

KENNETH SCHMITT
Town Supervisor

TOWN OF CARMEL
TOWN HALL

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Town Clerk

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AGENDA
TOWN BOARD WORK SESSION
Wednesday, October 2, 2013 7:00pm

[Pledge of Allegiance – Moment of Silence](#)

Town Board Voting Meeting:

1. Res: Authorizing Agreement between the City of New York and the Town of Carmel for the Operation and Maintenance of Upgrades Required by the City's Watershed Regulations for CSD#7
 2. Res: Authorizing Re-advertising for Bids
 3. Distribution of the Tentative Budget Fiscal Year Ending 2014 to the Carmel Town Board by Ann Spofford, Town Clerk
 - 3A. Budget Message 2014 by Kenneth Schmitt, Town Supervisor
 - 3B. PowerPoint Presentation of 2014 Budget by Mary Ann Maxwell, Town Comptroller
- **Public Comment (Three (3) Minutes on Agenda Items Only)**
 - **Town Board Member Comments**

Open Forum:

- **Public Comments on New Town Related Business (Three (3) Minutes Maximum per Speaker for Town Residents, Property Owners & Business Owners Only)**
- **Town Board Member Comments**
- **Adjournment**

#1

RESOLUTION AUTHORIZING ENTRY INTO CONTRACT WITH THE CITY OF NEW YORK FOR CARMEL SEWER DISTRICT #7 WASTEWATER TREATMENT PLANT OPERATIONS & MAINTENANCE

RESOLVED, that the Town Board of the Town of Carmel, Acting as Commissioners of Carmel Sewer District #7, hereby authorizes the entry into an agreement between the Town of Carmel and the City of New York for the operation and maintenance of Carmel Sewer District #7 wastewater treatment plant upgrades required by the watershed regulations of the City of New York in form as attached hereto and made a part hereof; and

BE IT FURTHER RESOLVED that Town Supervisor Kenneth Schmitt is hereby authorized and directed to execute said contract and any other and further documentation necessary to the performance thereof.

Resolution

Offered by: _____

Seconded by: _____

| <u>Roll Call Vote</u> | <u>YES</u> | <u>NO</u> |
|-----------------------|------------|-----------|
| Jonathan Schneider | _____ | _____ |
| John Lupinacci | _____ | _____ |
| Suzanne McDonough | _____ | _____ |
| Frank Lombardi | _____ | _____ |
| Kenneth Schmitt | _____ | _____ |

**AGREEMENT BETWEEN THE CITY OF NEW YORK
AND TOWN OF CARMEL FOR THE OPERATION AND MAINTENANCE OF
UPGRADES REQUIRED BY THE CITY'S WATERSHED REGULATIONS**

THIS AGREEMENT is made and entered into the ____ day of _____, 20__ by and between **THE CITY OF NEW YORK** (the "City"), a municipal corporation organized and existing under the laws of the State of New York, having its principal office at City Hall in the Borough of Manhattan, City and State of New York, and **TOWN OF CARMEL** ("Owner"), the owner of a wastewater treatment plant ("WWTP") located in the Town of Mahopac, County of Putnam, State of New York, and having its principal office at 60 McAlpin Avenue, Carmel, New York 10541, (the City and the Owner collectively referred to herein as the "Parties").

WHEREAS, the City, acting by and through the Commissioner of the New York City Department of Environmental Protection ("NYCDEP"), is charged with the duty of protecting the high quality of waters from which the City's water supply is drawn and preserving it from degradation for the purpose of protecting the health and general welfare of the consumers of this supply; and

WHEREAS, the Owner operates a WWTP that is located within the watershed of the City of New York's drinking water supply system; and

WHEREAS, discharges from the WWTP flow into the Plum Brook, a tributary of the Muscoot Reservoir; and

WHEREAS, the City is concerned about the potential impact of the discharges from the WWTP on the drinking water supply of the City of New York; and

WHEREAS, in January 1997, the City entered into a Memorandum of Agreement regarding the City's watershed protection program with the State of New York, the United States Environmental Protection Agency, the Coalition of Watershed Towns, the Catskill Watershed Corporation, Putnam County, Westchester County, certain watershed municipalities, and certain environmental groups (the "Watershed MOA"); and

WHEREAS, pursuant to Article 11, §1100 of the New York State Public Health Law and § 24-302 of the New York City Administrative Code, the City promulgated "Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources" (the "Watershed Regulations"), which became effective May 1, 1997; and

WHEREAS, Section 18-36(a)(10) of the Watershed Regulations requires owners of WWTPs located within the watershed of the City's drinking water supply to upgrade their WWTPs to comply with the Watershed Regulations; and

