

**AGREEMENT FOR INSTALLATION  
OF STORMWATER RETROFIT PROJECT  
Y-MU-40**

THIS AGREEMENT is made and entered into the 8<sup>th</sup> day of August, 2023, by and between EAST OF HUDSON WATERSHED CORPORATION ("EOHWC"), a local development corporation having its principal office at 2 Route 164, Patterson, New York, 12563, the TOWN OF YORKTOWN, having its town offices at 363 Underhill Ave, Yorktown Heights, NY 10598 ("Municipality"). EOHWC and Municipality are referred to as the "Parties".

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

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

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

Section 1. The Owner is the fee owner of certain premises located in the Town OF YORKTOWN, County of Westchester and State of New, as described in Exhibit "A" (the "Property").

Section 2. EOHWC shall undertake on the Property, at EOHWC's own expense and with the permission and consent of the Municipality, the stormwater retrofit project set forth in the Project Description appended hereto as Exhibit "B" ("Stormwater Retrofit Project Description").

Section 3. The Municipality hereby grants to EOHWC, its successors and assigns, a nonexclusive right of access to the Property for the purpose of installing and maintaining the Stormwater Retrofit Project. A map of the area to which access is hereby granted, is annexed hereto in Exhibit "C" ("Easement Premises").

Section 4. EOHWC's access to the Easement Premises shall be unrestricted during normal business hours or, upon reasonable notice, during non-business hours and shall include, without limitation, unrestricted access, egress and ingress to and across all improvements, structures and facilities thereon. EOHWC's access to the Easement Premises and work performed on the Easement Premises shall be conducted in such a manner as to minimize to the extent practical any disruption to the Municipality.

Section 5. EOHWC shall procure all necessary approvals and permits for the construction and installation of the Stormwater Retrofit Project at its sole cost and expense and shall have sole and exclusive supervision and control of the construction of all improvements upon the Easement Premises, including the selection of materials and contractors. The Municipality agrees, upon request, to cooperate with EOHWC in obtaining such licenses and permits.

Section 6. EOHWC shall not at any time permit or suffer any lien to be attached to the Property, and, if attached, shall within thirty (30) days cause the same to be discharged and released. EOHWC shall obtain at its expense or require all contractors (and subcontractors) retained to do such work to carry the forms of insurance set forth in Exhibit "D." All insurance coverages maintained by EOHWC with respect to the Property shall be primary insurance as respect to the Municipality (as defined in Exhibit "D").

Section 7. EOHWC shall indemnify and hold harmless the Municipality from and against any and all claims, demands, suits and actions, and any liabilities, losses, damages, and/or judgments which may arise therefrom, as well as against any fees, costs, charges or expenses which the Municipality incur in the defense of any such claims, demands, suits, actions or similar such demands made or filed by any party (hereinafter "Claims"), arising or resulting from (1) EOHWC's breach or claim of breach of its obligations under this Agreement, (2) any injury or damage to persons or property arising from, out of or incident to EOHWC's exercise or failure to exercise any of its rights or obligations hereunder, and (3) the negligence, gross negligence or willful misconduct of EOHWC or any of its agents or contractors, in any way related to the subject matter of this Agreement. Notice of any Claim subject to this indemnification shall be given. Excluded from the provisions of this section are liabilities, losses, damages and/or judgments arising from, out of or incident to the negligence, gross negligence or willful misconduct of the Municipality.

Section 8. All obligations of "Non-Federal Sponsor" as set forth in Article IV of the agreement between EOHWC and The Department of the Army ("ACOE"), with respect to a portion of the funding for the Stormwater Retrofit Project, shall be assumed by and be the sole responsibility of the Municipality. A form of the ACOE agreement is attached hereto as Exhibit E. (A copy of the final executed ACOE Agreement will be attached to and incorporated herein by reference) Nothing herein is intended to relieve DEP or any third party from any liability under the Comprehensive Environmental Response, Compensation, and Liability Act or other applicable laws.

Section 9. Municipality shall have the obligation, and EOHWC shall have the right, but not the obligation, in accordance with the terms of this Agreement to maintain, repair and replace the Stormwater Retrofit Project as often and whenever it deems proper, and the Municipality shall not obstruct or impede EOHWC in the exercise of that right. The Municipality shall not remove any catch basin inserts during the term of this Agreement without the express written consent of EOHWC.

