

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

THIS AGREEMENT, dated the 17 day of March, 2026 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 (“DEP”), and the **EAST OF HUDSON WATERSHED CORPORATION** (“EOHWC”), an independent locally-based and locally administered not-for-profit corporation, organized and existing under Section 1411 of the New York State Not-For-Profit-Corporation Law and having its principal office in Patterson, New York, the City and the EOHWC being collectively referred to as the “Parties”;

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

WHEREAS, the municipalities that are members of the EOHWC are subject to the terms and requirements of the Municipal Separate Storm Sewer Systems (“MS4”) SPDES General Permit No. GP-0-24-001 issued December 13, 2023 with an effective date of January 3, 2024 by the NYSDEC (“the MS4 Permit”); and

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

WHEREAS, under the April 2012 Letter Agreement between DEP, Westchester County and Putnam County, as amended by the June 2016 letter amendment, Putnam County agreed to use Eight Million, Two Hundred Thousand Dollars (\$8,200,000) and Westchester County agreed to use Ten Million Dollars (\$10,000,000), for a total of Eighteen Million, Two Hundred Thousand Dollars (\$18,200,000) in monies (collectively, “EOH Funds”) 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 toward the design, construction, implementation and permanent operation and maintenance (“O&M”) of stormwater retrofit projects, including the administrative expenses associated therewith, as set forth in the Regional Retrofit Plan, as defined therein, subject to the provisions of Paragraphs 107 and 140 of the Watershed MOA, and the Inter-Municipal Agreements between DEP and Westchester County, and DEP and Putnam County regarding the East of Hudson Water Quality Investment Program annexed to the MOA as Attachments GG-1 and GG-5, respectively; and

WHEREAS, the EOHWC anticipates securing the approvals necessary to allow EOH Funds

remaining after completion of years 1-10 of the MS4 Permit to be used toward completion of projects that are part of the phosphorous reduction targets established for years 11-15 of the MS4 Permit's term; and

WHEREAS, the Parties entered into an initial funding agreement entitled Funding Agreement between New York City Department of Environmental Protection and the East of Hudson Watershed Corporation, CRO-522, dated June 12, 2013 (the "2013 Funding Agreement"), and the Parties entered into an second funding agreement entitled Agreement between New York City Department of Environmental Protection and the East of Hudson Watershed Corporation, CRO-574, dated January 18, 2019 (the "2019 Funding Agreement"), whereby in each of these agreements, the City provided funding to the EOHWC, and the EOWHC agreed to take certain actions pertaining to implementation of the regional retrofit plan covering the ten year period of the municipal separate storm sewer permits GP-0-10-002 and GP-0-15-003, the predecessors to the MS4 Permit (the "Prior Permits"); and

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

WHEREAS, the City entered into a contract with the NYSDEC, dated August 9, 2022 ("NYSDEC Prime Contract"), whereby the NYSDEC has agreed to provide certain funds to the City for water quality projects located within the New York City watershed, subject to and in accordance with the terms and conditions set forth in that agreement; and

WHEREAS, the City and NYSDEC have agreed that funding certain costs of EOHWC's compliance with the Regional Retrofit Plan for the years 11-15 of the MS4 Permit's term is an eligible water quality project located within the New York City watershed as identified in the NYSDEC Prime Contract; and

WHEREAS, the City desires to allocate a portion of the funds from the NYSDEC Prime Contract to pay EOHWC for the Work, in accordance with the terms and conditions set forth herein and in the NYSDEC Prime Contract, as further detailed below; and

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

ARTICLE 1

GENERAL PROVISIONS

Section 1.01 Performance by EOHWC

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

Section 1.02 Retrofit Funds and Stormwater Retrofit Projects

A. "Bondable" shall be those costs for implementing a Stormwater Retrofit Project completed

within the term of this Agreement that may be financed by long-term debt in compliance with the New York City Comptroller's Directive 10 and generally includes a total project cost exceeding \$50,000, and expected to have a useful life of five years or more.

- B. "General Administrative Costs" shall be any administrative costs not directly relating to planning, design or construction of a specific Stormwater Retrofit Project. A list of costs that the Parties have determined are directly related to the planning, design or construction of a specific Stormwater Retrofit Project is attached hereto as Appendix C, provided and solely to the extent such costs result in a completed and Bondable Stormwater Retrofit Project.
- C. "Retrofit Funds" shall be any City funds remitted to the EOHWC pursuant to this Agreement for the purposes of performing the Work. In addition, Retrofit Funds shall include earnings on advanced City funds remitted to the EOHWC under this Agreement.
- D. "Stormwater Retrofit Project" shall be a stormwater retrofit project located in New York State and identified in the EOHWC Regional Retrofit Plan for Years 11-15 approved by NYSDEC (as may be amended, "Regional Retrofit Plan") and covering the additional phosphorous reduction targets established by the NYSDEC for the period of the MS4 Permit starting in Year 11 of such plan, with a total project cost that is greater than \$50,000 and results in a useful life of no less than five years.

Section 1.03 Duration

- A. This Agreement shall be effective when signed by the Parties and registered by the City pursuant to Section 328 of the Charter of the City of New York and approved by DEC ("Effective Date"). The City shall promptly provide notice of the registration of this Agreement by ordinary mail to the EOHWC at the address designated in Section 13.03 of this Agreement.
- B. EOHWC shall commence the Work beginning upon receipt of notice of the Effective Date.
- C. This Agreement shall terminate six (6) years after the Effective Date (the "Term"). In the event all Work hereunder is not completed prior to the termination date, this Agreement shall be extended or renewed upon mutual agreement of the Parties upon the same terms and conditions. The renewal agreement shall become effective upon registration by the City pursuant to Section 328 of the Charter of the City of New York and if applicable, approval by NYSDEC.

ARTICLE 2

DESCRIPTION OF THE WORK

Section 2.01 Eligible Projects and Activities

- A. The EOHWC shall construct Stormwater Retrofit Projects in accordance with the terms,

conditions and procedures set forth in this Agreement (the “Work”).

- B. EOWHC shall ensure that each Stormwater Retrofit Project constructed under this Agreement shall have an O&M plan consistent with the most current version of the New York State Stormwater Management Design Manual (January, 2015) or any subsequent guidance manual for local officials issued by NYSDEC. Prior to commencing construction of a Stormwater Retrofit Project, EOWHC shall enter into an agreement with the owner or applicable authorized municipality whereby the owner or applicable authorized municipality agrees to perform or ensure the proper operation and maintenance of the Stormwater Project in compliance with the O&M plan for the duration of its useful life.
- C. Eligible Costs. The “Eligible Costs” for Retrofit Funds shall consist solely of the costs of the following activities related to the Work:
 - 1. The planning and design of a Stormwater Retrofit Project, including the identification of projects to be completed pursuant to a NYSDEC-approved revision or modification of the Regional Retrofit Plan for Years 11-15, preparation of surveys, bid packages, environmental review, financing, permitting, acquisition of land and/or easements, provided and solely to the extent such planning and design is directly associated with and results in a completed and Bondable Stormwater Retrofit Project.
 - 2. The bidding, construction, and installation of completed and Bondable Stormwater Retrofit Projects.
 - 3. Other costs reasonably related to supporting the implementation of a completed and Bondable Stormwater Retrofit Project, but excluding: (i) General Administrative Costs and (ii), those costs listed as ineligible costs on Appendix C.

ARTICLE 3

PAYMENT GENERALLY

Section 3.01 Payment of Retrofit Funds

- A. During the Term, the City shall pay the EOWHC periodic installments of Retrofit Funds in advance to pay the Eligible Costs of the Work, up to an aggregate amount not to exceed Ten Million (\$10,000,000) Dollars in total.
- B. Annual Budgets:
 - i. By March 1st of each year of the Term, commencing with the first City full fiscal year of the Term, EOWHC shall prepare an annual budget (“Budget”) of the reasonable estimate taking into account prior contingencies unless otherwise justified, which estimate includes a reasonable amount for contingencies during such period, of the Eligible Costs reasonably anticipated to be expended or committed by EOWHC for the performance of the Work during the upcoming City fiscal year (July 1 to June 30),

broken down by semi-annual fiscal period based upon reasonable projections. For purposes of information and not as a limitation on Eligible Costs, the Budget shall be broken down by the categories of Eligible Costs for: (1) planning; (2) design; and (3) construction.