WHEREAS, pursuant to Paragraph 141 of the Watershed MOA, the City agreed to pay for the costs of upgrading existing WWTPs in order to enable them to comply with the requirements imposed solely by the Watershed Regulations (“Regulatory Upgrades,” as that term is defined herein), in order to ensure that the work would be performed expeditiously; and

WHEREAS, in connection with upgrading the WWTP, the Owner may also be installing equipment which, in addition to enabling existing WWTPs to comply with requirements imposed solely by the Watershed Regulations, also replaces equipment previously used at the WWTPs to comply with federal and State law and that will now enable the WWTPs to comply with State and federal law, as well as the Watershed Regulations; and

WHEREAS, the City’s agreement to pay for those costs of the Regulatory Upgrades at public WWTPs (as that term is interpreted under the Public Health Law), which are required solely by the Watershed Regulations and not because of any provision of federal, State or local law, regulation or enforceable standard otherwise applicable to a WWTP (such upgrades not necessarily being the same as those upgrades which are being funded pursuant to the City’s obligation in the Watershed MOA to fund Regulatory Upgrades), is also made pursuant to the City’s obligation to pay such costs as required by the Public Health Law Section 1104(1); and

WHEREAS, the City and the New York State Environmental Facilities Corporation (“EFC”) have entered into an agreement pursuant to which EFC is assisting the City to administer a program to design, permit, construct and install Regulatory Upgrades at existing WWTPs (the “WWTP Upgrade Program”) and pursuant to which EFC has executed and implemented contracts with WWTP owners for the disbursement of City funds to pay for the costs of designing, permitting, constructing and installing such upgrades (“City-EFC Agreement”); and

WHEREAS, on or about May 1, 1998, the Owner executed such a contract with EFC to upgrade the WWTP in accordance with NYCDEP approved plans and specifications, and the City is a third party beneficiary to such contract (“Owner Upgrade Contract”); and

WHEREAS, the Owner has agreed to operate and maintain the upgraded WWTP in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the City has agreed to pay the Owner for certain costs associated with the operation and maintenance of the WWTP in accordance with this Agreement;

NOW, THEREFORE, in consideration of the promises, the mutual representations and agreements hereinafter contained, together with such other and further consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1
GENERAL PROVISIONS

Section 1.01 Definitions

1. “Agreement” means this Agreement between the City and the Owner for funding a portion of the WWTP’s operation and maintenance costs in an amount determined pursuant to, and in accordance with, the terms and conditions herein.

2. “Allowable Litigation Costs” means, and is limited to:

a. awards in contract damage, personal injury, and property damage actions to the extent such awards arise out of Operation or Maintenance of the Regulatory Upgrades and are not covered by the Owner’s insurance; and

b. settlements of contract damage, personal injury, or property damage actions to the extent that such awards arise out of Operation or Maintenance of the Regulatory Upgrades, and are not covered by the Owner’s insurance, that have been determined by the City, in advance of the Owner’s entering into such settlements, to be reasonable; and

c. reasonable legal fees and expenses incurred in connection with (a) and (b) above; and

d. reasonable legal fees and expenses incurred in connection with defending against and/or settling enforcement proceedings resulting in the imposition of Allowable Fines and Penalties as defined herein (including legal fees and expenses incurred under such circumstances if the result is that no fines, penalties, and/or costs of any environmental benefit projects(s) are payable; and

e. awards or settlements resulting from any criminal conduct, willful misconduct, gross negligence on the part of the Owner, its agents, officers, and/or employees, or the Owner’s failure to operate and maintain the Regulatory Upgrades properly, in good repair and operating condition, shall not be Allowable Litigation Costs; and

f. any agreement by the City to pay Allowable Litigation Costs shall be strictly in excess of any and all insurance coverage carried by the Owner and the applicable Contractor, Consultant, or Subcontractor.

3. “Allowable Fines and Penalties” means, and is limited to, any fine or penalty, and/or the costs of any environmental benefit project(s) imposed on the Owner by a court or regulatory agency, to the extent that such fines, penalties, or costs of such environmental benefit project(s) arise out of the operation and maintenance of the Regulatory Upgrades and are not covered by the Owner’s insurance; provided that Allowable Fines and Penalties shall not include any fines, penalties or costs of such environmental benefit project(s) imposed by a federal, state or local regulatory authority on the Owner as a result of any criminal conduct, willful misconduct, or gross negligence on the part of the Owner, its agents, officers, and/or employees in connection with the operation and maintenance of the WWTP, and further provided that the Owner has operated and maintained the Regulatory Upgrades in good repair and operating condition in accordance with the Operation and Maintenance Manual. If such fine, penalty, or environmental benefit project is required as a result of a settlement, the cost shall be payable by

the City only if the settlement has been determined to be reasonable by the City, in advance of the Owner's entering into such settlement.