Section 10. EOHWC may obtain a current survey of the Easement Premises, made and certified by a licensed surveyor or engineer, showing the location of the Stormwater Retrofit Project. The EOHWC shall provide the Municipality with a copy of such survey if one is completed. Should it be necessary for Municipality to change the configuration or location of the Stormwater Retrofit Project during the term of this Agreement, the Municipality will use their best efforts to do so in a manner that the beneficial impact on of the Stormwater Retrofit Project is maintained or improved.

Section 11. The Municipality agrees not to make any claims against EOHWC for, or by reason of, any inconvenience or interference with the Municipality' use, occupancy or enjoyment of the Easement Premises or the use, occupancy or enjoyment of any person claiming under or through the Municipality, including without limitation tenants, invitees, guests, licensees, easement holders or others, associated with the EOHWC's activities under this Agreement, provided EOHWC is in compliance with the terms of this Agreement.

The Municipality represents that it has no knowledge of the existence (actual or alleged) beneath the Property of any fuel tanks or barrels, has no knowledge of any environmentally hazardous or toxic substances or materials on or under the Property, nor of any hazardous waste or toxic substance contamination of the Property (as defined in § 27-0901 and/or § 7 1-2702 of the New York State Environmental Conservation Law) or regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), or other Federal, state or local rule or regulation, and has no knowledge of any active violations of any such laws, rules or regulations, nor of any ongoing remediation efforts, and is not aware of any contamination caused by any other party, other than that which may be documented by the reports if any, supplied by Municipality to EOHWC and identified at [Exhibit A – Stormwater Retrofit Project] attached hereto. EOHWC may suspend or terminate future performance under this Agreement in the event of any such conditions suspected or identified during the course of Stormwater Retrofit Project design or construction. The Municipality acknowledges that EOHWC assumes no responsibility for any such condition. Nothing herein is intended to relieve any third party from any liability under the Comprehensive Environmental Response, Compensation, and Liability Act or other applicable laws.

Section 12. EOHWC and its agents and contractors (and subcontractors) shall conduct all work activities on the Property in a good workmanlike manner and in accordance with prevailing industry practices, standards and procedures. EOHWC shall plan, schedule, and conduct its activities as expeditiously as is reasonably practicable and shall conduct such activities in a manner which avoids any material inconvenience, disruption or interference to the Municipality’s use of the Property. EOHWC shall repair any damage to the Property caused by installation of the Stormwater Retrofit Project and shall restore the affected area to its previous condition.

Section 13. This Agreement shall be effective when fully executed by the Parties and shall run with the land and be binding upon the Municipality, its successors and assigns for the useful life of the Stormwater Retrofit Project, provided that if the Parties agree that the Municipality shall complete the Stormwater Retrofit Project initiated by EOHWC, then the Parties will terminate this agreement and will enter into a replacement reimbursement agreement pursuant to which EOHWC will reimburse the Municipality for reasonable costs to complete the Stormwater Retrofit Project. In not case shall termination of this agreement justify the failure to complete an eligible project.

Section 14. If any provision of this Agreement or its application shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications hereof shall not be affected or impaired in any way.

Section 15. This Agreement shall be recorded in the office of the County Clerk, County of Westchester by EOHWC at its sole cost and expense.

Section 16. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

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

EAST OF HUDSON WATERSHED CORPORATION

By Richard Williams, Sr.  
Richard Williams, Sr., President

TOWN OF YORKTOWN

By Thomas Diana  
Thomas Diana, Supervisor

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF Westchester

SERAFINA BRAVO  
Notary Public State of New York  
No. 01BR5049463  
Qualified in Westchester County  
Commission Expires Sept. 18, 20 25

On this 12 day of July, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas Diana, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Serafina Bravo  
NOTARY PUBLIC

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF Dutchess

LINDA MATERA  
Notary Public - State of New York  
No. 01MA6381157  
Qualified in Dutchess County  
My Commission Expires Sept. 24, 20 26

On this 8<sup>th</sup> day of August, 2023 before me, the undersigned, a Notary Public in and for said State, personally appeared Richard Williams, Sr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Linda Matera  
NOTARY PUBLIC

## EXHIBITS

- A. Property Description
- B. Stormwater Retrofit Project
- C. Easement Premises
- D. Required Forms of Insurance
- E. Form of AOCE Agreement

L & H INFORMATION SERVICES

Title No. S23914

SCHEDULE A

PARCEL I:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Yorktown, County of Westchester, State of New York, bounded and described as follows:

BEGINNING at a point on the south side of Saw Mill River Road, which point is on the dividing line between lands now or formerly of A.K. Johnson and the parcel herein being described, and which point is also the northeast corner of the parcel herein being described:

