

AGREEMENT

AGREEMENT made as of the _____ day of _____, 2014 by and between the **CITY OF HOBOKEN** (“Hoboken”), a municipal corporation of the State of New Jersey having its principal place of business at 94 Washington Street, Hoboken, New Jersey 07030 and the **NORTH HUDSON SEWERAGE AUTHORITY** (the “Authority”), a body politic of the State of New Jersey, with offices at 1600 Adams Street, Hoboken, New Jersey 07030.

WHEREAS, Hoboken is the owner of various properties located in the City of Hoboken and more particularly described in Schedule A attached hereto (the “Properties”) upon which the parties wish to design, construct, maintain and operate the H5 Wet Weather Pump Station (the “Project”). The H5 Wet Weather Pump Station, which will be located on 11th Street west of Sinatra Drive, is designed to alleviate flooding in the H5 drainage basin in Hoboken; and

WHEREAS, Hoboken has applied for funding for the Project through the New Jersey Environmental Infrastructure Trust (NJEIT) through the State Revolving Loan Fund (SRF); and

WHEREAS, the Authority will be the authorized representative for Hoboken and will be responsible for designing, building, operating and maintaining the Project including controlling the Project costs and quality, and managing the operations of the Project; and

WHEREAS, Hoboken will enter into a 99 year lease with the Authority for the Properties upon which the Project will be constructed and operated; and

WHEREAS, Authority represents that it possesses the expertise to cause the Project to be designed, constructed in a good and workmanlike manner, and to be operated and maintained in an effective manner; and

WHEREAS, the Authority and Hoboken desire to memorialize their understanding with regard to improvements to be performed and paid for by Hoboken and to the actions to be taken

by the Authority.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, it is agreed by the Authority and Hoboken as follows:

1. OWNERSHIP OF PROPERTY AND INFRASTRUCTURE.

- A. Hoboken will retain ownership of the Properties on which the Project is to be constructed as well as all of the improvements constructed thereon to be used in conjunction with the Project.
- B. Hoboken shall lease the Properties and improvements which constitute the Project to the Authority for a term of 99 years at a rate of \$1.00 per year.
- C. Hoboken, as owner of the Properties, shall retain all rights with respect to the Properties on which the Project is to be situated including, but not limited to, any and all rights to use the Properties so long as such use does not interfere with the Authority's operation and maintenance of the Project. With the consent of the Authority, which shall not be unreasonably withheld, and if space is available, Hoboken shall specifically have the right of access to utilize any portion of the Properties for the purpose of laying pipes, cables, underground drainages, channels, or providing other common facilities. Hoboken shall have further rights within the Properties, including any buildings or structures standing thereon, as and when deemed necessary by Hoboken, to lay down, place, maintain, alter, remove or repair any pipe, pipe lines, conduits for service lines, posts, or other appliances or apparatus in, on, under, over, along or across the Properties in such area for the purposes of providing any common amenities or services and the same may be done either directly by any person either generally or specially authorized by Hoboken on its behalf and the Authority agrees to same provided it does not interfere with the operation of the Project.

2. PREPARATION AND REVIEW OF DESIGNS, PLANS AND SPECIFICATIONS.

The Authority shall be responsible for designing the Project to mitigate flooding in Hoboken.

In this regard the Authority shall:

- A. Prepare all engineering and design work required for the Project.
- B. Collaborate with Hoboken to accommodate Hoboken's needs.
- C. Own the plans that it develops for the Project. The Authority grants to Hoboken a perpetual license to use the plans in connection with the Project.
- D. The Authority represents that the design, engineering or other relevant development plans are currently 70% complete and shall be submitted to the City for review and comment. Any such comments must be submitted to the Authority within thirty (30) days. 100% complete plans must be submitted to the City by October 31, 2014. Comments must be provided by the City to the Authority within thirty (30) days.
- E. Cooperate with Hoboken and diligently review, prepare and/or execute, as applicable, any and all required plans, designs, specifications and applications for the various infrastructures and on and off-site improvements contemplated herein.
- F. The parties acknowledge that Hoboken, Jersey City and Weehawken have been recognized as successful finalists in the "Rebuild by Design" contest, which has enabled them to receive federal grant money from the U.S. Department of Housing and Urban Development ("HUD") for their comprehensive storm resiliency and engineering proposal to rebuild after SuperStorm Sandy. The Authority agrees to cooperate in good faith with Hoboken to incorporate the purposes of the "Rebuild by Design" regulations in order to protect the H5 Pump Station from future damage.
- G. Provide all necessary engineering services for the applications and related certifications that may be required by the New Jersey Department of Environmental Protection