- ii. If DEP believes that a Budget contains cost estimates which do not constitute reasonably expected Eligible Costs, DEP shall provide EOHWC with written notice indicating the amount in dispute, the specific reasons for the objection, what the disputed amount should be, and requesting an explanation of the cost estimates. EOHWC shall have forty-five (45) days to justify or explain the reasons for any such claimed inaccuracies. If DEP still disagrees with the disputed amounts, DEP shall provide EOHWC with its written determination as to eligibility. The provisions of this Section shall survive the expiration or termination of this Agreement.

- C. Supplemental Cost Estimates. EOHWC may also submit a supplemental cost estimate, together with a request to DEP for additional funding by October 1st of each year, in which EOHWC determines that actual Allocations by EOHWC will likely exceed the projected expenses set forth in a Budget; provided that the aggregate amount of Retrofit Funds paid to EOHWC shall not exceed the total amount set forth in Section 3.01. Such request shall demonstrate through documentation that such additional funding is necessary because the balance of Unallocated Retrofit Funds is insufficient to address Eligible Projects anticipated during the City's semi-annual fiscal period as set forth in the Annual Budget. Within sixty (60) days of such request, DEP will issue a written determination to grant, in whole or in part, or deny the request. If DEP denies or grants only a portion of the request, DEP shall provide a detailed explanation of its basis for the determination. If DEP grants the request, in whole or in part, EOHWC's invoice shall include such additional funds beginning with the semi-annual fiscal period of the City's fiscal year next following DEP's written determination to provide additional funding.

Section 3.02 Payment of Estimated Eligible Costs

- A. Initial Payment. Within ninety (90) days of the Effective Date of this Agreement and EOHWC's submission of an approved invoice in the form attached at Appendix A, DEP shall pay an initial payment ("Initial Payment") of Retrofit Funds in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000).
- B. Semi-Annual Payments
 - i. Commencing at the start of the first full City fiscal year of the Term, the City shall pay EOHWC, Retrofit Funds, on a semi-annual period basis, subject to Section 3.01.C, within sixty (60) days after DEP's approval of EOHWC's submission of an invoice in form attached hereto as Appendix A, the amount of Retrofit Funds, if any, necessary to cause the total amount of "Unallocated" Retrofit Funds" (as defined herein) on hand with EOHWC to equal the amount specified on the Budget for the applicable semi-annual City fiscal period provided however, that the total aggregate amount of Retrofit Funds provided under this Agreement shall not exceed Ten Million Dollars (\$10,000,000), and that such advances shall be subject to receipt of the applicable Reconciliation Statement and supporting

documentation due prior to that date pursuant to Section 3.02(C) hereof. For purposes of this Section, “Unallocated Retrofit Funds” shall mean the amount of Retrofit Funds that are not committed by EOHWC to an Eligible Project as of the date of the Reconciliation Statement, based upon a subcontract or other agreement, including approved Board Resolutions authorizing a subcontract or other agreement, entered into in good faith by EOHWC. “Allocated” shall mean the amount of Retrofit Funds that have been committed by EOHWC to an Eligible Project as of the fiscal period applicable to the subject Reconciliation Statement, based upon a subcontract or other agreement, including approved Board Resolutions authorizing a subcontract or other agreement, entered into in good faith by EOHWC. For purposes of illustration, if the Effective Date is August 1, 2025, the Initial Payment, would be due by November 1, 2025, and the first Budget would be due by March 1, 2026.

- ii. Whenever the provisions of this Agreement call for the City to make payments to EOHWC, such payments shall be made promptly by the due date specified electronically, pursuant to Section 6-107.1 of the New York City Administrative Code. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the Initial Payment made under this Agreement, EOHWC shall designate one financial institution or other authorized payment agent and shall complete an “EFT Vendor Payment Enrollment Form” on the City’s Payee Information Portal (“PIP”) in order to provide the Commissioner of Finance with information necessary for EOHWC to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The final crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by EOHWC shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by EOHWC to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

C. Reconciliation Process

- i. Commencing with submission of the third invoice to the City, EOHWC shall concurrently provide DEP with a statement reconciling the amount of funds paid by the City two invoices prior to date under this Agreement against the amount of actual Eligible Costs incurred or Allocated during the semi-annual fiscal period two periods prior (“Reconciliation Statement”). Following the initial Reconciliation Statement, EOHWC shall provide DEP with Reconciliation Statements on a semi-annual basis for the last period not covered by any prior Reconciliation Statement, i.e., two semi-annual periods prior.
- ii. Each Reconciliation Statement shall include a detailed breakdown of the Eligible Costs incurred for associated Work. The Reconciliation Statement shall also include the most recent total figure for interest earned on the remitted Retrofit Funds.

- iii. Along with each Reconciliation Statement, EOHWC shall submit documentation to support the actual Eligible Costs incurred or Allocated, and that EOHWC has complied with all obligations under this Agreement. Such documentation shall include the following for expenses incurred by EOHWC: invoices, payrolls, a status report of the percentage of expenditures of each Stormwater Retrofit Project to date, an Excel spreadsheet listing all Allocated projects (amount of Retrofit Funds committed by EOHWC, amount of Retrofit Funds expended by EOHWC to date, amount of Retrofit Funds expended in current City fiscal semi-annual pay period, and available amount of Retrofit Funds to be expended); payment vouchers and check stubs; general ledger and monthly financial statements; bank statements and reconciliations; bidding documents; Board resolutions (if applicable); salary, payroll and benefit documents; receipts for purchases; vendor invoices; mileage reports and travel logs (if applicable). For all subcontractors, each of the following additional documentation shall be required: bidding documents; receipts for purchases; invoices; mileage reports and travel logs (if applicable); documents evidencing their compliance with Section 220 of the Labor Law if applicable (including signed and approved timesheets, approval salary rate schedules, daily sign- in/sign-out logs); and construction documents, if applicable (project drawings/as- built, substantial and final certifications of work performed, progress reports submitted by contractors, equipment usage inventories, and photographs showing project progress as requested)., and a cover letter from EOHWC verifying that all costs are reasonable and fair and were authorized in good faith and in accordance with all applicable laws. Such documentation is subject to review, audit, and requests for additional information by DEP for compliance with the terms of this Agreement.
- iv. If DEP believes that a Reconciliation Statement contains costs which do not constitute Eligible Costs, DEP shall provide EOHWC with written notice indicating the amount in dispute, the specific reasons for objection, and what the disputed amount should be and requesting an explanation of the costs. EOHWC shall have forty-five (45) days to justify or explain the reasons for any such claimed inaccuracies prior to DEP approving or adjusting any proposed cost estimate. Such determination shall be subject to the dispute resolution procedures in Section 4-09 of the New York City's Policy and Procurement Board Rules ("PPB Rules") ("Resolution of Disputes Arising Out of Contract Administration"), as may be amended from time to time. Notwithstanding the foregoing, at EOHWC's request, DEP agrees to request written pre-approval of the eligible cost of an item pursuant to the DEC Prime Contract, from the DEC Project Manager. In the event DEC issues a determination of eligibility within fifteen (15) days of DEP's request, DEP will not deny payment hereunder; provided however, that, if the DEC Project Manager does not issue a determination of eligibility of such cost within sixty (60) days of DEP's request, DEP may determine the cost to be ineligible, and shall have no further obligation to obtain DEC's approval or consent.

Section 3.03 Payment Obligations

- A. All receipts and disbursements of Retrofit Funds under this Agreement are subject to audit by

the City, NYSDEC, and the State, and the EOHWC agrees to cooperate with any audit of the agreement undertaken by the City and State.

