

ACTS 60, 61 - 2023

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Executive recommending approval of a legislative package which contains the following proposed acts authorizing the County to: 1) enter into an intermunicipal agreement (“City IMA”) with the City of Mount Vernon (the “City”) whereby the County shall procure, coordinate and administer all required services for the design, construction and construction management of a below-grade sewer pumping station and sewer line replacement and rehabilitation in the vicinity of the connection to the County’s Hutchinson Valley High Level Interceptor on West Third Street between South Ninth and Tenth Avenues (the “West Third Street Pump Station and Sanitary Sewer Project”), on behalf of the City and at no cost to the County; and 2) enter into an intermunicipal funding agreement (“Funding IMA”) with the New York State Environmental Facilities Corporation (“EFC”) and the City to fully fund the design, construction and construction management of the West Third Street Pump Station and Sanitary Sewer Project. Copies of the aforementioned proposed City IMA and Funding IMA are transmitted herewith.

In June, 2018, the United State Department of Justice and the New York State Attorney General’s Office filed a complaint against the City (United States v. City of Mt. Vernon, 18 Civ.5845) in Federal court to address discharges of raw sewage and other illicit pollutants from its storm sewer systems into the Hutchinson and Bronx Rivers. The United States District Court in the Southern District of New York entered a series of remedial orders against the City directing the City to comply with Federal and State laws and regulations associated with sanitary sewer and storm sewer systems (the “Federal Court Orders”). On or about May 10, 2022 the County, City and the New York State Department of Environmental Conservation (“DEC”) on behalf of the State of New York (“State”) entered into a Memorandum of Understanding (“MOU”) which describes a City-County-State proposed partnership and path forward to comprehensively improve sanitary sewer and storm sewer systems within the City, and undertake related efforts to increase the flood resilience of these systems in the face of increasing storm intensity resulting for climate change. The MOU broadly outlines the financial, oversight and construction activities designed to achieve substantial progress and ultimately full compliance by the City with the Federal Court Orders and with all Federal and State laws and regulations associated with sanitary sewer and storm sewer systems.

As part of proposed partnership set forth in MOU, the City has identified the West Third Street Pump Station and Sanitary Sewer Project to improve sanitary sewer and storm sewer systems within the City and has requested the County's assistance to procure, coordinate and administer all required services for the design, construction and construction management of the West Third Street Pump Station and Sanitary Sewer Project on behalf of the City. The West Third Street Pump Station and Sanitary Sewer Project will consist of the design and provision of all necessary labor, material and equipment required for construction of an underground sewer pumping station at an existing underground chamber that has been used to divert flow from two existing City sewers into a ten inch (10") borehole into the County's Hutchinson Trunk Sewer tunnel. The borehole has become irreparably clogged and can no longer function in this capacity. In addition, to the new underground sewer pumping station, work will consist of, but is not limited to, construction of a new gravity sewer to accept the discharge from the pumps and convey sewage to the existing City sanitary sewer system, all necessary appurtenances for the pumping station, sanitary sewer, and site restoration.

The West Third Street Pump Station and Sanitary Sewer Project shall be fully funded by the EFC, thus, the County shall enter into the Funding IMA with the EFC and City to fund the Project. Pursuant to the terms of the Funding IMA, the County shall submit payment requests to the EFC and the EFC shall tender payment to the County. The County shall then pay the consultants, contractors and suppliers necessary to complete the West Third Street Pump Station and Sanitary Sewer Project.

The County shall also simultaneously enter into the City IMA with the City that sets forth the terms whereby the County shall procure, coordinate and administer all required services for the design, construction and construction management of the West Third Street Pump Station and Sanitary Sewer Project on behalf of the City. The City shall fully cooperate with the County, its contractors and consultants in connection with all aspects of the design and construction of the West Third Street Pump Station and Sanitary Sewer Project including without limitation, granting the County, its contractors and consultants full access to all real property, infrastructure, documents, records and any data within City's custody and control related the West Third Street Pump Station and Sanitary Sewer Project. The City shall further provide, at its sole expense, sufficient personnel and services required to support the design and construction of the West Third Street Pump Station

and Sanitary Sewer Project, including but not limited to traffic and pedestrian control, police and engineering services.

It should be noted by your Honorable Board, that pursuant to the terms of the aforementioned proposed agreements, the West Third Avenue Street Pump Station and Sanitary Sewer Project shall be undertaken by the County at no cost to the County.

It should be further noted by your Honorable Board that officials from the EFC and DEC have advised that up to \$150,000,000 in funds may be made available to the City to fund sanitary sewer, storm sewer and flood resiliency improvements within the City, and should the City request and the County desire to jointly undertake any other projects in addition to the West Third Avenue Street Pump Station and Sanitary Sewer Project within the City, that further authorization shall be requested from Your Honorable Board in order to enter into additional intermunicipal funding agreements and intermunicipal agreements, as required.

The Planning Department has advised that, based on its review, this is a “Type II” action under the State Environmental Quality Review Act (“SEQRA”), and its implementing regulations, 6 NYCRR Part 617, which is an action determined not to have a significant effect on the environment and therefore does not require further environmental review. Your Committee has reviewed the annexed SEQRA documentation prepared by the Planning Department and concurs with this conclusion.

It should be noted that approval of the two (2) Acts authorizing the County to enter into the City IMA and Funding IMA, respectively, both require the affirmative vote of a majority of the voting strength of your Honorable Board.

Your Committee believes that entering into these agreements to improve sanitary sewer and storm sewer systems within the City be of great benefit to the health of City and County residents as

well as the environment of the County in general. Therefore, your Committee recommends the favorable action of your Honorable Board on the annexed proposed legislation.

Dated: March 20th, 2023
White Plains, New York

Vedat Sahin
J. W. B.

David M. G.

Catharine Park

David J. Lubio

Henry B. Johnson

Nancy B. B.
J. W. B.