THENCE leaving said south side of Saw Mill River Road, South 14 Degrees 32' 00" East, 569.65 feet;

THENCE South 36 Degrees 14' 40" West, 135.39 feet to the end of a stone wall;

THENCE along mean centerline of said stone wall, South 77 Degrees 18' 00" West, 81.50 feet, South 80 Degrees 01' 00" West, 200.63 feet, South 78 Degrees 48' 20" West, 229.30 feet;

THENCE leaving said mean centerline of stone wall and continuing along Post and wire fence, North 9 Degrees 08' 50" East, 102.50 feet, North 61 Degrees 52' 10" East, 20.00 feet to the end of a chestnut railfence;

THENCE along same, North 24 Degrees 13' 00" West, 220.30 feet to south side of Saw Mill River Road;

THENCE along same, North 63 Degrees 58' 30" East, 337.52 feet, North 35 Degrees 33' 30" East, 130.00 feet, North 28 Degrees 49' 10" East, 125.30 feet, North 34 Degrees 14' 30" East, 100.00 feet to the point or place of BEGINNING.

PARCEL II:

ALL that certain plot, piece or parcel of land, situate, lying and being in the County of Westchester, Town of Yorktown, State of New York and more particularly described as follows:

BEGINNING at a point on the south side of Saw Mill River Road, which point is the northwest corner of lands now or formerly of Gordon;

THENCE leaving said point and continuing along west side of lands now or formerly of Gordon, South 24 Degrees 13' 00" East, 220.30 feet;

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## L & H INFORMATION SERVICES

Title No. S23914

### SCHEDULE A (continued)

THENCE South 61 Degrees 52' 10" West, 20.00 feet;

THENCE South 9 Degrees 08' 50" West, 102.50 feet to lands now or formerly of Louis Mastro;

THENCE along same, South 80 Degrees 26' 10" West, 334.69 feet to the east side of Saw Mill River Road;

THENCE along the easterly side of Saw Mill River Road the following courses and distances:

1. North 13 Degrees 20' 40" East, 80.68 feet;
2. Northeasterly on a curve to the right having a radius of 370 feet a distance of 328 feet; and
3. North 63 Degrees 58' 30" East 74.78 feet to the point or place of BEGINNING.

Excepting therefrom premises conveyed in Liber 6708 page 552 described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Yorktown, County of Westchester, State of New York, bounded and described as follows:

BEGINNING at a point on a south side of Saw Mill River Road, which point is on the dividing line between lands now or formerly of Lipton and the parcel herein being described, and which point is also the northeast corner of the parcel herein being described;

THENCE leaving said point and continuing along lands now or formerly of Lipton. South 14 Degrees 32' 00" East 569.65 feet to lands now or formerly of Mastro;

THENCE along same, South 36 Degrees 14' 40" West, 135.39 feet to a point on the mean centerline of a stone wall;

THENCE, still along lands now or formerly of Mastro, along mean centerline of said stone wall, South 77 Degrees 18' 00" West 81.50 feet, South 80 Degrees 01' 00" West 200.63 feet, South 78 Degrees 48' 20" West 50.20 feet;

THENCE leaving lands now or formerly of Mastro and continuing along lands now or formerly of Gordon, North 8 Degrees 40' 40" West 85.31 feet to a point in the mean centerline of a brook;

CONTINUING THENCE along centerline of said brook, North 45 Degrees 00' 00" West 42.43 feet, North 20 Degrees 33' 20" West 51.26 feet, North 19 Degrees 30'

**L & H INFORMATION SERVICES**

**Title No. S23914**

**SCHEDULE A (continued)**

10" East 50.92 feet, North 23 Degrees 11' 50" West 121.85 feet, North 40 Degrees 58' 20" West 21.31 feet to a point on the south side of Saw Mill River Road;

THENCE along same, North 63 Degrees 58' 30" East 197.00 feet, North 35 Degrees 33' 30" East 130.00 feet, North 28 Degrees 49' 10" East 125.30 feet, North 34 Degrees 14' 30" East, 100.00 feet to the point or place of BEGINNING.

The above described premises are shown and designated as Section 10.12, Parcel 17, Lot 2 on the Tax Map of the Town of Yorktown.

**FOR  
CONVEYANCING  
ONLY**

The policy to be issued under this report will insure the title to such buildings and improvements erected on the premises which by law constitute real property.

TOGETHER with all the right, title and interest of the party of the first part, of, in and to the land lying in the street in front of and adjoining said premises.