- B. The EOHWC shall ensure that all Retrofit Funds advanced to it shall be used exclusively for Eligible Costs incurred in connection with the Work. The terms and provisions of this paragraph shall survive termination or expiration of this Agreement.
- C. The City shall not be deemed, by virtue of making payments to the EOHWC, to have released the EOHWC from any claim or liability, or to have waived any right or rights of action under this Agreement.
- D. Promptly upon receipt of any 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 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 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.

Section 3.04 Conditions of Payment

- A. The EOHWC will employ generally accepted cash management practices established by the New York State Comptroller, to the extent applicable.
- B. If the EOHWC is in material breach of the terms of this Agreement and such breach is not cured within the time frames set forth in Section 10.01 below, in addition to any other rights or remedies available to it at law or in equity, the City shall be entitled to withhold payment in an amount that represents the cost to cure the breach and covering any reasonable damages resulting directly from such breach.
- C. This Agreement does not and is not intended to express any opinion as to the liability of the City or the East of Hudson Watershed communities to pay for costs in complying with the MS4 Permit. This Agreement shall not be used as an admission or precedent in any other action, proceeding or document. The City maintains that the MS4 Permit heightened requirements are requirements of federal and State law and that responsibility for meeting those requirements rests with the East of Hudson Watershed communities and not with the City of New York. The members of the EOHWC maintain that the only reason the MS4 Permit contains heightened requirements for the EOH MS4 communities is that the surface waters are part of the New York City water supply system, and that the high cost of compliance with the heightened requirements above and beyond the normal cost of MS4

compliance must be borne by the City.

ARTICLE 4

INSURANCE

Section 4.01 Insurance

- A. Prior to entering into any agreements to disburse Retrofit Funds, or commencing any work on a Stormwater Retrofit Project, the EOHWC shall and shall cause its subcontractors to obtain insurance of the kind and amount set forth in Appendix B, attached hereto. The City, the New York City Water Board (“Water Board”), the State, and NYSDEC Division of Water and each of their respective officials and employees, shall be named as additional insureds on each of the insurance policies except for Workers’ Compensation coverage. EOHWC agrees to maintain such insurance in full force and effect during the term of this Agreement, and to otherwise comply with the requirements in Appendix B.
- B. The insurance certificate(s) must contain an endorsement in writing added to and made part of the insurance contract for the purpose of changing the original terms such that the City, its officials and employees, Water Board, the NYSDEC Division of Water, and the State of New York, and each of their officials and employees are added as additional insured. In addition, the applicable insurance policy number(s) referenced on the ACCORD form must be referenced on the endorsement. A copy of the endorsement page, showing the City, Water Board, the NYSDEC Division of Water, and the State of New York, and each of their officials and employees, as additional insured, must be provided to DEP.

ARTICLE 5

RECORDS AND REPORTS

Section 5.01 General

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

Section 5.02 Maintenance of Records

The EOHWC shall maintain complete and accurate records in readily accessible files on all of its activities in connection with this Agreement. Such records shall include, but are not limited to, certified payrolls, and 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 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 NYSDEC and the State Comptroller, and by the City, including the City Comptroller, to the extent authorized by State and/or local law, including Section 93 of the New York City Charter.
- B. The EOHWC shall prepare and maintain documentation and justification in support of expenditures under this Agreement in accordance with generally accepted business practices and shall make such documentation available to the State, including the State Comptroller, and the City, including the City Comptroller, as they consider necessary.

Section 5.04 Regular Reports

- A. Annual Audited Financial Reports: Within ninety (90) days after the end of the last quarter of each EOHWC fiscal year, the EOHWC shall submit to the City an audited financial statement for the EOHWC for the preceding fiscal year, audited by an independent certified public accountant, which shall include an itemization of (i) all Retrofit Funds expended under this Agreement, including receipts from the City, disbursements to third parties, and amounts EOHWC remains committed to pay pursuant to outstanding consultant, construction or other contracts; (ii) receipts, if any, of the EOHWC in repayment of Retrofit Funds; (iii) the amount of Retrofit Funds on hand with the EOHWC; and (iv) such other information as the City may reasonably require.
- B. Termination Audited Financial Reports: Within ninety (90) days after the termination of this Agreement, the EOHWC shall submit to the City an accounting of the 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 Retrofit Funds expended under this Agreement, including cash receipts from the City and disbursements to third parties; (ii) the amount of 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 Retrofit Funds; (iv) the amount of Retrofit Funds on hand with the EOHWC; and (v) such other information as the City may reasonably require.
- C. Retrofit Reporting: On or before April 1 of each year, until the Retrofit Funds and the EOH Funds provided by Putnam and Westchester Counties are expended, the EOHWC shall submit to DEP a copy of the annual report it submits to NYSDEC on or before April 1, as such date may be extended by DEP in writing upon documentation that such date is extended by DEC, identifying its accomplishments implementing the Regional Retrofit Plan during the previous calendar year. On or before April 1 and October 1 of each year, until the Retrofit Funds and EOH Funds provided by Putnam and Westchester Counties are expended, the EOHWC shall also submit any interim progress certifications submitted to NYSDEC.
- D. Semi-Annual Progress Reports: Within thirty (30) days of the close of each semi-annual

fiscal period until the Retrofit Funds are expended, the EOHWC shall submit to DEP a progress report of the following information on each Stormwater Retrofit Project, in form approved by DEP, on a project-by-project basis for the preceding three month period:.

1. Schedule for each Stormwater Retrofit Project and an assessment of whether it will be completed within the term of this Agreement;
2. A description of the status of each Stormwater Retrofit Project, including the status of design and implementation and potential changes to the scope.
3. An updated assessment of whether each Stormwater Retrofit Project remains on schedule to be completed within the term of this Agreement;
4. An updated assessment of the estimated cost of each Stormwater Retrofit Project contemplated in this Agreement.
5. The amount of Retrofit Funds provided by the City to EOHWC under this Agreement, and listing separately, the total Retrofit Funds that EOHWC has spent on each Stormwater Retrofit Project;
6. The amount of Retrofit Funds the EOHWC has committed to each Stormwater Retrofit Project in the previous year through binding agreements;
7. The geographic GIS location of each Stormwater Retrofit Project, including identifying the watershed basin in which the project is located.

- E. Annual Reporting on EOH Funds: By April 1 of each year, until the EOH Funds provided by Putnam and Westchester Counties are expended, the EOHWC shall submit to DEP an accounting in a form approved by DEP of expenditures of EOH Funds by Stormwater Retrofit Project and whether the expenditures were for design, construction, or O&M,. The report will also include an itemized accounting of the amount of EOH Funds spent on General Administrative Costs.
- F. State Consultant Services Contractor's Planned Employment Report. In order to comply with Chapter 10 of the Laws of 2006 amended State Finance Law Sections 8 and 163's reporting requirements in contracts for consultant services, EOHWC shall submit by email to NYSDEC, with a copy to DEP, a completed State "Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term", in accordance with the procedure obtained on the website of the Office of the State Comptroller at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm>. The completed form (AC 3271-S) must include information for all employees providing Work under the Agreement whether employed by EOHWC or a subcontractor.
- G. Regional Plan Updates. Concurrently throughout the term of this Agreement, the EOHWC shall submit to DEP a copy of the Regional Plan update it submits to NYSDEC, if any, regarding the status of a Stormwater Retrofit Project and use of the Retrofit Funds and/or EOH Funds.
- H. Committee Materials. The EOHWC will distribute to DEP at the same time it distributes to its Board of Directors and/or any committee members, all correspondence, meeting notices and materials for Board of Directors or committee meetings, including, without limitation, proposed budgets and budget modifications, progress reports, as well as materials distributed to the Board of Directors or any committee members in anticipation of

discussions held during Executive Sessions, and any materials distributed to committee members in anticipation of committee meetings or planned discussions. DEP acknowledges that it is obligated to, subject to law, keep any materials or discussions relating to Executive Sessions confidential on behalf of and for the benefit of EOHWC, until such materials or discussions are disclosed by EOHWC itself.