J. W. B.
Catharine Park
David J. Lubio
Nancy B. B.
J. W. B.

COMMITTEE ON

C: jpi 3.1.2023

Budget & Appropriations

Public Works & Transportation

Dated: March 20, 2023
White Plains, New York

The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

Colin J. Smith

Colin J. Smith

COMMITTEES ON

Budget & Appropriations

Public Works & Transportation

FISCAL IMPACT STATEMENT

CAPITAL PROJECT #: SW033

NO FISCAL IMPACT PROJECTED

SECTION A - CAPITAL BUDGET IMPACT

To Be Completed by Budget

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

Source of County Funds (check one):

Current Appropriations

Capital Budget Amendment

100% FUNDED NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION

SECTION B - BONDING AUTHORIZATIONS

Total Principal \$ - PPU Anticipated Interest Rate

Anticipated Annual Cost (Principal and Interest):

Total Debt Service (Annual Cost x Term): \$ -

Finance Department:

SECTION C - IMPACT ON OPERATING BUDGET (exclusive of debt service)

To Be Completed by Submitting Department and Reviewed by Budget

Potential Related Expenses (Annual): \$ -

Potential Related Revenues (Annual): \$ -

Anticipated savings to County and/or impact of department operations
(describe in detail for current and next four years):

SECTION D - EMPLOYMENT

As per federal guidelines, each \$92,000 of appropriation funds one FTE Job

Number of Full Time Equivalent (FTE) Jobs Funded: 76

SECTION E - EXPECTED DESIGN WORK PROVIDER

County Staff

Consultant

Not Applicable

Prepared by: Dianne Vanadia

Title: Sr. Budget Analyst

Department: Budget

Date: 3/3/23

Reviewed By:


DV 3/3/23

[Signature]
Budget Director

Date:

3/3/23

TO: Vincent Kopicki, Commissioner
Department of Environmental Facilities

FROM: David S. Kvinge, AICP, RLA, CFM 
Assistant Commissioner

DATE: October 27, 2022

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR MOUNT VERNON
THIRD STREET SEWER PROJECT**

PROJECT/ACTION: The project involves the installation of an underground pumping station and sewer lines on West 3rd Street between 8th and 10th avenues in the City of Mount Vernon in order to bypass a clog in the connection between the existing pipe and the County's Hutchinson Valley High Level Interceptor. The project will include an aboveground control panel and may also include installation of a natural gas emergency generator in the vicinity to ensure uninterrupted operation during power outages. County assistance is being sought to help in the administration and implementation of the project, which involves City infrastructure and State financing.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:

- DOES NOT MEET THE DEFINITION OF AN "ACTION" AS DEFINED UNDER SECTION 617.2(b)**
- MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTIONS:**
- **617.5(c)(6):** street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
 - **617.5(c)(9):** construction or expansion of a primary or accessory/appurtenant, nonresidential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;
 - **617.5(c)(13):** extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list.
-

COMMENTS: The City of Mount Vernon is under several court orders to correct violations associated with the discharge of raw sewage and other illicit pollutants from its storm sewer system into the Hutchinson and Bronx rivers. While the County is not subject to these court orders, the

County has been asked to participate in the administration and oversight of sewer improvements needed to bring the City of Mount Vernon into compliance. The 3rd Street Pumping Station project involves the installation of an approximately 12-foot square underground chamber atop of the shaft over the existing clogged sewer pipe, along with approximately 400 linear feet of new sewer piping to redirect the sewage to another sewer line, which has sufficient capacity, to the east. The project is located in an urban area. The pump chamber and sewer line will be installed within the road right-of-way. The associated control panel and emergency generator, if included in the project, would be installed in the vicinity and will occupy minimal square footage. The project will eliminate the need for the temporary aboveground pump that is currently being used to bypass the clog.

DSK/cnm

cc: Norma Drummond, Commissioner
John Paul Iannace, Senior Assistant County Attorney
Claudia Maxwell, Associate Environmental Planner

An Act authorizing the County of Westchester to enter into an enter into an enter into an intermunicipal agreement with the City of Mount Vernon whereby the County shall procure, coordinate and administer all required services for the design and construction of the West Third Street Pump Station and Sanitary Sewer Project, on behalf of the City, and at no cost to the County.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County of Westchester is hereby authorized to enter into an intermunicipal agreement (“IMA”) with the City of Mount Vernon (the “City”) whereby the County shall procure, coordinate and administer all required services for the design and construction of a below-grade sewer pumping station and sewer line replacement and rehabilitation in the vicinity of the connection to the County’s Hutchinson Valley High Level Interceptor on West Third Street between South Ninth and Tenth Avenues (the “West Third Street Pump Station and Sanitary Sewer Project”), on behalf of the City. The City shall provide, at its sole expense, sufficient personnel and services required to support the design and construction of the West Third Street Pump Station and Sanitary Sewer Project, including but not limited to traffic and pedestrian control, police and engineering services.

§2. The term of the IMA shall commence upon full execution and shall have a term of five (5) years, or terminate upon completion and acceptance of the West Third Street Pump Station and Sanitary Sewer Project by the County and City, whichever is earlier, and shall be at no cost to the County.

§3. The County Executive or his authorized designee is hereby authorized and empowered to execute all instruments and to take all action necessary and appropriate to effectuate the purposes hereof.

§4. This Act shall take effect immediately.

THIS INTERMUNICIPAL AGREEMENT (“IMA” or “Agreement”) made this _____ day of _____, 2023, by and between:

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (the “County”),
and

THE CITY OF MOUNT VERNON, a municipal corporation of the State of New York, having an office and place of business at One Roosevelt Square, Mount Vernon, New York 10550 (hereinafter the “City”).

WHEREAS, on or about May 10, 2022 the County, City and the New York State Department of Environmental Conservation (the “Department”) on behalf of the State of New York (the “State”) entered into a Memorandum of Understanding (the “MOU”) which describes a City-County-State proposed partnership and path forward to comprehensively improve sanitary sewer and storm sewer systems within the City, and undertake related efforts to increase the flood resilience of these systems in the face of increasing storm intensity resulting from climate change. That MOU outlines the financial, oversight and construction activities designed to achieve substantial progress and ultimately full compliance by the City with Federal and State laws and regulations associated with sanitary sewer and storm sewer systems; and

WHEREAS, on June 16, 2022 the City declared an emergency (the “City’s Emergency Declaration”) to protect the public health and to render all required available assistance vital to the security, well-being and health of the citizens of the City and to take all reasonable and responsible efforts including but not limited to: (1) the application for and securing of funding, (2) increase of pollution related fines and penalties, and (3) deviation from standard procurement procedures where necessary to prevent and mitigate irreparable injury to humans and the environment and expedite compliance with the Clean Water Act and all Federal Orders; and

WHEREAS, Article 5-G of the New York General Municipal Law (“GML”) authorizes municipal corporations and districts to perform their functions, duties, and powers on a cooperative basis with other municipal corporations and districts pursuant to municipal cooperation agreements; and

WHEREAS, both the County and the City are municipal corporations as that term is defined in

New York GML Article 5-G, Section 119-n and they desire to enter into this inter-municipal agreement (“IMA”) whereby the County shall assist the City to procure, coordinate and administer all required services for the design and construction of a below-grade sewer pumping station and sewer line replacement and rehabilitation in the vicinity of the connection to the County’s Hutchinson Valley High Level Interceptor on West Third Street between South Ninth and Tenth Avenues, as more fully described in **Schedule “A”** (the “Project”) for the benefit of the City; and

WHEREAS, the Environmental Facilities Corporation (“EFC”) will fund the cost of the design and construction of the Project pursuant to a separate funding agreement (the “Funding Agreement”) with the County and the City in an amount of approximately Nine Million (\$9,000,000.00) Dollars of even date herewith, and transmit these funds directly to the County in order for the County to make required payments to any consultants, contractors and/or supplier for design, engineering, construction, project management, community outreach, equipment purchases, and other related services in connection with the design and construction of the Project on behalf of the City; and

WHEREAS, upon completion the City will own, operate and maintain any improvements, infrastructure, facilities and systems constructed as a result of the Project, subject to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. **RECITALS**: The above recitals, including any defined terms, are hereby incorporated by reference into the body of this Agreement.
2. **PERFORMANCE OF WORK**: In accordance with all applicable laws, rules and regulations, including State and County procurement requirements, the County, at no cost to the County, agrees to procure all services and equipment necessary to design and construct the Project, in accordance with the scopes of work and budgets attached hereto and made a part hereof as Schedule “A” (the “Work”). The City and County acknowledge and agree that the procurement, coordination and administration of the Work shall be done by the County, at no cost to the County, in consultation with the City.