("NJDEP") for the construction and operation of the Project. Technical specifications shall be submitted by the Authority's engineer, as required by the NJDEP, and as may be required by Hoboken.

- H. Be responsible for advertising and awarding all contracts for the construction of the Project.
- I. Ensure that the Project is implemented in its entirety in accordance with the plans and specifications and that the Project is operated and maintained during the term.

3. CONSTRUCTION OF THE PROJECT.

The Authority shall be responsible for implementing the construction of the Project. In this regard the Authority shall:

- A. Be designated as the authorized representative of the Project for Hoboken.
- B. Organize the supervision, monitoring and control of the construction of the Project.
- C. Be solely responsible to develop and maintain the construction schedule for the Project.

The Authority shall provide a copy of the construction schedule to Hoboken not less than 30 days prior to the commencement of construction.

- D. Each month during the construction phase, the Authority shall forward a monthly engineering report which shall include a progress report on the construction. These reports shall also include the details of any known changes to the proposed date of completion of construction.
- E. Ensure that payments to all contractors and subcontractors are timely made and indemnify Hoboken against any and all claims for payment which, during the progress of work, may become payable or be demanded by any contractor or subcontractor.

F. Upon completion of construction of the Project, furnish a complete copy of as built plans showing all of the improvements and monument locations to Hoboken and provide a complete set of operation manuals to Hoboken.

4. PAYMENT MANAGEMENT.

The Project will be paid for through the New Jersey Environmental Infrastructure Trust (NJEIT) through the State Revolving Loan Fund (SRF). In this regard:

- A. Hoboken shall be the applicant for the funding and the Authority shall be appointed as its authorized representative in connection with the loan.
- B. Hoboken shall assign its rights to receive payments from the funding source to the Authority, with the Authority receiving reimbursement payments directly from the funding source.
- C. Authority shall be responsible for coordinating with the NJEIT in order to obtain authorization to advertise and award contracts.
- D. Authority will be responsible for the engineers estimate of probable construction costs and for all bidding and contracting for the Project.
- E. Hoboken has applied for a loan from the NJEIT for the Project in the amount of \$11,162,500 of which \$9,250,000 is the estimated building cost and the remainder is for engineering fees and administrative costs as well as for construction of a “Sustainable Stormwater Demonstration Project” around City Hall. Should the bids received for the construction portion of the Project be greater than the \$9,250,000 estimated building cost set forth in Hoboken’s NJEIT application, then the parties agree to either negotiate an allocation of the costs above said sum or rebid the contract. If the contract is rebid and the bids again exceed the amount of the building cost estimate of the NJEIT loan as aforesaid, either party may terminate this Agreement.

- F. After the bid for the construction of the Project has been accepted, the Authority will guaranty a total price for the Project which shall be subject to the approval of Hoboken. If the Project costs exceed the guaranteed price specified to Hoboken, the Authority shall be responsible for all cost overages. This shall include additional costs resulting from change orders.
- G. Authority shall review all payment applications by contractors, pay all contractors and manage all payment documentation during construction of the Project. Hoboken shall be provided with copies of all such payment applications and proof of payment.
- H. Authority shall be responsible for responding to all audits from NJEIT and SRF in connection with the Project.
- I. Authority shall ensure that the funds for the Project obtained from the NJEIT are only used by the Authority for the Project in accordance with the design plans and specifications that have been approved by Hoboken.
- J. Authority shall provide to Hoboken releases from each contractor and subcontractor prior to final payment.