Section 5.05 Survival

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

ARTICLE 6

PERSONNEL

Section 6.01 Employees

- A. The EOHWC and the City agree that the EOHWC and its employees, agents, contractors and/or consultants, are independent contractors and not employees of the City, DEP or any department, agency, or unit of the City. In accordance with its status as independent contractors, the EOHWC covenants and agrees that neither the EOHWC nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency, or unit thereof.
- B. The City shall not be responsible for the work, direction, compensation and personal conduct of the EOHWC's employees, agents, contractors and/or consultants while engaged under this Agreement.
- C. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the EOHWC, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the EOHWC or for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, workman's compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.
- D. The City shall not be responsible for any physical injuries or death to the EOHWC's agents, servants, or employees or to any other person or damage to any property sustained during the EOHWC's operations and work under this Agreement resulting from any act, omission, commission or error in judgment of any of the EOHWC's officers, members, trustees, employees, agents, servants, or independent contractors. The City shall not be responsible for the safety and protection of the EOHWC's employees.

Section 6.02 Unemployment Insurance

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

employees.

Section 6.03 Minimum Wage

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

Section 6.04 Equal Employment Opportunity

- A. The EOHWC agrees that it has not and will not engage in any unlawful discrimination based upon race or perceived race, creed, color, religion, national origin, sex, sexual orientation, gender, disability or other handicap, age, mental or physical disability, marital status, status with regard to public assistance, religious practice, political beliefs or affiliations, ancestry, presence of a service dog, sexual orientation, criminal conviction, (unless there is a direct relationship between one or more of the previous criminal offenses and the specific employment sought or held by the individual; or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public), pregnancy, victim of domestic violence, stalking or sex offenses, military status, or predisposing genetic characteristics, unemployment status, or status with regard to public assistance or any other class protected by the Human Rights Law, 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.
- B. The EOHWC will state in all solicitations or advertisements for employees placed by or on behalf of the EOHWC that all qualified applicants will receive consideration for employment without unlawful discrimination and that it is an equal employment opportunity employer.
- C. The EOHWC shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments and policy.
- D. EOHWC shall comply with all the requirements of the Whistleblower Protection Expansion Act, as set forth in Appendix D, annexed hereto and by this reference incorporated herein. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

ARTICLE 7

PROCUREMENT OF GOODS AND SERVICES

Section 7.01 Competitive Bidding of Work

- A. Unless otherwise specified, the EOHWC shall competitively bid all work, exclusive of professional services, not performed by the EOHWC that would be subject to public bidding in accordance with the provisions of Section 103 of the General Municipal Law which would apply if the EOHWC were a municipal corporation and shall comply with the terms thereof.
- B. The EOHWC shall develop a professional consultant procurement policy and procedures which it will follow to obtain professional services. The policy and procedures shall require that for all professional service contracts in the amount of Twenty-Five Thousand Dollars (\$25,000) or more, the EOHWC shall solicit proposals from at least three (3) prospective consultants qualified under the laws of the State of New York to perform the proposed work, except that three (3) proposals shall not be required when selecting a governmental agency.
- C. EOHWC is encouraged to make good faith efforts to promote and assist in the participation of "Service-Disabled Veteran-Owned Businesses" or "SDVOBs" on the performance of the Work and provision of materials. The directory of New York State certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Section 7.02 Consultants and Other Contractors:

- A. In addition to the foregoing, before allowing any consultant or other contractor (the "Contractor") to perform work to be paid with Retrofit Funds, EOHWC shall enter into a written contract ("Contract"), which shall include the provisions set forth below.
 - 1. A requirement that the Contractor perform all work in accordance with the terms of this Agreement, and the NYSDEC Prime Contract. If there is any term or provision that is inconsistent with or in conflict with the NYSDEC Prime Contract, the NYSDEC Prime Contract shall control.
 - 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 Retrofit Funds requiring review and approval by DEP under the Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources ("Watershed Regulations") (10 NYCRR Part 128, Title 15, RCNY Chapter 18) or required to be designed, constructed or implemented in accordance with standards set forth in the Watershed Regulations, be submitted for such review and approval and be designed, constructed, and implemented in accordance with the Watershed Regulations;
 - 3. A requirement that Contractors for construction exceeding Thirty-Five Thousand Dollars (\$35,000) provide a performance and completion bond in the full amount of the bid to

secure the successful completion of all work, and a payment bond to ensure that all materialmen and laborers are paid for work performed with Retrofit Funds. The performance bond or other security shall name the City, the Water Board, EOHWC, the NYSDEC and the State of New York, as obligees in the full amount of the cost of the work to be performed by the contractor, shall be issued by a surety company qualified to do business in the State, and shall secure the faithful performance and completion of all work required of the contractor. In addition, EOHWC shall require the contractor(s) to provide a payment bond or other security acceptable to the City in the full amount of the work to be performed by the contractor guaranteeing prompt payment of monies due to all persons furnishing labor or materials in the prosecution of the construction Work, as required by State Finance Law Section 137;

Before they commence any work under this Agreement, a requirement that Contractors have liability insurance in compliance with the terms and conditions and in the amounts provided in Appendix B.

4. A statement and a requirement that Contractors agree to the maximum extent permitted by law, defend, indemnify, and hold harmless the City, Water Board, the NYSDEC, and the State of New York, including their respective officials, employees, agents and assigns (collectively, "Indemnitees"), from and against all losses from claims (including, but not limited to, claims asserted against it), demands, payments, suits, actions, recoveries, judgments and costs and expenses of whatever kind (including, but not limited to, payment or reimbursement of attorneys' fees and disbursements) brought or recovered against it by reason of any omission or tortious act of the Contractor, or any of their agents, employees, suppliers or subcontractors, in the performance of the contract or the failure to comply with any of the provisions of this Agreement or of the law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Section by way of cross-claim, third-party claim, declaratory action or otherwise. The statement shall further require that the indemnification obligation contemplates (1) full indemnity in the event of liability imposed against an Indemnatee without negligence and solely by reason of statute, operation of law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of an Indemnatee, either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise). The statement shall further require that where the indemnification provides for partial indemnity, all costs and expenses shall be indemnified on a pro rata basis. The Contractors shall further agree that the foregoing indemnification shall not relieve the Contractor of its obligations to purchase insurance (as described in Article 4), nor shall a failure to purchase said insurance relieve Contractor of its indemnification obligations.
5. The City may retain such monies from the amount due EOHWC as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the City, the NYSDEC and/or the State;

6. A requirement that Contractors agree to and comply with a budget, a scope of work, a progress schedule for completion of the work within specified milestones and payment schedule which is dependent upon completion of the work within the specified period of performance;
7. A representation and warranty that no payment, gift or thing of monetary value was made, given or promised to a EOHWC officer, director, or employee to obtain the Contract or any other agreement with the City or the EOHWC;
8. A statement and requirement that nothing contained in the Contract shall impair the rights of the City or NYSDEC under this Agreement or the NYSDEC Prime Contract;
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, the State or NYSDEC; and
11. A requirement that the Contractor not engage in any unlawful discrimination based upon actual or perceived race, color, creed, religion, religious practice, political beliefs or affiliations, ancestry, national origin, sex, sexual orientation, gender, disability or other handicap, predisposing genetic characteristics, pregnancy, age, veteran or military status, marital/familial status, partnership status, arrest or conviction record, status as a victim of domestic violence, stalking or sex offenses, unemployment status, or status with regard to public assistance or any other class protected by federal, state or local law 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, layoffs, termination, and all other terms and conditions of employment;
12. Unless waived in writing by the NYSDEC, the Contract shall expressly name the State, through the NYSDEC, as an intended third party beneficiary, except that this right shall not make the NYSDEC or the State a party to any Contract or create any right, claim or interest in the subcontractor against the NYSDEC.
13. A requirement that the Contractor has submitted a completed "Vendor Assurance of No Conflict of Interest or Detrimental Effect" form to NYSDEC.
14. A provision requiring that the Contractor performing public work within the meaning of Section 220 of the New York State Labor Law fully comply with all applicable prevailing wage requirements and all other applicable requirements of Section 220 of the State Labor Law. If applicable, the Contractor shall have each worker sign a statement

certifying that each worker has received a notice of prevailing wage, which statement shall be maintained with the payroll records; and