3. **EMERGENCY DECLARATION:** The parties acknowledge and agree that the County is procuring and performing the Work in reliance upon the City's Emergency Declaration, a copy of which is attached hereto and made a part hereof as Schedule "B."

4. **TERM:** The term of this Agreement shall commence on full execution and shall have a term of five (5) years, or terminate upon completion and acceptance of the Project by the County and City, whichever is earlier, unless terminated sooner pursuant to the provisions of this Agreement.

5. **COSTS:** (a) Pursuant to the Funding Agreement, the EFC has agreed to fund all costs related to the Project up to at least Nine Million (\$9,000,000.00) Dollars ("Project Funds"). However, if determined to be necessary by the EFC, the amount of Project Funds may be increased.

(b) Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall the County be expected or required to incur any costs of any kind whatsoever or be under any other obligation or liability hereunder in connection with the Project. It is acknowledged and agreed by the County and City that in no event shall the County have any obligation to make any payments to a contractor, consultant or supplier in connection with the Project unless and until the EFC has previously paid the County for the same.

(c) In the event the costs for the Project exceed the amount of Project Funds identified in Section 5(a) above, and the EFC is unwilling or unable to fund such additional costs, the City shall be solely responsible to pay such costs in excess of the Project funding and shall make payment to the County within ten (10) business days of a disbursement request submitted by the County to the City.

(d) Notwithstanding the above, should the City fail to pay any Project costs in excess of the Project Funds identified in Section 5(a) above within said ten (10) business days, the County shall have no further obligation to continue with the construction of the Project, the County may terminate this Agreement and the County shall have no further obligations or liability in connection with this Agreement.

6. **PAYMENT:** The parties agree that all payments for the Work set forth in this Agreement will be made by EFC to the County for the benefit of the City in accordance with the Funding Agreement. It shall be based upon actual billing (e.g.: contractor, consultant, supplier invoices) received by the County and submitted to the EFC. The County, upon request for payment from a contractor, consultant or supplier engaged to carry out any portion of the Third Street Project, shall submit a requisition for

payment to the EFC and provide a copy of said requisition with any supporting documentation to the City. The EFC will process the payment request and transfer funds to the County in order for the County to make timely payments.

7. **LIMITATION OF LIABILITY:** The parties acknowledge and agree that the County's role shall be limited to the procurement, coordination and administration of the Work and related equipment for the benefit of the City and its residents. The City recognizes and acknowledges that the obligations of the County under this Agreement are subject to the County's receipt of Project Funds from the EFC, and that no liability shall be incurred by the County beyond the Project Funds made available from the EFC for this Agreement. The City agrees that the County shall not be liable for any of the payments to any contractors, consultants or suppliers engaged by the County in accordance herewith unless and until the County has received the funds from the EFC or the funds have been made available to the County by the EFC. Without limiting the foregoing, the City acknowledges and agrees that in the event the County makes any payment(s) to any consultant, contractor or supplier in advance of receiving all or part of the Project Funds from the EFC, and if the Funds for such payment(s) are not subsequently received by the County from the EFC, the City shall repay to the County such payment(s) made by the County to any consultant, contractor or supplier, within five (5) days of receipt of notice from the County to the City.

8. **TERMINATION:** (a) In the event that the City defaults in the performance of any term, condition or covenant herein contained, the County, at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this Agreement upon thirty (30) days written notice to the City; provided, however, that the City may defeat such notice by curing the default complained of within such notice period, or, if any such default is not curable within such notice period by promptly commencing to cure the default and diligently pursuing all necessary and appropriate action to effect such cure. Upon subsequent defaults by the City, the County, at its option and in addition to any other remedy it may have to seek damage, judicial enforcement or any other lawful remedy, may terminate this Agreement upon ten (10) days written notice to the City, provided, however, that the City may defeat such notice by curing the default complained of within such notice period, or, if any such default is not curable within such notice period by promptly commencing to cure the default and diligently pursuing all necessary and appropriate action to effect

such cure.

(b) Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall the County be expected or required to incur any costs of any kind whatsoever or be under any other obligation or liability hereunder in connection with the Project. It is acknowledged and agreed by the County and City that in no event shall the County have any obligations to make any payments to a contractor, consultant or supplier in connection with the Project unless and until the EFC and/or City has previously paid the County for the same.

9. **MAINTENANCE OF RECORDS:** The County and City shall, at their sole cost and expense, keep, maintain, and preserve at its principal offices throughout the term of this Agreement, full and detailed books, accounts, and records pertaining to its performance pursuant to this Agreement. Such books, accounts and records will include, without limitation, all bills, invoices, payrolls and other data evidencing, or in any material way relating to, the direct and indirect costs and expenses incurred in connection with the Project. The City, County and EFC shall have the right to inspect and audit, at reasonable times and upon reasonable notice, any and all such books, accounts and records at the office or offices where they are then being kept, maintained and preserved. All of the provisions of this Section "9" will survive the expiration or other termination of this Agreement.

10. **COOPERATION AND ACCESS:** The City shall fully cooperate with the County, its contractors and consultants in connection with all aspects of the design and construction of the Third Avenue Project including without limitation, granting the County, its contractors and consultants full access to all real property, infrastructure, documents, records and any data within City's custody and control related the Third Avenue Project. The City shall further provide, at its sole expense, sufficient personnel and services required to support the design and construction of the Third Avenue Project, including but not limited to traffic and pedestrian control, police and engineering services.

The City shall further fully cooperate with the County its contractors and consultants in connection with compliance of all applicable federal, state and local laws, ordinances and regulations, including but not limited to the State Environmental Quality Review Act and the State Historic Preservation Act.

11. **REPRESENTATIONS, WARRANTIES AND GUARANTEES:** (a) The City and

County expressly represent, warrant and guarantee to the other that:

(i) the execution and performance of this Agreement by the City and County has been duly authorized by their respective governing boards; and

(ii) this Agreement, and any other documents required in connection herewith, when so delivered, will constitute legal, valid and binding obligations of the City and County enforceable against the other in accordance with their respective terms; and

(iii) the City and County will deliver to the other at the time of execution of this Agreement an act or resolution, as appropriate, adopted by their respective governing boards authorizing the execution of this Agreement, and any other documents required to be delivered by the City and the County; and

(iv) the persons signing this Agreement on behalf of the City and County has full Authority to bind the City and County to all of the terms and conditions of this Agreement.