5. PERMITS.

The Authority shall be responsible to obtain all building permits, local approvals and certificates of occupancy for the Project prior to the commencement of construction. Copies of all such permits and approvals shall be filed with the Authority and Hoboken. The Authority shall also be responsible for all regulatory approvals, code compliance, FEMA compliance and materials testing and documentation. Hoboken shall be responsible for supplying and compensating all required traffic control officers during the construction phase of the project. The Authority, however, shall use all reasonable efforts to adhere to the construction schedule which will be separately agreed to between the parties.

6. MAINTENANCE AND OPERATIONS OF THE PROJECT.

Upon completion of the construction of the Project, the Authority shall assume all responsibilities for the maintenance, operations and servicing of the Project including the H5 Pump Station. All such functions shall be at no cost to Hoboken. In this regard:

- A. Authority agrees to operate and maintain the Project at all times on behalf of Hoboken in compliance with all State, Federal and local laws and regulations and in accordance with the terms and provisions of this Agreement. The Authority further agrees that the Project shall at all times be kept in good repair and working order and at all times shall be managed, operated and maintained by the Authority in an efficient and economical manner, in accordance with prudent industry and utility practices.
- B. Authority shall organize the supervision, monitoring and control of the operation and maintenance of the Project and its facilities, as may be necessary to ensure the proper performance of the Project.
- C. Authority shall operate and maintain or cause to be operated and maintained the Project facilities and amenities in accordance with the conditions of all prudent utility practices and industry standards at the sole cost and expense of the Authority. 'Maintain' shall mean and include necessary upgrades and replacements of the Project facilities and amenities, from time to time, to meet or surpass prevalent industry standards for similar facilities.
- D. Authority shall provide the City with a copy of its annual Capital Improvement Plan which shall include, as appropriate, information for the H5 Pump Station.
- E. In the event of an emergency relating to the Project which threatens the public health, safety and welfare of the residents of Hoboken, the Authority shall be obligated to repair and remedy the situation as soon as practicable. In the event of such an emergency

situation the Authority will immediately report the nature of the emergency to Hoboken and provide Hoboken with a written explanation of the remedial measures that will be taken by the Authority to address the situation.

- F. Authority shall perform periodic testing of the Project as shall be required in accordance with prudent industry and utility practices.
- G. Hoboken shall have the right from time to time or at any time to inspect the Project and/or the operation thereof by the Authority, provided that same does not interfere with the ordinary operation of the Project.
- H. Hoboken shall have the right to continuously monitor and review the performance of the Project and the operation, maintenance and management thereof by the Authority and, if Hoboken chooses, Hoboken shall be entitled to retain a consulting engineer and/or other consultant at its own cost for purposes of conducting such monitoring and review activities, provided that same does not interfere with the ordinary operation of the Project.
- I. Authority shall keep such records of all pertinent operating data and information relating to the Project, including accounting and financial records, as prudent industry and utility practice shall require.
- J. Authority shall be obligated to provide Hoboken, upon reasonable request, with copies of all operating data, accounting, financial and other information related to the Project. The Authority shall provide monthly engineering reports which shall include information on the Project.
- K. Authority shall provide, at its cost and expense, all labor, materials, machinery and equipment necessary for the operation, maintenance and management of the Project by the Authority in accordance with the terms and provisions of this Agreement.

- L. All repairs and/or improvements to the Project shall be made by the Authority in accordance with existing Hoboken ordinances.
- M. The Authority shall provide Hoboken with monthly engineering reports which shall include information on the Project.
- N. Authority shall provide a staff of qualified and experienced employees who have direct experience in operating, maintaining, and managing systems similar in nature and character to the Project for operations, maintenance and management procedures and shall provide such additional third party support as may be needed to perform its duties and obligations hereunder. Said third parties shall be equally qualified for the particular services to be performed and shall not have any direct claim against Hoboken whatsoever. The Authority at all times shall maintain the necessary number of employees, staff, and third party contractors to operate, maintain and manage the Project in accordance with the terms and provisions of this Agreement, to adequately maintain the Project in good repair and to adequately operate the Project to provide good service and protect the health, welfare, and safety of the citizens of Hoboken.
- O. Authority shall comply with all reporting requirements related to its operations and the operation, maintenance, and management of the Project, as mandated by Federal, State, and local laws and regulations.
- P. Authority shall pay all expenses required for the normal operation, maintenance, and management of the Project.
- Q. At the end of the term, the Authority shall handover the Project operation and maintenance including all assets, either movable or immovable created by the Authority for the Project to Hoboken and the Authority hereby agrees that the Authority shall not be entitled to be paid any compensation therefor. Two (2) years before the end of the term,