15. A requirement that Contractor maintain the original certified payrolls or certified transcripts which Contractor is required to maintain pursuant to the New York Labor Law Section 220. Within thirty days of issuance of the first payroll and every thirty days thereafter, each Contractor must submit a transcript of the original payroll to DEP, which must be subscribed and affirmed as true under penalty of perjury.
 16. A prohibition on the purchase of tropical hardwoods to be used under this Agreement.
- B. The EOHWC shall enforce the foregoing provisions of its Contracts.
 - C. The EOHWC shall also require such Contractors to maintain certified payroll records evidencing their compliance with Section 220 of the State Labor Law.
 - D. EOHWC shall provide DEP with a copy of any Contract entered into by it with respect to any aspect of this Agreement and of any subcontract entered into by its Contractor.
 - E. Construction of any Stormwater Retrofit Project funded with Retrofit Funds shall not begin until EOHWC has received all necessary approvals and permits and secured the necessary bonds and proof of insurance pursuant to Article 4, and provided all notices that are necessary under law or contract prior to commencing the work. The Contract shall be void and of no effect unless the Contractor procures the required insurance policies and maintains them until acceptance of the work.
 - F. The City and NYSDEC may at any time throughout the term of this Agreement, verify that the Contract is in compliance with all the provisions of this Agreement. EOHWC shall notify DEP immediately in writing of the initiation of any legal action or suit which relates in anyway way to a Contract with a Contractor or which may affect the performance of EOHWC's duties under this Agreement.
 - G. EOHWC is responsible for informing its contractors and consultants of all relevant terms, conditions and requirements of this Agreement.
 - H. Notwithstanding the foregoing, EOHWC agrees that it is fully responsible to the City and NYSDEC for the acts and omissions of its Contractors and of persons either directly or indirectly employed by such Contractors as it is for the acts and omissions of any person directly employed by it. EOHWC further agrees that EOHWC and its Contractors shall not in any way be relieved of any of its responsibilities, duties and liabilities under this Agreement by virtue of entering into any contract or subcontract for the performance of any portion of a Stormwater Retrofit Project.
 - I. The provisions of this Section shall survive expiration or termination of this Agreement.

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 Retrofit Funds.
- B. For Contractors paid a total compensation of less than \$100,000 with Retrofit Funds, 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. If at any time during the term of this Agreement, total compensation to a Contractor is expected to exceed \$100,000 or as otherwise requested by DEP, EOHWC shall cause each applicable Contractor that meets the criteria set forth in this Subsection B, to file a certified “Vendor Responsibility Questionnaire” online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at: http://www.osc.state.ny.us/venrep/info_vrsystem.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

Section 8.01 Status and Authority of the EOHWC

The EOHWC represents and warrants that:

- A. The EOHWC is and will continue to be a locally based and administered not-for-profit corporation duly organized under Section 1411 of the New York State Not-For-Profit Corporation Law, validly existing and in good standing under the laws of the State of New York.
- B. The EOHWC has all requisite power and authority to execute, deliver and perform this Agreement.
- C. The EOHWC has supplied the City with current copies of its certificate of incorporation and by-laws, and submitted a certified “Vendor Responsibility Questionnaire” to NYSDEC prior to execution of this Agreement, and will update these if they are amended during the term of this Agreement.
- D. The EOHWC has submitted a completed “Vendor Assurance of No Conflict of Interest or Detrimental Effect” form to NYSDEC prior to execution of this Agreement.
- E. This Agreement has been duly authorized by all necessary action on the part of the EOHWC and has been duly executed and delivered by the EOHWC and, assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of the

EOHWC.

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

Section 8.02 Authority of the City

The City represents and warrants that:

- A. The City has all requisite power and authority to execute, deliver and perform this Agreement. DEP is a validly authorized and existing agency of the City, with full right and power to execute, deliver and perform its obligations under this Agreement.
- B. The execution, delivery and performance by the City and DEP of this Agreement are within the powers of the City and DEP, and upon registration of this Agreement pursuant to Section 328 of the City Charter, will have been duly authorized by all necessary action on the part of the City, and will require no action by or in respect of, or filing with, any governmental body, agency or official. Upon registration of this Agreement pursuant to Section 328 of the City Charter, the City also represents that the City and DEP will have complied with all applicable laws in connection with the execution, delivery and performance of this Agreement.
- C. This Agreement will, when executed by the City and registered by the City pursuant to Section 328 of the City Charter, and assuming due execution and delivery by the EOHWC, constitute the valid and binding agreement of the City and DEP, enforceable in accordance with its terms.
- D. The execution and delivery of this Agreement by the City and DEP, 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 DEP.

Section 8.03 Conflict of Interest

Organizational Conflict of Interest. The EOHWC represents and warrants that, except in its role as agent on behalf of the certain municipalities located in the City's East of Hudson watershed, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, defined as when the nature of the work to be performed under this Agreement may without some restriction on future activities, impair or appear to impair EOHWC's objectivity in performing the Work.

- A. Personal Conflict of Interest. To the best of EOHWC's knowledge, neither it nor any of its directors, officers, members, partners or employees: (i) have any interest nor shall they acquire any interest, directly or indirectly, in any contracts, except contracts between the EOHWC and a municipality member comprising EOHWC, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided; or (ii) except for the municipality members comprising EOHWC, have any relationship of an employee, subcontractor employee or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee or consultant in performing the Work except as provided in H.
- B. The EOHWC further represents and warrants that in the performance of this Agreement, other than in its capacity as a municipality member comprising EOHWC, 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 Retrofit Funds to be paid to the EOHWC by the City except as provided in H.
- C. An employee, officer, director or member of the EOHWC, upon learning that any project proposed will constitute a personal conflict of interest as defined above, 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 except as provided in H.
- D. No elected official or other officer or employee of the municipalities comprising EOHWC, or the City or DEP, nor any person whose salary is payable, in whole or in part, from the City Treasury, or from Retrofit Funds shall participate in any decision relating to this Agreement which affects her/his personal interest or the interest of any corporation, partnership or association other than the applicable municipality, the City or DEP, respectively, in which he/she is, directly or indirectly, interested except as provided in H.
- E. The EOHWC shall maintain a conflict of interest policy that provides that no officer, employee or director of the EOHWC shall use or attempt to use his/her position with the EOHWC to obtain any personal financial gain, contract, privilege or other advantage from performing the Work. The conflict of interest policy shall also provide that any officer, employee or director of the EOHWC shall fully disclose to the EOHWC any financial or other interest in any proposed contract to be awarded or approved by the EOHWC before any discussion of such matter or vote regarding such matter, shall absent himself or herself from, and shall not participate in any discussion or vote concerning such matter, and shall not seek to use personal influence in connection with the Board of Directors' consideration of such matter. Nothing in this Section, however, shall prohibit an elected official of an East of Hudson Watershed municipality or employee of the City from using his/her position with the EOHWC to obtain a gain, contract, privilege or other advantage for the benefit of the municipality represented by such official or of the City provided that any benefit conferred on such official or employee personally by virtue of such action is similar to the benefit conferred on other eligible residents of the municipality.

- F. The conflict of interest policy shall further provide that no officer, employee or director of the EOHWC shall assume a position as director, officer or employee with, or acquire a financial interest in any firm or corporation which is awarded a contract by the EOHWC.
- G. For purposes of the EOHWC's conflict of interest policy, a conflict of interest will be deemed to exist if the officer, director, or employee of the EOHWC has, or the officer's, director's or employee's immediate family has, or is considering acquiring, a position with, or an ownership or other financial interest in, any person or firm holding, bidding for, or proposed to be awarded a contract to be awarded hereunder.
- H. Unless waived by DEP, EOHWC shall certify annually, commencing one year following the Effective Date, and each year thereafter, within 45 days after the close of the previous annual certification, that, to the best of its knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, pertaining to this Agreement have been reported to DEP. A record of disclosure and recusal in the minutes of the EOHWC's meetings is a report.