(b) The County represents and warrants that it will use all funds transferred to it from the EFC in accordance with the terms set forth in this Agreement and the Funding Agreement and shall be responsible for payment of said funds to the appropriate third parties after receipt of said funds from the EFC.

12. INSURANCE: The City agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "C," entitled "Standard Insurance Provisions," which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "C," the City agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the City shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the City or third parties under the direction or control of the City; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and

(c) This Section "12" shall survive the termination or expiration of this Agreement.

13. **ASSIGNMENT OF RIGHTS:** Neither party may assign any rights under this Agreement without the prior express written consent of the other party.

14. **ENTIRE AGREEMENT; AMENDMENT:** This Agreement, including without limitation, all schedules and attachments, constitute the entire Agreement between the parties and will supersede all previous negotiations, commitments and writings. It will not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties, subject to any necessary legal approvals.

15. **COMPLIANCE WITH LAW:** The County and the City will comply, each at their sole cost and expense, with all applicable federal, state and local laws, rules and regulations, ordinances and requirements affecting the conduct of their activities in connection with the performance of this Agreement herewith and, as applicable to the parties, as an employer.

16. **NOTICES:** All notices of any nature, requests, approvals and other communications which may be given by either party to the other under this Agreement will be in writing and sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier or sent by facsimile (with acknowledgement received and a copy of the notice sent by overnight courier) to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice will be effective upon receipt:

To the County: Commissioner
 Department of Environmental Facilities
 County of Westchester
 270 North Avenue, 6th Floor
 New Rochelle, NY 10801

with a copy to: County Attorney
 Michaelian Office Building, Room 600
 148 Martine Avenue
 White Plains, New York 10601

To the City: Mayor
City of Mount Vernon
One Roosevelt Square
Mount Vernon, New York 10550

with a copy to: Office of Corporation Counsel
City of Mount Vernon
One Roosevelt Square
Mount Vernon, New York 10550

with a copy to: NYS Environmental Facilities Corporation
625 Broadway
Albany, New York 12207

with a copy to: General Counsel
NYS Environmental Facilities Corporation
625 Broadway
Albany, New York 12207

17. **VALIDITY**: If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement will in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision will be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the parties prior to determination of such invalidity or unenforceability.

18. **APPROVALS**: It is hereby acknowledged that any request for any modification of the terms hereof which requires the consent of the parties will be subject to the receipt of any and all necessary legal approvals.

19. **EXECUTION**: This Agreement may be executed simultaneously in several identical copies, each of which will be an original and all of which will constitute but one and the same agreement.

20. **GOVERNING LAW**: This Agreement will be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement will be brought in the County of Westchester.

21. **NO WAIVER**: Failure of the County or the City to insist, in any one or more instances,

upon strict performance of any term or condition herein contained will not be deemed a waiver or relinquishment for the future of such term or condition, but the same will remain in full force and effect.

22. **THIRD PARTIES:** Nothing herein is intended or will be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third-party rights are expressly granted herein.

23. **ENFORCEMENT:** This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney and the Office of the City's Corporation Counsel.

24. **CAPTIONS:** The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

[NO FURTHER TEXT ON THIS PAGE. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the County of Westchester and the City of Mount Vernon have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

By: _____
Vincent F. Kopicki, P.E
Commissioner
Department of Environmental Facilities

CITY OF MOUNT VERNON

By: _____
Name:
Title:

Approved by the Westchester County Board of Legislators by Act No. _____ at a meeting duly held on _____, 2023.

Approved by the Mount Vernon City Council by Resolution No. _____ on _____, 2023.

Approved:

Approved:

Sr. Assistant County Attorney
County of Westchester

Corporation Counsel
City of Mount Vernon

s:C/JPI/DXF/Mt.Vernon.Sewer.Grant.IMA.3.8.23

CITY ACKNOWLEDGMENT

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

On the ___ day of _____ in the year 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgment

CITY CERTIFICATE OF AUTHORITY

I, _____, certify that I am
(Officer other than officer signing contract)
the _____ of the _____
(Title) *(the "Municipality")*

a municipal corporation duly organized and in good standing under the _____

(Law under which organized, e.g., the New York Business Corporate Law)

named in the foregoing agreement; that _____
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution,

(Title of such person)

of the Municipality and that said agreement was duly signed for and on behalf of said Municipality
by authority of its Board of _____, thereunto duly authorized and that
such authority is in full force and effect at the date hereof.

(Signature)

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

On this _____ day of _____, 20 __, before me personally came
_____, whose signature appears above, to me known,
and known to me to be the _____ of _____
_____, the Municipality described in and which
executed the above certificate, who being by me duly sworn did depose and say that he/she, the said
_____ of said Municipality resides at _____
_____, and that he/she signed his/her name
hereto by order of the Board of _____ of said Municipality.

Signature and Office of individual
taking acknowledgment

SCHEDULE "A"

Scope of Work and Budget

I. **Third Street Project:**

[Insert Scope and Budget]

DRAFT

SCHEDULE "B"

City of Mount Vernon Emergency Declaration

[Insert Emergency Declaration.]

REF

SCHEDULE "C"

STANDARD INSURANCE PROVISIONS

(Municipality)

1. Prior to commencing work, and throughout the term of the Agreement, the Municipality shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Municipality shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Municipality's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Municipality maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Municipality. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

2. The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Agreement):

- a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

- b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:

- i. Premises - Operations.
- ii. Broad Form Contractual.
- iii. Independent Contractor and Sub-Contractor.
- iv. Products and Completed Operations.

- c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

- d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

REF

An Act authorizing the County of Westchester to enter into an enter into an intermunicipal agreement with the New York State Environmental Facilities Corporation and the City of Mount Vernon to fully fund the design and construction of the West Third Street Pump Station and Sanitary Sewer Project.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County of Westchester is hereby authorized to enter into an intermunicipal agreement (“IMA”) with the New York State Environmental Facilities Corporation and the City of Mount Vernon to fully fund the design and construction of a below-grade sewer pumping station and sewer line replacement and rehabilitation in the vicinity of the connection to the County’s Hutchinson Valley High Level Interceptor on West Third Street between South Ninth and Tenth Avenues.

§2. The term of the IMA shall commence upon full execution and expire on March 31, 2027, and shall be at no cost to the County.

§3. The County Executive or his authorized designee is hereby authorized and empowered to execute all instruments and to take all action necessary and appropriate to effectuate the purposes hereof.

§4. This Act shall take effect immediately.

