC hereunder, and EOHWC shall be released from this Agreement.

Section 16. Owner hereby covenants that Owner is seized of the Property in fee simple and has good right to execute this Agreement; shall do nothing in the Easement Area which would prevent, impede or disturb the full use and intended purpose of this Agreement; and shall execute and deliver any further documents reasonably necessary to assure the benefits of this Agreement to EOHWC and the Municipality. Any future mortgage on the Property shall be subordinated to this Agreement.

Section 17. Owner represents that it has no knowledge of the existence (actual or alleged) beneath the Property of any fuel tanks or barrels, has no knowledge of any environmentally hazardous or toxic substances or materials on or under the Property, nor of any hazardous waste or toxic substance contamination of the Property (as defined in § 27-0901 and/or § 7 1-2702 of the New York State

Environmental Conservation Law) or regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), or other Federal, state or local rule or regulation, and has no knowledge of any active violations of any such laws, rules or regulations, nor of any ongoing remediation efforts, and is not aware of any contamination caused by any other party, other than that which may be documented by the reports, if any, supplied by Owner to EOHWC and identified at Exhibit B – Stormwater Retrofit Project attached hereto. EOHWC may suspend or terminate future performance under this Agreement in the event of any such conditions identified during the course of Stormwater Retrofit Project design or construction. The Municipality acknowledges that EOHWC assumes no responsibility for any such condition. Nothing herein is intended to relieve any third party from any liability under the Comprehensive Environmental Response, Compensation, and Liability Act or other applicable laws.

Section 18. If any provision of this Agreement or its application shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications hereof shall not be affected or impaired in any way.

Section 19. This Agreement shall be recorded in the office of the County Clerk, County of Putnam.

Section 20. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 21. Any litigation between the Parties relating to this Agreement shall be tried in Supreme Court, Putnam County, and shall be tried without a jury.

Section 22. This Agreement represents the full and complete agreement among the Parties and may not be modified except in writing executed by all Parties.

Section 23. The parties hereby agree that this Agreement may be executed by facsimile or scanned signatures transmitted by electronic mail and/or in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same original.

IN WITNESS WHEREOF the authorized representatives of EOHWC, Municipality, and Owner have executed this agreement.

EAST OF HUDSON WATERSHED CORPORATION, EOHWC

By _____

Title: _____

E.B.S.E. LLC, Owner,

By _____

Printed Name _____

TOWN OF KENT

By _____

Supervisor

STATE OF NEW YORK)
) ss.
COUNTY OF _____)

On this ___ day of _____, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
) ss.
COUNTY OF _____)

On this ___ day of _____, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

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NOTARY PUBLIC

EXHIBITS

- A. Description of Property
- B. Description of Stormwater Retrofit Project
- C. Description of Easement Area
- D. Required Forms of Insurance
- E. Map of Easement Area

Exhibit A
Description of Property
Stormwater Retrofit Project
KENT-MB-1000

Exhibit B
Description of Stormwater Retrofit Project
Stormwater Retrofit Project
KENT-MB-1000

Exhibit B

PROJECT: Kent-MB-1000, Longfellow Drive/NYS Route 311

PROJECT LOCATION: Vacant lot between Longfellow Drive and Ludington Ct, Kent, NY and NYS Route 311

Project Description:

The project is located on private property along Longfellow Road and a vacant lot owned by E.B.S.E LLC, located off of Ludington Court. This project will treat multiple municipal outfalls which direct stormwater on to the vacant lot prior to discharge into the Middle Branch River, Stump Brook Creek and Lake Carmel. These municipal discharges have created multiple severely eroded deep channels on the vacant lot since their installation. These channels will be stabilized and all municipal discharges will be rerouted to a newly installed conveyance swale and stormwater infrastructure.

The stormwater retrofit will include installation of five (5) ConTech Jellyfish filters within Longfellow Drive, construction of a lined grass swale for conveyance of all stormwater on private property, installation of drainage manholes and construction of two (2) settling basins, and filling of twelve (12) eroded channels on the vacant lot. A permanent easement through the property will follow the flow path of the installed conveyance system. This easement will begin at the intersection of the property with Ludington Court and will include permanent access off the roadway, the settling basin, an approximately 20 ft wide drainage path containing multiple drainage manholes and approximately 785 LF of 30" HDPE pipe, and an upper collection area measuring 3.24 ac, running parallel with Longfellow Drive, which includes a drainage swale tying in to multiple municipal outfalls. The temporary easement will stretch north through the center of the property, allowing the contractor to establish soil borrow areas that will be used to fill in the 12 eroded channels on site

A portion of the project consisting of replacement of multiple damaged existing discharge pipes will be completed at the expense of the Town.

The project includes, but is not limited to, replacement of existing outfall structures, minor roadwork, and installation of the stormwater treatment devices. The work also includes site preparation, erosion and sediment control, maintenance and protection of traffic, earthwork, installation of conveyance structures, final restoration, and cleaning in the project area under the direction of the Engineer and the EOHWC. All work is detailed on the preliminary design drawings titled "Kent-MB-1000 Stormwater Retrofit" as prepared by Insite Engineering, Surveying & Landscape Architecture, P.E.

Maintenance for all stormwater systems installed within Longfellow Drive and installed within any previously existing easement on site will be the responsibility of the Town of Kent. Maintenance of any stormwater conveyance systems installed within the vacant lot will be the responsibility of the Owner.

Exhibit C
Description of Easement Area
Stormwater Retrofit Project
KENT-MB-1000

C-1 Temporary Construction Access
Property described at Exhibit A

C-2 Permanent Easement Area
Description to be prepared of
portion of Property depicted at
Exhibit D

Exhibit D
Required Insurance
Stormwater Retrofit Project
KENT-MB-1000

Insurance requirement:

The following insurances will be maintained by EOHWC, including a Waiver of Subrogation and naming the following as additional insured:

1. The City of New York, including its officials and employees
2. Municipality and its agents, officers, directors and employees
3. E.B.S.E. LLC , as Owner.
4. Any other agencies and/or entities required by any other contracts and/or agreements

Coverage for the additional insured shall apply as Primary and Non-Contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds.

Worker's Compensation: Statutory per New York State law without regard to jurisdiction

Employer's Liability: Statutory

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
- XCU may not be excluded

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

Where applicable: Professional liability insurance coverage with an annual aggregate of not less than \$2,000,000 per occurrence.

Exhibit E
MAP OF EASEMENT AREA
Stormwater Retrofit Project
KENT-MB-1000

E-1 Temporary Construction Access

E-2 Permanent Easement Area