ARTICLE 9

APPLICABLE LAWS, RULES, AND REGULATIONS

Section 9.01 Severability

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

Section 9.02 Compliance with the Law

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

ARTICLE 10

DEFAULT, SUSPENSION OR TERMINATION

Section 10.01 Early Termination

The City may postpone, suspend, abandon or terminate this Agreement at any time upon: (a) the withdrawal by NYSDEC of its subcontractor approval of EOHWC; (b) the withdrawal by NYSDEC of funds for the Stormwater Retrofit Projects; or (c) the postponement, suspension, abandonment or termination of the NYSDEC Prime Contract. Such action by the City shall in no event be deemed a breach of the Agreement. In any of the foregoing events, the City shall make settlement with EOHWC in accordance with the allocation of funds received by the City from NYSDEC pursuant to the NYSDEC Prime Contract.

Section 10.02 Defaults

If either Party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than ten (10) calendar days after written notice of such default is received by the defaulting Party from the non-defaulting Party, or the defaulting Party fails to make a good faith effort to correct the defect, such non-defaulting Party may (in addition to any other rights or remedies available at law or in equity) suspend work or terminate this Agreement upon written notice to the defaulting Party. If a material breach of the Agreement cannot be cured within ten (10) days, the Agreement shall not be suspended or terminated pursuant to this Section if the breaching Party commences appropriate actions to cure the breach prior to the end of the ten (10) days and diligently prosecutes the actions necessary to cure the breach.

Section 10.03 Force Majeure

In the event the City cannot comply with the terms and conditions of this Agreement because climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides or other catastrophes or acts of God; acts of war or of the public enemy or terrorist acts; disruption, outage or power failure caused by a utility's inability to provide service, pandemics, epidemics, outbreaks of infectious disease or any other public health emergency; other states of emergency declared by the City, State or Federal government, quarantine restrictions, and freight embargoes; including the City's or EOHWC's reasonable responses to any of the above or other condition as to which conduct the City was not the proximate cause, as to which conduct the City was not the proximate cause, the City's performance hereunder may be excused or delayed provided the City notifies the EOHWC in writing within thirty (30) days of obtaining knowledge of such condition and requests an appropriate extension of the relevant terms and conditions of this Agreement and further provided that the City makes its best efforts to provide for alternate arrangements to fulfill the terms and conditions of this Agreement.

- A. In the event the EOHWC cannot comply with the terms and conditions of this Agreement because of climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides or other catastrophes or acts of God; acts of war or of the public enemy or terrorist acts; disruption, outage or power failure caused by a utility's inability to provide service, pandemics, epidemics, outbreaks of infectious disease or any other public health emergency; other states of emergency declared by the City, State or Federal government, quarantine restrictions, and freight embargoes; including the City's or EOHWC's reasonable responses to any of the above 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 Retrofit Funds for the purposes set forth in Section 2.01.

Section 10.04 Rights Upon Termination of Agreement

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

- A. The City shall stop making any further payments to the EOHWC pursuant to this Agreement, and the EOHWC shall not incur any further obligation pursuant to this Agreement and shall cancel all cancelable obligations for material and equipment. Except in the event of EOHWC's default as defined in Section 10.02, the EOHWC shall be entitled to receive or retain Retrofit Funds for Eligible Costs to fulfill non-cancelable obligations required by contracts entered into by EOHWC in good faith prior to receiving a notice of termination. Within thirty (30) days of receipt of notice, EOHWC shall submit to DEP, copies of all data, reports, plans or other documentation related to performance of Work under this Agreement.
- B. Within thirty (30) days of the expiration or earlier termination of this Agreement, the EOHWC shall account for and return to DEP or the City: (i) all "Unallocated Retrofit Funds" (as defined in Section 3.02); and (ii) provided the expiration or earlier termination of this Agreement is the result of a default by EOHWC, including without limitation, the failure by EOHWC to complete a Retrofit Project by the expiration of the Term of this Agreement, all funds provided to the EOHWC pursuant to this Agreement that did not result in the implementation of a completed Bondable Stormwater Retrofit Project.
- C. The EOHWC shall submit, within ninety (90) calendar days of termination, the reports required pursuant to Subsection 5.04.
- D. The provisions of this Section shall survive expiration or termination of this Agreement.

ARTICLE 11

INDEMNIFICATION

Section 11.01 Indemnification.

o the fullest extent permitted by law, EOHWC shall defend, indemnify, and hold the City, the Water Board, the NYSDEC, and the State of New York, including their respective officials, employees, agents and assigns (collectively, the "Indemnitees") from and against all losses from claims (including, but not limited to, claims asserted against it), demands, payments, suits, actions, recoveries, judgments and costs and expenses of whatever kind (including, but not limited to, payment or reimbursement of reasonable attorneys' fees) brought or recovered against it by reason of any omission or tortious act of the EOHWC, or any of their agents, employees, suppliers or subcontractors, in the performance of the contract or the failure to comply with any of the provisions of this Agreement or of the law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Article 11 by way of cross-claim, third-party claim, declaratory judgment action or

otherwise. The City may retain such monies from the amount due EOHWC as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against an Indemnatee. The EOHWC expressly agrees that the indemnification obligation hereunder contemplates (i) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (ii) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a *pro rata* basis. Notwithstanding the foregoing, at its option, EOHWC may assume the defense of any third-party claim subject to indemnification as provided herein, by giving written notice to the Indemnitees within thirty (30) days after EOHWC's receipt of notice of such a claim. Upon assuming the defense of such claim, EOHWC shall select counsel that is satisfactory to the Indemnitees and shall thereafter continue to defend such claim in good faith. Should EOHWC assume the defense a claim (and continue to defend such claim in good faith), EOHWC will not be liable to the Indemnitees for any legal expenses subsequently incurred in connection with the claim, unless EOHWC has failed to assume the defense and employ counsel in accordance with this Article 11.

- A. Indemnification under this Article 11 or any other provision of this Agreement shall operate whether or not EOHWC and its contractors and/or subcontractors have placed and maintained the insurance required under Article 4. EOHWC waives all rights against the City, including its officials and employees, for any damages or losses for which either is covered under any insurance required under this Agreement (whether or not such insurance is actually procured) or any other insurance applicable to the operations of a consultant or contractor of EOHWC.
- B. The provisions of this Section shall not be deemed to create any new right of action in favor of any third parties against the City, the Water Board, EOHWC, NYSDEC, or the State of New York beyond such as may legally exist irrespective of this Section or this Agreement.
- C. The provisions of this Section shall survive expiration or termination of this Agreement.

ARTICLE 12

INVESTIGATIONS

Section 12.01 Cooperation with Governmental Investigations

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

of this Agreement. The provisions of this Section shall survive expiration or termination of this Agreement.

ARTICLE 13

COPYRIGHTS AND PUBLICATION

Section 13.01 Copyright

NYSDEC has title to and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created in the performance of the Work. Any invention or discovery made or conceived in the performance of the Work shall be the property of NYSDEC. DEP shall request that NYSDEC grant to EOHWC an irrevocable, royalty-free, non-exclusive right to reproduce, translate and use all such copyrighted material or patent for its own purposes and for the purposes of its participating Municipalities.

Section 13.02 Publications

EOHWC may publish papers or other material pertaining to the Work performed under this Agreement after providing DEP with a copy of the proposed publication for review and comment by NYSDEC. DEP may, upon direction from NYSDEC, require EOHWC to withhold from publication any data that impacts on enforcement issues until resolution of enforcement action. If applicable, in recognition of a portion of the NYSDEC funds utilized for any Work completed under this Agreement, EOHWC agrees to acknowledge in any communication to the public, that such funding was provided from the Environmental Protection Fund as administered by the NYSDEC.

ARTICLE 14

MISCELLANEOUS PROVISIONS

Section 14.01 Assignment or other Disposition of the Agreement

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

Section 14.02 Modification

This Agreement may not be modified or amended except by an instrument in writing signed by both of the Parties hereto and if applicable, approved by the NYSDEC, effective upon registration by the City pursuant to Section 328 of the Charter of the City of New York. This Agreement may not be modified or amended orally.