FUNDING AGREEMENT

Among

CITY OF MOUNT VERNON

and

COUNTY OF WESTCHESTER

and

NEW YORK STATE
ENVIRONMENTAL FACILITIES CORPORATION

Dated as of [INSERT DATE], 2023

This **FUNDING AGREEMENT**, dated as of the date set forth on the cover page, is between the County of Westchester (the “County”), the City of Mount Vernon (the “Recipient”) and the New York State Environmental Facilities Corporation (the “Corporation”).

WITNESSETH:

WHEREAS, on or about May 10, 2022 the County, Recipient and the New York State Department of Environmental Conservation (the “Department”) on behalf of the State of New York (the “State”) entered into a Memorandum of Understanding (the “MOU”) which describes a Recipient-County-State proposed partnership and path forward to comprehensively improve sanitary sewer and storm sewer systems within the Recipient, and undertake related efforts to increase the flood resilience of these systems in the face of increasing storm intensity resulting from climate change. That MOU outlines the financial, oversight and construction activities designed to achieve substantial progress and ultimately full compliance by the Recipient with Federal and State laws and regulations associated with sanitary sewer and storm sewer systems; and

WHEREAS, the Corporation is empowered under the NYSEFC Act to provide financial assistance to eligible recipients for the planning, design, and construction of projects that provide a water quality benefit; and

WHEREAS, in furtherance of the MOU, the State has made funding available to the Corporation to support municipal water quality infrastructure programs; and

WHEREAS, pursuant to Article 5-G of the New York General Municipal Law, the Recipient has simultaneously entered into an inter-municipal agreement with the County (the “IMA”) whereby the County has agreed to assist the Recipient to procure, coordinate and administer all required services for the design and construction of a below-grade sewer pumping station and sewer line replacement and rehabilitation in the vicinity of the connection to the County’s Hutchinson Valley High Level Interceptor on West Third Street between South Ninth and Tenth Avenues, as more fully described in **Exhibit A** (the “Project”) for the benefit of the Recipient; and

WHEREAS, on the basis of Recipient’s approved Municipal Water Quality Infrastructure Program Funding Form, and the representations, warranties and covenants set forth in this agreement, the Corporation proposes to make funding available to the County for the benefit of the Recipient in accordance with Article III of this agreement, to fund costs incurred by the County for the benefit of the Recipient in connection with the Project, and the Recipient and the County desire to have such funding be used in accordance with and upon the terms and conditions set forth in this agreement;

NOW THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

**ARTICLE I
GENERAL PROVISIONS**

Section 1.1 Definitions.

Unless stated otherwise, each capitalized term used in this Agreement has the meaning specified for it in **Exhibit B**.

Section 1.2 Effective Date and Term.

This Agreement is effective and enforceable as of the date on the cover page following its execution by the Recipient, the County, and the Corporation, and it will remain in full force and effect until March 31, 2027, unless terminated early in accordance with the provisions herein or extended by written agreement of the

parties.

Section 1.3 Exhibits and Appendices Incorporated.

All exhibits and appendices to this Agreement are incorporated into, and made a part of, this Agreement.

Section 1.4 Amendments.

This Agreement may not be amended except by an instrument in writing signed by each of the parties.. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The exchange of copies of signature pages by scanned portable document format (“.pdf”) e-mail attachment shall constitute effective execution of this Agreement. Scanned .pdf copies of this Agreement shall have the same force and effect as an original.

Section 1.5 Applicable Law.

This Agreement is governed by and construed in accordance with the laws of the State.

Section 1.6 Consent to Jurisdiction.

To the fullest extent permitted by law, the parties consent to the initiation of any proceedings to enforce the terms of this Agreement in any court of competent jurisdiction and, if applicable, agrees not to assert the defense of sovereign immunity in any such proceedings.

Section 1.7 No Warranty Regarding Condition, Suitability or Cost of Project.

The Corporation and County make no warranty, express or implied, as to the work required by the Project or that it will be suitable for the Recipient’s purposes or needs, or that the funding provided under this Agreement will be sufficient to pay the costs of the Project. The Recipient is solely responsible, with the County’s assistance, to plan, design, and build the Project properly, and upon completion of the Project the Recipient shall be solely responsible to operate and maintain the Project’s improvements effectively, as required by laws, regulations, permits and good management practices.

The Recipient acknowledges and agrees that neither the Corporation nor the County are responsible for increased costs resulting from defects in the plans, design drawings and specifications, or other Project documents.

Section 1.8 Notices.

All notices or other communications under this Agreement must be sufficiently given, and will be deemed given, when delivered in writing to the address of the identified party or parties set forth on the signature page of this Agreement, or to such other address, facsimile number, or e-mail as the appropriate party may hereafter designate by notice in writing given to the others.

Section 1.9 Severability.

If any provision of this Agreement is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

**ARTICLE II
REPRESENTATIONS AND WARRANTIES**

Section 2.1 Representations and Warranties of the Recipient.

As of the date set forth on the cover page, the Recipient represents and warrants as follows:

- (a) The Project description stated in **Exhibit A** is a general overview of the scope of activities to be funded, in whole or in part, with the funding provided under this Agreement.
- (b) The Estimated Project Costs as shown in **Exhibit C** represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Project.
- (c) All documentation and information provided to the Corporation and County in connection with this Agreement is accurate in all respects and the Recipient acknowledges that the Corporation is executing this Agreement and providing funding in reliance upon the accuracy of such documentation and information.
- (d) The Recipient has obtained all necessary approvals required to undertake the Project. The Recipient further represents that to the extent required it has complied with the State Environmental Quality Review Act, Section 14.09 of the State Historic Preservation Act, and all other applicable federal, state and local laws, ordinances and regulations.
- (e) The Recipient shall not amend or terminate this Agreement without first having secured the Corporation's and County's consent.
- (f) The Recipient shall fully cooperate with the Corporation and the County, its contractors and consultants in connection with all aspects of the design and construction of the Project.
- (g) The Recipient shall not be liable for the actions of the County.

Section 2.2 Representations and Warranties of the County.

As of the date set forth on the cover page, the County represents and warrants as follows:

- (a) The Project description stated in **Exhibit A** is a general overview of the scope of activities to be funded, in whole or in part, with the funding provided under this Agreement.
- (b) The Estimated Project Costs as shown in **Exhibit C** represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Project.
- (c) All documentation and information provided to the Corporation and Recipient in connection with this Agreement is accurate in all respects and the County acknowledges that the Corporation is executing this Agreement and providing funding in reliance upon the accuracy of such documentation and information.
- (d) The County further represents that to the extent required it shall comply with the State Environmental Quality Review Act, Section 14.09 of the State Historic Preservation Act, and all other applicable federal, state and local laws, ordinances and regulations.

**ARTICLE III
AGREEMENT TO PROVIDE FUNDING**

Section 3.1 Project Consultant.