the Authority and Hoboken will start making suitable arrangements for handing over all the assets to Hoboken. During this time period, the Authority and Hoboken shall take such actions as are reasonable to prepare for the turnover of the Project. The Authority also agrees that no notice shall be given, or any application made, by Hoboken for the handing over of the Project by the Authority.

7. LICENSES.

The Authority shall acquire and hold all required State, Federal, and local approvals, licenses, permits and certifications necessary to operate, maintain, and manage the Project in accordance with the terms and provisions of this Agreement

8. INSURANCE.

Throughout the Project, and the term of the 99 year lease, insurance coverage shall be maintained by the Authority as follows:

- A. Workers' Compensation and Employers Liability Insurance. The Authority or their agents shall take out and maintain adequate workers' compensation and employer's liability insurance for all employees employed in connection with the work, and in case any work is sublet, the applicant shall require each subcontractor similarly to provide workers' compensation and employer's liability insurance for the latter's employees, unless such employees are covered by the protection afforded by the applicant's insurance. Employer's liability insurance shall have limits of not less than \$500,000 per accident, or for disease \$100,000 per claim.
- B. Comprehensive or commercial general liability and property damage liability including contingent liability and contractual liability and naming Hoboken and its agents and employees as additional insured parties with the following limits:

One person in any one occurrence	\$1,000,000
Two or more persons in any one occurrence	\$5,000,000
Aggregate property damage limit	\$ 300,000
Property damage in any accident	\$ 100,000*

*Property damage insurance shall be extended to cover damage to underground wires, pipes, ducts, conduits, structures, etc. and further to cover explosion damage and damage due to collapse.

C. Automobile liability insurance with the following limits:

One person in any one accident	\$ 500,000
Two or more persons in any one accident	\$1,000,000
Property damage in any one accident	\$ 100,000

9. HOLD HARMLESS AND INDEMNIFICATION.

The Authority, its successors, assigns, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless Hoboken, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of the Authority's actions under this Agreement and costs in connection therewith. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys' fees, court costs and any other expenses that may be incurred by Hoboken in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with the Authority's activities pursuant to the rights granted in this Agreement. This

indemnification does not include any action arising out of the Hoboken's own negligence, willful act or breach of this Agreement.

10. TERMINATION FOR CAUSE BY HOBOKEN.

- A. Hoboken shall have the right to terminate this Agreement due to the Authority's persistent and repeated failure to construct the Project in accordance with the design plans and specifications, to complete construction within sixty (60) months of the execution of this Agreement, or to operate, maintain, and/or manage the Project in accordance with the terms and provisions of this Agreement, its obligations and duties created hereunder, and/or applicable law.
- B. In the event Hoboken desires to terminate this Agreement for the reasons set forth in Paragraph A above, Hoboken shall provide written notice to the Authority setting forth in detail the alleged failure and/or deficiency of the Authority. The Authority shall have thirty (30) days after receipt of such written notice from Hoboken to cure and/or correct such failure and/or deficiency or to deliver to Hoboken a written notice alleging that no such event has occurred and setting forth in detail its reasoning as to why no such event has occurred.
- C. In the event that the Authority does not cure and/or correct such failure and/or deficiency within said thirty (30) day period or deliver to Hoboken the written notice described in the preceding sentence within said thirty (30) day period, Hoboken shall have the right to terminate this Agreement upon one (1) year notice.