## **Exhibit B**

**PROJECT: Y-MU-40**

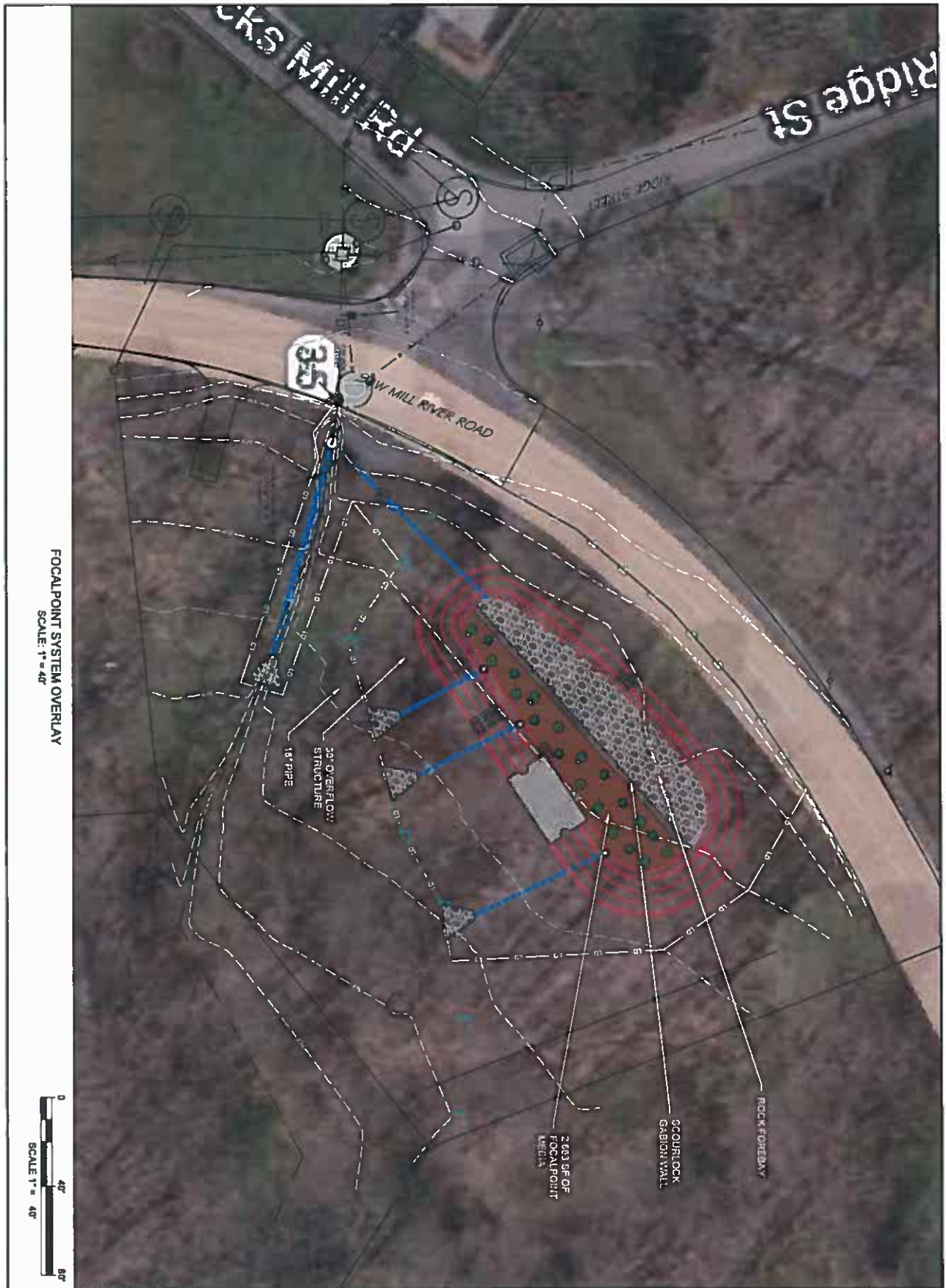
**PROJECT LOCATION: Across from intersection of Ridge Street and Hallocks Mill Road, Yorktown Heights, NY 10598  
SBL 37.10-2-68**

### **Project Description:**

The town owned property located on Saw Mill River Road, across from the intersection of Ridge Street and Hallocks Mill Road, has been targeted for the installation of a stormwater retrofit. There is currently an eroding drainage channel on the property which receives the stormflows from 60 acres of residential properties.