Section 14.03 Notifications

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

If to DEP:

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

with a copy to:

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

If to the EOHWC:

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

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

Section 14.04 Third-Party Beneficiary

EOHWC acknowledges and agrees that the State of New York, through the NYSDEC, shall be the sole intended third-party beneficiary to this Agreement. This Agreement is not intended to create any benefit or interest in any other third party except for the State of New York.

Section 14.05 Cooperation

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

Section 14.06 Claims or Actions Against the City

A. No director, officer, employee, agent or other person authorized to act on behalf of the City

shall have any personal liability in connection with this Agreement or any failure of the City to perform its obligations hereunder. No director, officer, employee, agent or other person authorized to act on behalf of the EOHWC shall have any personal liability in connection with this Agreement or any failure of the EOHWC to perform its obligations hereunder.

- B. The EOHWC shall report to DEP in writing within seven (7) days of the initiation by the EOHWC or the service on the EOHWC of any legal action or proceeding in connection with or relating to this Agreement. In the event any claim is made or any action brought in any way relating to the Agreement herein (except an action brought by the EOHWC against the City or by the City against the EOHWC), the EOHWC shall diligently render to DEP and/or the City without additional compensation, any and all reasonable and necessary assistance which DEP and/or the City may require of the EOHWC to prosecute or defend against such claim or action. Nothing in this section shall be deemed to require EOHWC to waive the attorney client privilege.

Section 14.07 Political and Lobbying Activity

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

Section 14.08 Diesel Emissions Reduction Act 2006

EOHWC and its subcontractors must comply with the specifications and provisions of the Environmental Conservation Law ("ECL" Section 19-0323 and 6 NYCRR Part 248, which require the use of best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD") for heavy duty vehicles owned or operated under this Agreement, unless specifically waived by DEP. Qualifications for a waiver under this law are the responsibility of EOHWC.

Section 14.09 Miscellaneous

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

CONTRACT SIGNATURE PAGE

This Contract is entered by and between the City of New York (“City”), acting by and through the **DEPARTMENT OF ENVIRONMENTAL PROTECTION**, and **EAST OF HUDSON WATERSHED CORPORATION** (“Contractor”).

This Contract consists of this contract signature page as well as the following documents (“Contract Documents”) which are located in the Documents tab of the PASSPort record titled **82625R0003-BWS-SWP-113**.

1. SWP-113 Agreement - Mar 12 2025 2:41PM

The above order does not represent an order of precedence. The Contract shall be governed by the order of precedence, if any, in the Contract Documents or by ordinary contract principles if no such order of precedence exists.

Each party is signing this Contract electronically on the date stated in that party's electronic signature.

The City of New York

By: **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Signed By: Joseph Vaicels
1AC6E69DD022461...

(Signature)

Joseph Vaicels

Name: _____

Title: Agency Chief Contracting Officer

Date: 3/17/2025 | 10:20:30 EDT

Contractor

By: **EAST OF HUDSON WATERSHED CORPORATION**

Signed By: Richard Williams Sr
26D2936B3A6B46B...

(Signature)

Richard Williams Sr

Name: _____

Title: Supervisor, Town of Patterson

Date: 3/14/2025 | 11:19:22 PDT

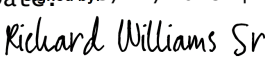
Signatures

Number of pages (including this one): 2

- ✓ Document signed electronically, the signatories agreeing that it is authentic between them.
- ✓ By signing this document, the signatories acknowledge and agree that they have carefully read this document and approve all its terms.

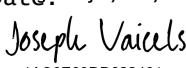
Nom: Williams Sr Richard
Fonction: President

Place: 1142 Route 311, Patterson, NY
Signed by: 3/14/2025 | 11:19:22 PDT


26D2836B3A6B46B...

Nom: Vaicels Joseph
Fonction: ACCO

Place: New York
Signed by: 3/17/2025 | 10:20:30 EDT


1AC6E69DD022461...

APPENDIX A
Form of Invoice [EOHWC Letterhead]

INVOICE NO. _____

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

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

From: East of Hudson Watershed Corporation
2 Route 164
Patterson, NY 12563
Attn: President

Re: Agreement between the New York City Department of Environmental
Protection and the East of Hudson Watershed Corporation dated _____, 202__

Invoice Date: _____

Contract No.: _____

Amount: \$ _____

Remit To: East of Hudson Watershed Corporation
Attn: Treasurer
2 Route 164
Patterson, NY 12563

Electronic Funds Transfer Account # _____
Account Holder: East of Hudson Watershed Corporation
Bank: _____

President
East of Hudson Watershed Corporation

APPENDIX B

Insurance Specifications

The following terms supplement Article 4 of this Agreement. Defined terms shall take the same meaning as indicated in this Agreement.

Section 1 Agreement to Insure

EOHWC shall maintain, and cause its contractors, consultants and subcontractors and subconsultants to maintain, the following types of insurance if and as indicated in Schedule A of this Appendix B (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement. All insurance shall meet the requirements set forth in this Appendix B. Wherever this Appendix B requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that EOHWC can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 2 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

A. EOHWC shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with applicable law on behalf of, or in regard to, all employees providing services under this Agreement.

B. Within 10 days of the Effective Date, or as otherwise specified by DEP, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), EOHWC shall submit proof of CW Corp.’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to DEP in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms, or equivalent, are acceptable:

1. Form C-105.2, Certificate of Workers’ Compensation Insurance;
2. Form U-26.3, State Insurance Fund Certificate of Workers’ Compensation Insurance;
3. Form SI-12, Certificate of Workers’ Compensation Self-Insurance;
4. Form GSI-105.2, Certificate of Participation in Worker’s Compensation Group Self-Insurance;
5. Form DB-120.1, Certificate of Disability Benefits Insurance;
6. Form DB-155, Certificate of Disability Benefits Self-Insurance;
7. Form CE-200 – Affidavit of Exemption;
8. Other forms approved by the New York State Workers’ Compensation Board; or

9. Other proof of insurance in a form acceptable to the City.

Section 3 Other Insurance

A. Commercial General Liability Insurance. EOHWC shall maintain commercial general liability insurance in the amounts specified in Schedule A of this Appendix B, covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and “occurrence” based rather than “claims-made.” Such coverage shall list the City, together with its officials and employees, and the New York City Water Board, together with its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 26 and, if construction is performed as part of the Work, ISO Form CG 20 37.

B. Commercial Automobile Liability Insurance. If vehicles are used in the provision of Work under this Agreement, EOHWC shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. Professional Liability Insurance.

1. To the extent applicable, EOHWC shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such Work to be provided under this Agreement. The policy or policies shall cover the liability assumed by EOHWC under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of EOHWC or anyone employed by EOHWC.

2. All Subcontractors of EOHWC providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A of this Appendix B. At the time of the request for subcontractor approval, EOHWC shall provide to DEP, evidence of such professional liability insurance on a form acceptable to DEP.

3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, EOHWC shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

D. Builders' Risk Insurance. All Subcontractors performing construction work shall maintain Builders Risk Insurance on special causes of loss and completed value forms through completion of construction. Unless waived by DEP, such insurance shall include coverage, without limitation, for terrorism, windstorm (including named windstorm), water (other than flood-related), storm surge, and earth movement. It shall include coverage for collapse in the course of construction and ordinance and law, including coverage for loss to the undamaged portion of the building, demolition cost coverage, and increased cost of construction coverage. Such insurance shall cover, without limitation, (a) all buildings and/or structures involved in the Contract work, as well as temporary structures at the work site, and (b) any property that is intended to become permanent part of such building or structure, whether such property is on the work site, in transit or in temporary storage. Policies shall name the construction contractor as Named Insured and list the City, its officials and employees as both an Additional Insured and a Loss Payee as its interest may appear.