11. OPTIONAL TERMINATION BY HOBOKEN.

Either party may, at its sole option and discretion, at any time during the term of this Agreement, terminate this Agreement for any reason whatsoever, upon one (1) year prior written notice to the other. If this option is exercised by Hoboken, Hoboken shall be obligated to assume

the unpaid portion of any capital improvement loans or bonds that have been incurred by the Authority for the project.

12. MISCELLANEOUS.

A. Enforcement.

The failure on the part of any party to enforce any provision of this Agreement shall not be construed as a waiver of its right to enforce such provision in the future.

B. Assignment.

This Agreement shall not be assigned by any party without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

C. Entire Agreement.

This Agreement contains the entire agreement between the parties hereto relating to the operation, maintenance and management of the Project and supersedes all previous or contemporaneous communications, representations, or agreements. This Agreement may be modified only by written amendment signed by the parties hereto.

D. Notices.

All notices given pursuant to the terms of this Agreement shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage pre-paid. Notices required to be given to the Authority shall be addressed as follows:

North Hudson Sewerage Authority
1600 Adams Street
Hoboken, New Jersey 07030

Attn: Executive Director

Notices required to be given to Hoboken shall be addressed as follows:

City Clerk
Hoboken City Hall
Hoboken, New Jersey 07642

or to such other address(es) as may be specified by written notice.

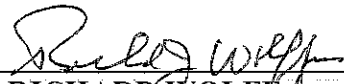
This Agreement may only be modified or terminated by written agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

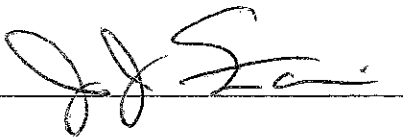
ATTEST:


FRANK COVELLO, COUNSEL

NORTH HUDSON SEWERAGE AUTHORITY

By: 
RICHARD WOLFF,
EXECUTIVE DIRECTOR

ATTEST: 10-8-14


Clerk

CITY OF HOBOKEN

By: 
DAWN ZIMMER, Mayor

Introduced by: [Signature]
 Seconded by: [Signature]

**CITY OF HOBOKEN
 RESOLUTION NO. : _____**

Authority [Signature]

RESOLUTION TO AUTHORIZE EXECUTION OF THE ATTACHED AGREEMENT BETWEEN NORTH HUDSON SEWERAGE AND THE CITY OF HOBOKEN

WHEREAS, the City wishes to enter into the attached Agreement with North Hudson Sewerage Authority ("NHTSA") to design, construct, maintain and operate the H5 Wet Weather Pump Station which will be located on City owned property at 11th Street west of Sinatra Drive; and

WHEREAS, the City has applied for complete funding for this project through the New Jersey Environmental Infrastructure Trust ("NJEIT") as well as through the State Revolving Loan Fund ("SRF"); and

WHEREAS, this project inherently benefits the City, its residents as well as visitors by alleviating flooding in the H5 drainage basin as well as contributing to the City's storm resiliency; and

WHEREAS, the Agreement authorizes the City to expend funds for the NHTSA pumping station once those funds have been received from the NJET and SRF; and,

NOW THEREFORE, BE IT RESOLVED, that the City is authorized to enter into the attached Agreement with North Hudson Sewerage Authority; and

BE IT FURTHER RESOLVED the City Clerk shall publish this resolution as required by law and keep a copy of the resulting contract on file in accordance with N.J.S.A. 40A:11-1 et seq.; and,

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be provided to Mayor Dawn Zimmer and Corporation Counsel for action in accordance therewith and to take any other actions necessary to complete and realize the intent and purpose of this resolution; and,

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

Meeting date: October 1, 2014

APPROVED:
[Signature]
 Quentin Wiest
 Business Administrator

APPROVED AS TO FORM
[Signature]
 Melissa L. Longo, Esq.
 Corporation Counsel

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla	/			
Theresa Castellano	/			
Peter Cunningham	/			
James Doyle	/			
Elizabeth Mason	/			/
David Mello	/			
Tim Occhipinti	/			
Michael Russo	/			
President Jen Giattino	/			

AT A MEETING HELD ON: OCT 01 2014

[Signature]
 CITY CLERK