The project proposes to install a bio-infiltration system to help remove phosphorus from the stormwater, while also stabilizing the degrading channel. The water quality flow will be diverted from the drainage channel to be treated in the bio-infiltration system. The phosphorus reduction from this project will amount to 27.9 kg/yr.

The project includes but is not limited to; clearing, excavation, grading and earthwork as needed and installation of stormwater infrastructure. The work also includes site preparation, erosion and sediment control, maintenance and protection of traffic, final restoration, and cleaning in the project area under the direction of the Engineer and the East of Hudson Watershed Corporation. The project is described in more detail in the engineer report and design drawings titled "EOHWC Stormwater Retrofit Y-MU-40" prepared by HVEA Engineers.



**Exhibit D**

**PROJECT: Y-MU-40**

**PROJECT LOCATION: Across from intersection of Ridge Street and Hallocks Mill Road, Yorktown Heights, NY 10598  
SBL 37.10-2-68**

**Insurance requirement:**

The following insurances will be maintained by EOHWC, naming the following as additional insured:

1. The City of New York, including its officials and employees
2. Town of Yorktown
3. Any other agencies and/or entities required by any other contracts and/or agreements

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

**Employer's Liability: Statutory**

**Commercial General Liability CG 00 01 (ed. 10/02) or equivalent- Combined Single Limit - Bodily Injury and Property Damage:**

**\$2,000,000 per occurrence**

**\$2,000,000 products/completed operations aggregate**

**\$4,000,000 general aggregate**

**\$25,000 maximum deductible**

**Automobile Liability: CA 00 01 (ed. 6/92) or equivalent. (See Section B.4, below)**

**Combined Single Limit - Bodily Injury and Property Damage**

**\$500,000 each occurrence**

**The following coverage must be provided:**

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

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

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
**EAST OF HUDSON WATERSHED CORPORATION**  
FOR  
DESIGN AND CONSTRUCTION ASSISTANCE  
FOR THE  
**HALLOCK'S MILL ROAD STORMWATER RETROFIT PROJECT**  
**TOWN OF YORKTOWN, NEW YORK**

THIS AGREEMENT is entered into this 18<sup>th</sup> day of January, 2024 by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for **New York District** (hereinafter the "District Commander") and the **East of Hudson Watershed Corporation (EOHWC)** (hereinafter the "Non-Federal Sponsor"), represented by its **President**.

WITNESSETH, THAT:

WHEREAS, the Government is authorized to provide design and construction assistance for publicly owned, non-Federal water-related environmental infrastructure and resource protection and development projects in the New York City Watershed, including projects for water supply, storage, treatment, and distribution facilities, and surface water resource protection and development pursuant to Section 552 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (hereinafter "Section 552");

WHEREAS, the District Commander has determined that the **Hallock's Mill Road Stormwater Retrofit Project in Town of Yorktown, Westchester County, New York** (hereinafter the "Project", as defined in Article I.A. of this Agreement) is eligible for implementation under Section 552;

WHEREAS, on October 10, 2023 the **Director of the New York State Department of Environmental Conservation**] certified to the Government that the Project will contribute to the protection and enhancement of the quality or quantity of the New York City water supply;

WHEREAS, on October 10, 2023 the **Director of the New York State Department of Environmental Conservation** designated the Non-Federal Sponsor as the public entity to carry out the Project pursuant to Section 552(d);

WHEREAS, Section 552(e) provides that the Federal share of project costs under each agreement entered into under Section 552 shall be 75 percent, which may be in the form of reimbursements;

WHEREAS, as of the effective date of this Agreement, the total amount of Federal funds available for the Federal share of project costs under this Agreement is **\$1,060,450**; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

## ARTICLE I - DEFINITIONS

A. The term “Project” means to install a proprietary bio-infiltration practice on municipal property to eliminate an unstable drainage channel and provide water quality treatment to approximately 60 acres area prior to discharge to Hallock’s Mill Brook and the Muscoot Reservoir. The proposed retrofits will remove approximately 29.0 kg/yr of phosphorus from the NYC drinking water supply by utilizing vegetated channel stabilization methods along with green infrastructure methods to insure absorption of 100% of the treatable stormwater volume (73,500 CF), as generally described in the **Project Management Plan (including the Project Fact Sheet) for Construction of Hallock’s Mill Road Stormwater Retrofit Project in Town of Yorktown, Westchester County, New York, dated September 26, 2023 and approved by the District Commander for the New York District, on October 19, 2023.**

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “project costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes the Non-Federal Sponsor’s eligible pre-Agreement design work costs, if any; the Government’s costs for conducting environmental compliance activities, providing management oversight and technical assistance, as needed, preparing monthly financial reports, reviewing design work, appraisals, and invoices provided by the Non-Federal Sponsor, conducting periodic inspections during construction, and any other costs incurred by the Government pursuant to the provisions of this Agreement; the Non-Federal Sponsor’s eligible costs for engineering, design, construction, and supervision and administration; the Non-Federal Sponsor’s eligible costs for providing real property interests and relocations, and performing permit work; and the costs of historic preservation activities except for data recovery for historic properties, if any. The term does not include any costs for operation and maintenance; HTRW cleanup and response; dispute resolution; audits; betterments; or the Non-Federal Sponsor’s cost to negotiate this Agreement.

D. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required by

applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term “pre-Agreement design work” means the design work performed by the Non-Federal Sponsor prior to the effective date of this Agreement that the Government determines was accomplished in a satisfactory manner and is necessary for the Project.

G. The term “betterment” means a difference in the design or construction of an element of the Project that results from applying standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that element.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. As of the effective date of this Agreement, the total amount of Federal funds available for the Federal share of project costs under this Agreement is limited to **\$1,060,450**. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount.

B. The Non-Federal Sponsor shall design and construct the Project in accordance with all requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto and the following:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for construction and operation and maintenance of the Project. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing inspections pursuant to Article II.D.

2. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all design work, including relevant plans and specifications, and related contract solicitations, prior to the Non-Federal Sponsor’s issuance of such solicitations. In addition, until the Government has provided written confirmation that environmental compliance has been completed, the Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the Project or commence construction of the Project using its own forces.

3. The Non-Federal Sponsor is responsible for obtaining all permits and licenses necessary for design, construction, and operation and maintenance of the Project and for ensuring compliance with all requirements of such permits and licenses.

4. The Non-Federal Sponsor shall establish and maintain such legal and institutional structures as necessary to ensure the effective long-term operation of the Project at no cost to the Government.

5. Upon completion of design, the Non-Federal Sponsor shall furnish the Government with copies of the completed design.

6. The Non-Federal Sponsor shall operate and maintain the Project **under agreement with the host municipality** at no cost to the Government. The Non-Federal Sponsor shall furnish the Government with a copy of the as-built drawings for the completed work.

7. No more frequently than every 30 calendar days, the Non-Federal Sponsor shall provide the Government an invoice with the documentation required by Article V for the Government to determine whether costs incurred by the Non-Federal Sponsor are eligible for inclusion in project costs. If the Non-Federal Sponsor incurred costs for pre-Agreement design work, documentation of such costs shall be included in the Non-Federal Sponsor's initial invoice. Following completion of the Project, the Non-Federal Sponsor shall notify the Government, which shall conduct a final inspection of the Project. No later than 60 calendar days after the Government conducts the final inspection, the Non-Federal Sponsor shall provide its final invoice, unless an extension is requested by Non-Federal Sponsor in writing and approved by the Government.

C. Using information developed and provided by the Non-Federal Sponsor, the Government shall ensure environmental compliance activities necessary to achieve compliance with all applicable environmental laws and regulations for design and construction of the Project are completed prior to initiation of construction. The Government will notify the Non-Federal Sponsor in writing when such compliance has been completed.

D. The Government may perform periodic inspections to verify the progress of construction and that work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis during design and construction of the Project. Further, the Government shall perform a final inspection to verify satisfactory completion of the Project.

E. Subject to the limitation on available Federal funds identified in Article II.A. for the Federal share of project costs under this Agreement, the Government shall be responsible for 75 percent of project costs, with reimbursement for costs incurred by the Non-Federal Sponsor determined in accordance with this paragraph. The Government shall review each invoice provided by the Non-Federal Sponsor and, based on the procedures, requirements, and conditions provided in Article V, shall determine the costs, or portion thereof, that are eligible for inclusion in project costs. To the maximum extent practicable, within 30 calendar days of receipt of each invoice, the Government, subject to the availability of Federal funds, shall reimburse the Non-Federal Sponsor for 75 percent of the Non-Federal Sponsor's eligible costs included in each invoice, less 25 percent of the costs incurred by the Government during that same invoice period. The Government shall provide a written explanation to the Non-Federal Sponsor for costs it determines are not eligible for inclusion in project costs.

F. The Government shall ensure compliance with the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101-307108), prior to initiation of construction. All costs incurred by the Government and the Non-Federal Sponsor for actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the NHPA and the mitigation of adverse effects other than data recovery, as the Government determines necessary and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of such costs, shall be included in project costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount available for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

G. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share for such work.

