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TO: Honorable Board of Acquisition and Contract

FROM: Vincent F. Kopicki, P.E.
Commissioner of Environmental Facilities

DATE: August 26, 2020

SUBJECT: Authorization for the County of Westchester to amend Contract EF-1907 for Tide Gate Replacements and Regulator Improvements, North Yonkers, Central Yonkers and South Yonkers Sanitary Sewer Districts, City of Yonkers, Westchester County, New York with ELQ Industries, Inc., to require compliance with the Entry Permit executed between the County and the MTA Bus Company for the Lamartine Avenue, Regulator 008 Site.

Pursuant to a resolution approved on September 5, 2019, your Honorable Board awarded Contract No. EF-1907 for Tide Gate Replacements and Regulator Improvements, North Yonkers, Central Yonkers and South Yonkers Sanitary Sewer Districts, City of Yonkers, Westchester County, New York, (the "Project") to ELQ Industries, Inc. ("ELQ"), 567 Fifth Avenue, New Rochelle, NY, 10801 in the amount not to exceed \$4,000,000.00 payable on a time and material basis. The term of the agreement commenced on September 1, 2019 and expires on December 31, 2020. Contract No. EF-1907 was subsequently executed on September 24, 2019.

Pursuant to a resolution approved on July 7, 2020, your Honorable Board authorized the County of Westchester (the "County"), acting by and through the Department of Environmental Facilities (the "Department") to enter into an entry permit (the "Entry Permit") with the MTA Bus Company (the "MTA") for a term commencing on May 1, 2020 and terminating on December 31, 2020 granting to the County and its contractors, subcontractors, access to certain real property leased by the MTA and located at 50 Babcock Place, Yonkers New York (SBL 2-2620-50 on the Official Tax Maps for the City of Yonkers) (the "Property"), in order for the County to perform certain work required for the Project at the Lamartine Avenue, City of Yonkers, Regulator 008 site (the "Lamartine Avenue Site"). The Entry Permit was subsequently executed on July 28, 2020.

Authorization is now sought from your Honorable Board to amend Contract No. EF-1907 with ELQ to require ELQ comply with the terms of the Entry Permit. Those terms include the following: (i) procuring certain additional insurance as required by the Entry Permit (ii) providing certain additional indemnification as required by the Entry Permit, (iii) agreeing to pay

an amount not to exceed \$50,000 to reimburse the MTA for certain costs and expenses reasonably incurred by the MTA in permitting access to and entry upon the Lamartine Site, as part and included in the \$4,000,000 not to exceed amount for Contract EF-1907, (iii) agreeing to a forum selection clause for disputes under the Entry Permit, (iv) waiving trial by jury for claims arising under the Entry Permit, (v) waiving consequential damages under the Entry Permit, and (vi) agreeing to a force majeure clause for work performed under the Entry Permit.

According, approval of the attached resolution is respectfully requested.

APPROVED BOARD OF ACQUISITION & CONTRACT - 09/10/2020 - LISA MARIJAS SECRETARY