The parties acknowledge and agree that the County has already procured the services of and entered into an agreement with Henningson, Durham & Richardson Architecture and Engineering, P.C. (hereinafter referred to as "HDR") for the provision of hydraulic study, design, preparation of construction contract documents, assistance with bidding and negotiation, design services during construction, construction management, project close-out, related services and to serve as a general consultant in connection with the Project. The parties acknowledge that HDR is currently providing consulting services in connection with the Project and that all work already performed and to be performed by HDR in connection with the Project shall be funded through payments made by the Corporation to the County pursuant to this Agreement, whether or not the County has paid HDR in whole or part for these services. Pursuant to the agreement with HDR, it is anticipated that the County will pay HDR Seven Hundred Thousand Dollars (\$700,000) .

Section 3.2 Agreement to Provide Funding for Project Costs.

Subject to the conditions and in accordance with the terms of this Agreement, the Corporation shall provide funding to the County for the benefit of the Recipient in an amount not to exceed \$9,000,000 for the design and construction of the Project, however, if determined to be necessary by the Corporation, this amount may be increased by the execution of an amendment to this Agreement.

Upon one hundred percent (100%) completion of the design of the Project, and again upon the bid opening for the Project, the parties will jointly review the plans and estimated cost of the Project. Should the estimated cost of the Project exceed the not to exceed amount of this Agreement (\$9,000,000 less the \$700,000 earmarked for the HDR design services agreement), and the Corporation is unwilling or unable to enter into an amendment to this Agreement to increase the not to exceed amount of this Agreement, then the County shall have no further obligation to proceed with the construction of the Project and shall have no further obligations or liability in connection with this Agreement.

If during construction of the Project, it appears that the cost of the Project shall exceed the not to exceed amount of this Agreement as a result of a change order request for any reason, and the Corporation is unwilling or unable to fund said change order, then the County shall have no further obligation to continue with the construction of the Project and shall have no further obligations or liability in connection with this Agreement.

The Corporation shall disburse funds by electronic funds transfer to an account administered by the County pursuant to a disbursement request submitted by the County to the Corporation in the form of **Exhibit D**, with a copy to be simultaneously provided to the Recipient. Each such disbursement request must include sufficient documentation to demonstrate that the work has been performed or supplies, materials or equipment have been purchased for which the disbursement is requested.

The Recipient shall have the opportunity to review each eligible disbursement request made by the County and will have up to four (4) business days to do so after the request is emailed to the Recipient at the email noted below, with an electronic copy to the Corporation and physical courtesy copy mailed via U.S. Mail to the Recipient. If the Recipient has not requested additional time (up to two (2) additional business days) to review such disbursement request, the disbursement request shall be deemed acceptable to the Recipient and the Corporation shall proceed with the requisition process. If the Recipient requests additional time to review such disbursement request in accordance herein, the disbursement request shall be deemed acceptable to the Recipient upon conclusion of that additional time period (up to two (2) additional business days) and the Corporation shall proceed with the requisition process. Notwithstanding anything to the contrary contained herein, for purposes of this paragraph, notice shall be deemed given upon transmission of email.

Should the Corporation require additional information from the County, it shall specify in writing the information that is necessary to process the disbursement request. The Corporation shall use its best efforts to notify the County via email at the email address noted below whether it requires additional information from the County within four (4) business days of the Corporation's receipt of a completed disbursement request. Upon submission by the County of this additional information, as long as no further supporting information is

requested by the Corporation, the Corporation agrees to promptly process each disbursement request and shall endeavor to disburse funds to the County within seven (7) business days thereafter.

If after submission of a disbursement request where no additional information is requested by the Corporation, then the Corporation shall endeavor to disburse funds to the County within ten (10) business days of receipt of such disbursement request.

The Corporation shall have no obligation to make disbursements more frequently than twice (2x) per month.

Section 3.3 Direct Purchases.

The parties acknowledge and agree that the County, in its sole discretion, may directly purchase certain materials and equipment in connection with the Project and, assuming such purchases are deemed eligible Project expenses by the Corporation, these purchases shall be entirely funded through payments made by the Corporation to the County pursuant to this Agreement, whether or not the County has previously paid its vendors and/or materialmen in whole or part for said materials and equipment.

Section 3.4 Source of Funding; Nature of Obligation.

(a) The Corporation shall provide funding pursuant to this Agreement solely from appropriated moneys made available to it for such purpose. The Corporation has no obligation to make any disbursements and no obligation shall be incurred by the State or the Corporation in excess of the moneys made available for that purpose. The Corporation will retain custody and control over the appropriated funds which will only be made available upon submission to the Corporation of documentation of incurred Project costs and approval thereof by the Corporation.

ARTICLE IV COVENANTS

Section 4.1 Project Compliance.

The Recipient and the County shall complete the Project in compliance with all applicable federal, State and local laws and regulations and this Agreement to ensure the availability of the Project for its intended purposes, protect water quality and ensure the safety of the public and public health. The Recipient and the County shall obtain all necessary approvals required to undertake the Project.

Section 4.2 Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises ("MWBE") and Equal Employment Opportunities ("EEO") for Minority Group Members and Women.

The Corporation, the County, and the Recipient acknowledge the importance of providing business participation opportunities for New York State certified minority- and women-owned business enterprises ("MWBEs") and equal employment opportunities ("EEO") for minority group members and women in the performance of contracts and subcontracts for the Project (hereinafter referred to as "Contracts" and "Subcontracts"). Accordingly, the Corporation encourages the Recipient and the County, and the Recipient and the County agree to encourage contractors and subcontractors, to comply with the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 for Contracts and Subcontracts with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

(a) *Equal Employment Opportunities.* The Corporation encourages the Recipient and the County, and the Recipient and the County will encourage contractors and subcontractors performing work pursuant to Contracts or Subcontracts, to undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO refers to the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) *Business Participation Opportunities for MWBEs.* The Corporation encourages the Recipient and the County, and the Recipient and the County will encourage contractors and subcontractors performing work pursuant to Contracts or Subcontracts, to make good faith efforts to promote and assist the participation of MWBEs on Contracts and Subcontracts. The directory of New York State Certified MWBEs can be found at: <https://ny.newnycontracts.com>. The Recipient and the County will provide information on any MWBE participation on Contracts and Subcontracts to the Corporation on an MWBE Utilization Plan prior to or at the time of final disbursement under this Agreement. The Recipient and the County will also provide information on any payments made to MWBEs for work performed on Contracts and Subcontracts to the Corporation prior to or at the time of final disbursement under this Agreement.

Section 4.3 Business Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses (“SDVOB”).