H. If the Non-Federal Sponsor elects to include betterments in the design or construction of the Project, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to betterments, including costs associated with obtaining permits for such work, without reimbursement by the Government.

### ARTICLE III - REAL PROPERTY INTERESTS AND RELOCATIONS

A. The Government and Non-Federal Sponsor shall jointly determine the real property interests required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps as appropriate, of such real property interests. Upon written confirmation by the Government, the Non-Federal Sponsor shall, in accordance with Article IV.A., investigate to ensure that HTRW does not exist in, on, or under the real property interests to be acquired. The Non-Federal Sponsor shall acquire such real property interests and notify the Government in writing when such interests have been acquired. The Non-Federal Sponsor shall ensure that such real property interests are retained in public ownership.



B. The Government and Non-Federal Sponsor shall jointly determine the relocations required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps and plans and specifications, as appropriate, for such relocations. Upon written confirmation by the Government, the Non-Federal Sponsor shall perform or ensure performance of such relocations and notify the Government in writing when such relocations have been accomplished.

C. In acquiring the real property interests for the Project, the Non-Federal Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

#### ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law, that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event the Non-Federal Sponsor discovers that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Non-Federal Sponsor shall provide written notice to the Government within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

1. If the Non-Federal Sponsor initiates or continues construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Non-Federal Sponsor shall pay such costs without reimbursement or credit by the Government.

2. In the event the Non-Federal Sponsor fails to discharge its responsibilities under this Article, the Government may suspend or terminate future performance under this Agreement, including reimbursements pursuant to Article II.E.

C. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

D. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

#### ARTICLE V - DETERMINATION OF ELIGIBLE NON-FEDERAL SPONSOR COSTS

A. The Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor's costs that are eligible for inclusion in project costs shall be determined in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Government shall include in project costs the value of required real property interests acquired from private owners after the effective date of this Agreement except that the value of real property interests donated to the Non-Federal Sponsor are not eligible for inclusion in project costs. The Non-Federal Sponsor shall obtain for each required real property interest acquired from private owners an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. The fair market value of real property interests acquired from private owners by the Non-Federal Sponsor shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor concludes the acquisition of the

interest. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for valuation purposes.

(3) The Government shall include in the project costs the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for valuation purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph A.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2), the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, up to a maximum of \$25,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall include in project costs eligible incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs after the effective date of this Agreement in acquiring required real property interests from private owners. Such incidental costs include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C., and other payments by the Non-Federal Sponsor for items that are generally recognized as

compensable, and required to be paid, by applicable state law due to the acquisition of required real property interests.

e. Except for permit work pursuant to Article V.A.4., any publicly owned real property interests required for the Project will be provided by the Non-Federal Sponsor at no cost to the Government.

2. Relocations. The Government shall include in project costs eligible costs of required relocations performed by the Non-Federal Sponsor after the effective date of this Agreement.

a. For a relocation other than a highway, eligible costs shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, eligible costs shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of New York would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs, as determined by the Government, include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and administration costs. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. Design and Construction Work. The Government shall include in project costs eligible costs of the design and construction work performed by the Non-Federal Sponsor after the effective date of this Agreement and eligible costs of pre-Agreement design work, if any.

a. The Non-Federal Sponsor shall provide documentation, satisfactory to the Government, for the Government to determine the amount of eligible costs. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Where the Non-Federal Sponsor's cost for completed pre-Agreement design work is expressed as fixed costs plus a percentage of project costs, the Non-Federal Sponsor shall calculate such costs based on actual costs.

b. The following costs are not eligible for inclusion in project costs: interest charges, or any adjustment to reflect changes in price levels after completion of the design or construction work; pre-Agreement design work previously reimbursed under another agreement; costs that exceed the Government's estimate of the cost for such design and construction work; design or construction work obtained at no cost to the Non-Federal Sponsor; or any construction work initiated prior to completion of environmental compliance.

4. Permit Work. The Government shall include in project costs eligible costs of permit work performed by the Non-Federal Sponsor after the effective date of this Agreement. Eligible costs shall be equivalent to the direct costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in obtaining all permits and licenses necessary for design and construction of the Project, including the permits necessary for construction, operation, and maintenance of the Project on publicly owned or controlled real property interests. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees involved in obtaining such permits. Failure to comply with these permits and licenses may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for design and construction of the Project in project costs.

5. Compliance with Federal Labor Laws. In undertaking construction and relocations, the Non-Federal Sponsor shall comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). The Non-Federal Sponsor's failure to comply with these laws may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for relocations and construction of the Project in project costs.

B. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for any costs it incurs for real property interests, relocations, and permit work that exceed 25 percent of project costs, and any such excess amount cannot be applied towards the non-Federal cost share for another project; and for any costs incurred by the Non-Federal Sponsor prior to the effective date of this Agreement, excluding costs for pre-Agreement design work.

## ARTICLE VI - ACCOUNTING

A. As of the effective date of this Agreement, project costs are projected to be **\$1,410,000**, with the amount of Federal funds available for such work limited to **\$1,060,450**. Costs incurred by the Government are projected to be **\$11,800**. Costs incurred by the Non-Federal Sponsor are projected to be **\$1,398,200**, which includes eligible design and construction work after the effective date of this Agreement projected to be **\$1,398,200**, eligible pre-Agreement design work projected to be **\$0**, eligible real property interests projected to be **\$0**, eligible relocations projected to be **\$0**, and eligible permit work projected to be **\$0**. Reimbursements pursuant to Article II.E. for eligible costs incurred by the Non-Federal Sponsor are projected to be **\$1,048,650**. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly financial reports setting forth the estimated project costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government to date; costs

incurred by the Non-Federal Sponsor to date; the total amount of reimbursements made to the Non-Federal Sponsor to date; and the balance of the Federal funds available for the Project.

C. After the Non-Federal Sponsor has provided its final invoice to the Government, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. As a part of the final accounting, the Government will determine the total reimbursable amount by taking 75 percent of eligible costs incurred by the Non-Federal Sponsor, less 25 percent of the costs incurred by the Government for the Project. Should the final accounting determine that funds in excess of the total reimbursable amount have been reimbursed to the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such excess reimbursement by delivering a check payable to “FAO, USAED, **New York (E3)**” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Should the final accounting determine that the reimbursements provided to the Non-Federal Sponsor are less than the total reimbursable amount, then subject to the limitation on available Federal funds identified in Article II.A. for the Federal share of project costs under this Agreement, the Government shall reimburse the Non-Federal Sponsor for the amount equal to such difference.

#### ARTICLE VII - TERMINATION OR SUSPENSION

If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate this Agreement. If the Government determines that the Federal funds available for the Project will be exhausted prior to completion of the Project, the Government shall notify the Non-Federal Sponsor and the Non-Federal Sponsor may continue with design and construction of the Project, at no cost to the Government, and with no further participation in the Project by the Government.

#### ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from any and all damages arising from design, construction, or operation and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred.

The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in project costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

#### ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

#### ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:  
President  
East of Hudson Watershed Corporation  
2 Route 164, Suite 2  
Patterson, NY 12563

If to the Government:

District Commander  
U.S. Army Corps of Engineers, New York District  
26 Federal Plaza (17th Floor)  
New York, NY 10278

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

### ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

### ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

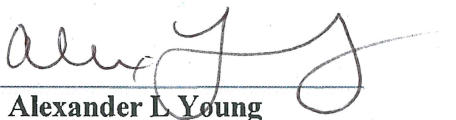
Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

EAST OF HUDSON WATERSHED  
CORPORATION

BY:

  
**Alexander L. Young**  
**Colonel, U.S. Army**  
**Commander and District Engineer**

BY:

  
**Richard Williams, Sr.**  
**President**

DATE:

1/18/24

DATE:

1/12/24



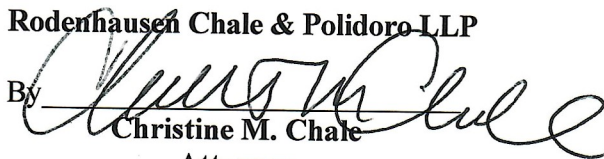
CERTIFICATE OF AUTHORITY

I, Christine M. Chale, Rodenhausen Chale & Polidoro LLP, do hereby certify that I am the principal legal officer for the East of Hudson Watershed Corporation, that the East of Hudson Watershed Corporation is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the East of Hudson Watershed Corporation in connection with the Hallock's Mill Road Stormwater Retrofit Project in the Town of Yorktown, Westchester County, New York, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, and that the person who executed this Agreement on behalf of the East of Hudson Watershed Corporation acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 12 day of January 2024

**Rodenhausen Chale & Polidoro LLP**

By



Christine M. Chale

Attorney

**East of Hudson Watershed Corporation**

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
\_\_\_\_\_  
**Richard Williams, Sr.**  
**President**

DATE: 1/12/2024