Section 4 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by this Appendix B must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured on Schedule A of this Appendix B.

B. EOHWC shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 3 of this Appendix B unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A of this Appendix B with all rights that would be provided by traditional insurance required under this Appendix B, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, the Water Board,

including their officials and employees, DEC, the State, and any other additional insured listed on Schedule A of this Appendix B that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to EOHWC as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 5 Proof of Insurance

A. For each policy required under this Appendix B, EOHWC shall file proof of insurance and, where applicable, proof that the City, the Water Board, including their officials and employees, DEC and the State are additional insureds with DEP within ten days of the Effective Date. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Appendix B) and any endorsements by which the City the Water Board, including their officials and employees, DEC and the State have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 3 of this Appendix B must be submitted to DEP prior to the expiration date of the coverage. Such proof must meet the requirements of Section 5(A) of this Appendix B.

C. EOHWC shall provide the City with a copy of any policy required under this Appendix B upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse EOHWC from maintaining policies consistent with all provisions of this Appendix B (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If EOHWC receives notice, from an insurance company or other person, that any insurance policy required under this Appendix B shall expire or be cancelled or terminated for any reason , EOHWC shall immediately forward a copy of such notice to both the address referred to in Schedule A of this Appendix B and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 6 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by this Appendix B, EOHWC shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where EOHWC may not be covered under such policy if this Agreement requires that the City be an additional insured. Such notice shall expressly specify that “this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured” (such notice shall also include the name of any other entity listed as an additional insured on Schedule A of this Appendix B) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. EOHWC shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If CW Corp. fails to comply with the requirements of this paragraph, EOHWC shall indemnify the City, the Water Board, DEC, and the State together with their officials and employees, and any other entity listed as an additional insured on Schedule A of this Appendix B for all losses, judgments, settlements and expenses, including reasonable attorneys’ fees, arising from an insurer’s disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A of this Appendix B.

B. EOHWC’s failure to maintain any of the insurance required by this Appendix B shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Appendix B shall not relieve EOHWC or contractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or law.

D. With respect to insurance required by Section 3 of this Appendix B and Schedule A of this Appendix B (but not including professional liability/errors and omissions insurance), EOHWC waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A of this Appendix B for any damages or losses that are covered under any insurance required under this Appendix B (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of EOHWC and/or its Contractors in the performance of this Agreement.

E. If EOHWC uses any Contractor who will make or participate in any delivery under this Agreement, EOHWC shall require that those Contractors obtain insurance meeting the requirements of this Appendix B. In the event EOHWC requires any Contractor to maintain insurance with regard to any operations under this Agreement and requires such Contractor to list EOHWC as an additional insured under such insurance, EOHWC shall ensure that such entity also list the City, the Water Board, DEC and the State, including their officials and employees,

and any other entity listed as an additional insured on Schedule A of this Appendix B as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

With response to Insurance required by Schedule A of this Agreement, EOHWC and any Contractor may procure supplemental insurance, including umbrella type policies to meet the requirements of Schedule A.

SCHEDULE A

Types of Insurance	Minimum Limits and Special Conditions
■ Workers' Compensation § 2 ■ Disability Benefits Insurance § 2 ■ Employers' Liability § 2	Statutory amounts.
■ Commercial General Liability §3(A)	<u>\$2,000,000.00</u> per occurrence for contracts equal to or above \$100,000; <u>\$1,000,000.00</u> per occurrence for contracts below \$100,000; <u>\$2,000,000.00</u> personal & advertising injury (unless waived in writing by the Department) <u>\$4,000,000.00</u> aggregate for contracts equal to or above \$100,000; <u>\$2,000,000.00</u> aggregate for contracts below \$100,000. \$25,000 maximum deductible \$4,000,000 products/completed operations for contracts equal to or above \$100,000; <u>\$2,000,000.00</u> aggregate products/completed operations for contracts below \$100,000. City and the New York City Water Board, including each of its officials and employees, shall be named as "loss payee as its interests may appear" and additional insured

■ Commercial Auto Liability § 3(B)	<u>\$1,000,000.00</u> per accident combined single limit If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90
■ Professional Liability/Errors & Omissions § 3(C)	<u>\$1,000,000.00</u> per claim
Builders' Risk (for construction contracts only)	100% of the value of the contract work City and the New York City Water Board, including each of its officials and employees, shall be named as "loss payee as its interests may appear" and additional insured
Notice	

Department's Mailing Address and Email Address for Notices	DEP Office of the ACCO ATTN: Contract Management Unit (Insurance) 59-17 Junction Blvd., 17th Floor Flushing, New York 11373 A copy of each insurance certificate shall also be sent to: DEP Bureau of Water Supply ATTN: DEP Project Manager 465 Columbus Avenue Valhalla, New York 10595
--	---

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

(1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

(2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

In the event DEP requires such policy or certificate to include information that is not on the printed forms (ie: policy or page number on each page), the certification by the insurance broker in the form on the following page setting forth the required information and signatures shall be sufficient to acknowledge that the policy and/or certificate was issued without such requested information.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

APPENDIX C

This appendix is intended to provide guidance to the Parties on Eligible Costs of implementing the Regional Retrofit Plan for Years 11-15 with Retrofit Funds, and costs which are not eligible for payment from Retrofit Funds. The EOHWC shall only use Retrofit Funds provided under this Agreement for capital construction projects of Stormwater Retrofit Projects, as described herein, that are bondable. Any costs expended for a project under this Agreement may only be eligible costs provided the work results in a completed bondable project under this Agreement.

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

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 Regional Retrofit Plans for Years 11-15 to determine phosphorus reduction efficacy.

Responses to NYSDEC technical reviews and comments on specific Stormwater Retrofit Projects in the Stormwater Retrofit Plans for Years 11-15.

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.

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 Plan for Years 11-15, 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

Management of invoices, expenses and payments to contractors, including legal fees associated with 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 with Retrofit Funds

The following are not eligible for payment using Retrofit Funds.

Projects

Planning and/or design work, including each of the items set forth above, which does not result in a completed, bondable Stormwater Retrofit Project under this Agreement.

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, and reprioritizing Stormwater Retrofit Projects in the Regional Retrofit Plan.

Operation and Maintenance

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

Perform O&M for any retrofits.

Administrative Tasks

General Administrative Costs

Pro rata allocation of EOHWC's or Subcontractors' expenses for Workers' Compensation and Disability benefits).

Preparing the list of stormwater retrofit projects to be implemented in Years 11 through 15, 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.

Preparing and submitting any audited financial report or annual report or progress report or other report to DEP required under Article 5 of this Agreement, including the pro-rata allocation of staff time and expenses (including benefits) and consultant fees required for the preparation of all reports required by Article 5 of the Agreement.

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

Acting as a clearinghouse for EOHWC member municipalities' MS4 program.

Implementation of any MS4 program elements other than the Stormwater Retrofit Program

Providing general administrative support to the EOHWC or EOH Coalition.

Appendix D
Whistleblower's Certificate

- A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. EOHWC shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

2. If any of EOHWC's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of Section (A) 1 of this Appendix F, he or she shall be entitled to bring a cause of action against CW Corp. to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

3. EOHWC shall post a notice in accordance with Attachment 1 provided by the City below in a prominent and accessible place on any site where work pursuant to this Agreement is performed that contains information about:

a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

4. For the purposes of this Appendix F, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance

evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Appendix is applicable to all EOHWC's subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, EOHWC shall include this Appendix in all subcontracts with a value in excess of \$100,000.00.

- B. Section A is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections A(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency.

Attachment 1



REPORT CORRUPTION, FRAUD, UNETHICAL CONDUCT RELATING TO A NYC-FUNDED CONTRACT OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATION [212-825-5959](tel:212-825-5959)

**DOI CAN ALSO BE REACHED BY MAIL
OR IN PERSON AT:**

**New York City Department of
Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU**

OR FILE A COMPLAINT ON-LINE AT:

www.nyc.gov/doi

All communications are confidential



**Or scan the QR Code above
to make a complaint**

**THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT
CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.