The Corporation, the County, and the Recipient acknowledge the importance of providing business participation opportunities for New York State certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”) in the performance of Contracts and Subcontracts. Accordingly, the Corporation encourages the Recipient and the County, and the Recipient and the County agrees to encourage contractors and subcontractors, to comply with the provisions of New York State Executive Law Article 17-B and 9 NYCRR Part 252 for Contracts and Subcontracts with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. The Corporation encourages the County, and the County will encourage contractors and subcontractors performing work pursuant to Contracts or Subcontracts, to make good faith efforts to promote and assist the participation of SDVOBs on Contracts and Subcontracts. The directory of New York State Certified SDVOBs can be found at: <https://ogs.ny.gov/Veterans/>. The Recipient and the County will provide information on any SDVOB participation on Contracts and Subcontracts to the Corporation on a SDVOB Utilization Plan prior to or at the time of final disbursement under this Agreement. The Recipient and the County will also provide information on any payments made to SDVOBs for work performed on Contracts and Subcontracts to the Corporation prior to or at the time of final disbursement under this Agreement.

Section 4.4 Use of Funding.

The Recipient and the County shall use the funding provided pursuant to this Agreement solely for Project costs in accordance with this Agreement and shall reimburse the Corporation if either fails to do so. The Recipient and the County shall not use materials, equipment, or personnel paid for with funding pursuant to this Agreement for any activity other than those provided for under this Agreement.

Section 4.5 Prevailing Wage Requirements.

The Recipient and the County shall comply, in all applicable respects, with the prevailing wage requirements under Article 8 of the Labor Law.

Section 4.6 Procurement.

The Recipient and the County shall comply with all federal, State and local laws and regulations pertaining to any procurement for contracts whose payment obligations are to be satisfied with funding provided pursuant to this Agreement. The Recipient and the County shall not enter into a contract or subcontract with any party deemed to be ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b. In addition, the Recipient and the County shall not enter into a contract or subcontract with any party deemed to be ineligible to submit a bid under Executive Law § 316.

Section 4.7 Project Approvals.

The Recipient and the County, as appropriate, shall obtain all necessary approvals from all governmental agencies requisite to the completion of the Project and shall comply with any requirements and/or conditions included in such approvals.

Section 4.8 Payment of Additional Project Costs.

In the event the costs for the Project exceed the amount of funding identified in Section 3.2 above, and the Corporation is unwilling or unable to fund such additional costs, the Recipient shall be solely responsible to pay such costs in excess of the Project funding and shall make payment to the County within (5) business days of a disbursement request submitted by the County after the request is emailed to the Recipient at the email noted below. The Recipient shall not be entitled to any reimbursement or funding for such excess costs from the Corporation.

Notwithstanding the above, should the Recipient fail to immediately pay any Project costs in excess of the funding provided pursuant to this Agreement, the County shall have no further obligation to continue with the construction of the Project and shall have no further obligations or liability in connection with this Agreement; provided that the County shall cooperate with the Recipient to promptly assign any contracts related to the Project over to the Recipient.

Section 4.9 Non-Discrimination Requirements.

Pursuant to Article 15 of the Executive Law (also known as the New York State Human Rights Law), and all other State and federal statutory and constitutional non-discrimination provisions, the County, the Recipient, and any contractors/subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if the Project involves the construction, alteration, or repair of any public building or public work, the Recipient and the County agree that neither they nor their contractors/subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. The Recipient and the County shall be subject to fines of \$50.00 per person per day for any violation of Labor Law § 220-e or § 239.

Section 4.10 Indemnification.

To the fullest extent permitted by law, the Recipient and the County agree to indemnify, defend and hold harmless the Corporation against any loss or liability arising out of any claim or action brought against the Corporation for death, injury or damage to persons or property occurring in connection with the planning, design, construction, operation or maintenance of the Project. In each case, such obligation of the Recipient

and County shall be conditioned upon (i) prompt written notice, by the Corporation to the Recipient and/or County, of the institution of any such claim or action and (ii) the assignment, by the Corporation to the Recipient and/or County, of the right to conduct the defense of any such claim or action, provided that such defense shall be undertaken by counsel reasonably satisfactory to the Corporation, and provided further that, absent the Corporation's prior written consent, no settlement, compromise or other voluntary resolution shall be entered into which would impose any liability or obligation on the Corporation. To the fullest extent permitted by law, the Recipient and County agree to pay and discharge any judgment or award entered or made against the Corporation with respect to any such claim or action and any settlement, compromise or other voluntary resolution thereof.

Section 4.11 Accounting and Records.

(a) *Establishment of Project Accounts.* The Recipient and the County shall maintain Project accounts in accordance with generally accepted government accounting standards and any instructions of the Corporation.

(b) *Access to Records.* Upon five (5) business days' notice, the Recipient and the County shall: (i) permit the Corporation, the Department, and the State Comptroller, or their authorized representatives to review or audit all records relative to this Project; (ii) produce or cause to be produced all records relating to any work performed under the terms of this Agreement for examination at such times as may be designated by any of the foregoing entities or their authorized representatives; (iii) permit extracts and copies of Project records to be made by any of the foregoing entities or their authorized representatives; and (iv) promptly fulfill information requests by any of the foregoing entities or their authorized representatives.

(c) *Access to Project and Work.* The Recipient and the County shall permit agents, consultants and representatives of the State Comptroller, the Department, and the Corporation to have access to the Project and its components upon two (2) business days' notice and at all reasonable times. All contracts of the Recipient and/or County for all or any portion of the Project must contain provisions that permit such access to the Project, and require the contractor to provide reasonable access and inspection, and shall permit extracts and copies of Project records to be made by the foregoing agents, consultants, and representatives.

(d) *Record Retention.* The Recipient and the County shall retain Project files and records for the term of this Agreement plus six (6) years.

**ARTICLE V
BREACH OF THIS AGREEMENT; REMEDIES**

Section 5.1 Events of Breach.

The occurrence of any of the following shall be a breach of this Agreement:

(a) *Misrepresentation.* Any warranty, representation or other statement made by or on behalf of any party pursuant to or in connection with this Agreement, is false or misleading.

(b) *Other Failure to Perform.* Any party fails to perform and/or comply with any covenant or condition under this Agreement, including but not limited to failure to make timely payments or to use the funding provided under this Agreement solely for Project costs.

Section 5.2 Remedies.

Upon the occurrence of a breach of this Agreement, any party may take whatever action at law or in

equity may appear necessary or desirable to remedy the breach, in addition to the remedies below. Failure by any party to exercise, or delay in exercising, any right or remedy under this Article V does not operate as a waiver of the right or remedy.

(a) *Reimbursement of Funding.* Notwithstanding anything herein to the contrary, upon the occurrence of a breach by the Recipient and/or the County, the Corporation may upon written notice to the defaulting party, require the defaulting party to reimburse the Corporation all funding paid pursuant to this Agreement from legally available funds appropriated for this purpose, less any amounts paid pursuant to the terms of this Agreement where such amounts were previously approved by the Corporation.

