

ACT NO. 2023 - _____

An Act authorizing the County of Westchester to 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 Six Hundred and Fifty Thousand (\$650,000.00) Dollars.

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 \$7,000,000 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 (\$7,000,000 less the \$650,000 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: Commisioner 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)

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.

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]

EXHIBIT D
DISBURSEMENT REQUEST FORM

REQUEST NO. _____

Dated as of _____, 20____

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: _____