(b) *Nonexclusive Remedy.* If the Corporation determines that the Recipient and/or the County or any Authorized Person is not complying with federal or State laws, regulations or requirements of the Corporation relating to the Project or terms of this Agreement, the Corporation may, in addition to exercising any or all of the remedies described herein, exercise any or all of the remedies otherwise provided by federal or State law or regulations, at law or in equity, including but not limited to rights to seek injunctive relief or specific performance.

(c) *Right to Remedial Action.* Nothing in this Agreement affects the right of any party to take remedial action including but not limited to administrative enforcement action and actions for breach of contract if any party fails to carry out its obligations under this Agreement.

(d) *Breach of IMA or this Agreement.* Notwithstanding anything to the contrary contained herein or the IMA, should any party breach this Agreement or the IMA, the non-breaching parties shall confer and jointly decide whether to continue or whether to terminate this Agreement and/or how to proceed with the completion of the Project.

[Space Intentionally Left Blank/Signature Page Follows]

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed and delivered as of the date first written above.

THE COUNTY OF WESTCHESTER

I certify that I am authorized to sign this Agreement and that I have been duly and formally delegated or designated as the authorized signatory and have the authority to agree to all of the terms and conditions of this Agreement.

By: _____
[]
[]

APPROVED

Sr. Assistant County Attorney
County of Westchester

Notice Address:

Westchester County
Attn: Commissioner of the Department of Environmental Facilities
Michaelian Office Building
270 North Avenue, 6th Floor
New Rochelle, NY 10801
E-mail:

with a copy to:
County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

CITY OF MOUNT VERNON

I certify that I am authorized to sign this Agreement and that I have been duly and formally delegated or designated as the authorized signatory and have the authority to agree to all of the terms and conditions of this Agreement.

By: _____
Shawyn Patterson-Howard
Mayor

Notice Address:

City of Mount Vernon
Attn: Mayor
Mt. Vernon City Hall
1 Roosevelt Square N
Mount Vernon, New York 10550
E-mail:

NEW YORK STATE ENVIRONMENTAL FACILITIES
CORPORATION

By: _____
Maureen A. Coleman
President and CEO

Notice Address:

New York State Environmental Facilities Corporation
Attn: President
625 Broadway
Albany, New York 12207-2997
E-mail: Maureen.coleman@efc.ny.gov (with a copy to Henrik.westin@efc.ny.gov)

DRAFT

EXHIBIT A

PROJECT DESCRIPTION

The Project consists of design and construction of a below-grade sewer pumping station and sewer line replacement and rehabilitation in the vicinity of the connection to the County's Hutchinson Valley High Level Interceptor on West Third Street between South Ninth and Tenth Avenues.

DRAFT

EXHIBIT B

DEFINITIONS

Capitalized terms used in this Agreement, unless otherwise defined herein, have the meanings set forth in this **Exhibit B**.

“Agreement” means this Funding Agreement, dated as of the date set forth on the cover page between the County, the Recipient, and the Corporation.

“Authorized Person” means a person so authorized to act on behalf of the Recipient or the County in connection with execution of this Agreement and the submittal of disbursement requests.

“City” means the City of Mount Vernon.

“Corporation” means the New York State Environmental Facilities Corporation established under the New York State Environmental Facilities Corporation Act, constituting Title 12 of Article 5 of the Public Authorities Law and Chapter 43-A of the Consolidated Laws of the State of New York, as from time to time amended and supplemented., and any entity which may succeed to its rights and duties.

“County” means the County of Westchester.

“Department” means the New York State Department of Environmental Conservation.

“Estimated Project Costs” means the projected costs of the Project that are eligible for funding, as set forth in **Exhibit C**.

“Intermunicipal Agreement” means the agreement entered into on [] by the County and the City.

“NYSEFC Act” means the New York State Environmental Facilities Corporation Act, constituting Title 12 of Article 5 of the Public Authorities Law and Chapter 43-A of the Consolidated Laws of the State of New York, as from time to time amended and supplemented.

“Project” means the project described in **Exhibit A**.

“Recipient” means the City of Mount Vernon.

“State” means the State of New York.

EXHIBIT C

ESTIMATED PROJECT COSTS

[INSERT ESTIMATED PROJECT COSTS/BUDGET]

DATA

EXHIBIT D

DISBURSEMENT REQUEST FORM

REQUEST NO. _____

Dated as of _____, **202**__

All capitalized terms used but not defined herein have the respective meanings set forth in the Funding Agreement, dated as of [INSERT DATE] between the County, the Recipient, and the Corporation.

I, the undersigned and Authorized Person of the County, hereby certify and agree as follows:

1. All representations and warranties of the County as set forth in Article II of the Agreement are still valid and effective as of today's date.

2. This request is being delivered pursuant to the Agreement.

3. The Corporation is hereby requested to make a disbursement under the Agreement in the amount of \$ _____ for Project costs.

4. The County has determined that such Project costs are reasonable, necessary, and allocable to the Project under generally accepted governmental accounting standards.

5. This disbursement, if made, together with any prior disbursements made under the Agreement, will not exceed the total amount of funding available pursuant to the Agreement.

6. The County hereby represents and warrants that it is not in breach of the Agreement, that it has performed all of the covenants and agreements that it is required to perform under the Agreement, that the making of the payment requested has been duly authorized by the County, and that no change in circumstances has occurred, or will occur upon the making of the payment hereby requested, which would constitute a breach under the Agreement.

7. All amounts requested hereunder are for eligible Project costs which have not been included in any previous disbursement, and have not been previously paid using the proceeds of any other third-party source of funding.

8. If disbursement is requested for payment for costs of construction, the County has obtained all licenses, permits or other approvals required as of the date hereof to undertake the Project, or to cause the Project to be undertaken.

9. The County has complied with all applicable public bidding requirements in connection with the Project including, but not limited to, the requirements of General Municipal Law Section § 101.

10. The County has encouraged the participation of MWBEs and SDVOBs on contracts and subcontracts for the Project. The County has provided the Corporation with information on any MWBE and SDVOB participation, by submission of an MWBE and/or SDVOB Utilization Plan as applicable, and any payments made to MWBEs and SDVOBs.

11. The County agrees that payment made pursuant to this disbursement request shall be transmitted by the Corporation in accordance with the following wire instructions:

Wire Instructions:

WESTCHESTER COUNTY

By: _____
Name:
Title:

DEPARTMENT USE ONLY

The Department has reviewed this Disbursement Request and any accompanying invoices or documentation of costs incurred, and approves the request in the amount of:

\$ _____.

(Signature of Authorized Representative)

(Date)

Name: _____

Title: _____

STATE OF NEW YORK)
) ss.
WESTCHESTER COUNTY)

I HEREBY CERTIFY that I have compared the foregoing Acts, Act No's. 60, 61 - 2023, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Acts, which was duly adopted by the County Board of Legislators, of the County of Westchester on March 20, 2023, and approved by the County Executive on March 21, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 22nd day of March, 2023.



Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