4. "City" means the City of New York and any of its departments and agencies, including without limitation, NYCDEP.

5. "Consumer Price Index" or "CPI" means, for purposes of this Agreement, the Consumer Price Index for All Urban Consumers (CPI-U), which is prepared and published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor agency, or the successor index to the CPI as defined herein.

6. "Contractor" or "Consultant" or "Subcontractor" means any person or entity contracting with the Owner for the provision of goods or services in connection with the Regulatory Upgrades and pursuant to, this Agreement

7. "Executive Committee of the Watershed Protection and Partnership Council" or "Executive Committee" means the Executive Committee of the New York City Watershed Protection and Partnership Council ("WPPC") established pursuant to Paragraph 98 of the Watershed MOA.

8. "Final Upgrade Plan" or "FUP" means the upgrade plan for the WWTP consisting of engineering plans and costs for implementing a Regulatory Upgrade and, if applicable, a SPDES Upgrade or such other NYCDEP-approved upgrade to the WWTP, which has been prepared by the WWTP engineer in accordance with the Scope of Work of the Owner Upgrade Contract, and which has received NYCDEP approval, dated 11/5/08, together with any NYCDEP-approved amendments thereto. The Final Upgrade Plan is incorporated herein by this reference.

9. "Fiscal Year" means the budget year selected by the WWTP Owner.

10. "Functional Completion Certification" means the written certification from the WWTP engineer, containing the Engineer's P.E. Seal, attesting that the WWTP upgrade is functionally complete pursuant to the Upgrade Program requirements. Such certification will include, but not be limited to, certifying that the WWTP upgrade was constructed in accordance with the approved Final Upgrade Plan; certifying that the equipment was installed as designed and specified; and certifying that the WWTP Upgrade is ready to proceed to Startup and Performance Testing.

11. "Income Taxes on City Funds" means Federal, State or local income, franchise or other taxes on or measured by net income, gross receipts, or gross income on Funds, as defined in this Agreement, paid by the City to the Owner pursuant to this Agreement. Income Taxes on City Funds do not include i) any taxes attributable to Funds paid to, and used by, the Owner to fund the O & M Contingency Account; ii) any taxes attributable to the income on O&M Contingency Account; or iii) taxes attributable to Funds that were advanced to the Owner by the City pursuant to this Agreement during the Tax Reporting Period but not spent during the Tax Reporting Period by the Owner for Regulatory Upgrades O & M Costs.

12. "Incremental Cost" means the actual cost attributable to each item of Operation and Maintenance Costs for which the Parties have determined that the appropriate allocation of costs attributable to the Regulatory Upgrades is the increment over an item-specific baseline. The attached Schedule 1 lists such items and also their agreed-upon baselines for the first year of

this Agreement. The baselines shall be adjusted annually to reflect the rate of inflation or deflation, based on the previous year's Consumer Price Index.

13. "Incremental Property Taxes" means the real property taxes assessed on the increase in value that results from the Regulatory Upgrades to all property that is taxable and upon which taxes are assessed pursuant to the Real Property Tax Law.

14. "Incremental Regulatory Upgrades Cost" means, for each item of Operation and Maintenance Costs identified in Schedule 1 as an Incremental Cost, the total cost of such item minus the baseline for such item, adjusted as set forth above.

15. "Initial WWTP Flow" or "Initial Flow" means 46,500, the average of the 30-day average gallons per day (gpd) flows of the WWTP over the twelve-month period preceding the execution of this Agreement, or the projected flow for the WWTP for the twelve month period following the execution of this Agreement, the period for which the baselines for Incremental Costs and the percentages for Proportional Costs, set forth in Schedule 1, were derived.

16. "Itemizable Cost" means the actual costs attributable to each item of Operation and Maintenance Costs for which the Parties have determined that the allocation of costs attributable to the Regulatory Upgrades will be made on a per-item basis. The attached Schedule 1 lists such items.

17. "Itemizable Regulatory Upgrades Cost" means, for each item of Operation and Maintenance Costs identified in Schedule 1 as an Itemizable Cost, the cost attributed to the Regulatory Upgrades.

18. "List of Regulatory Upgrades" means the list of Regulatory Upgrades, as defined herein, which may be amended from time to time in accordance with the provisions of this Agreement. The List of Regulatory Upgrades is attached to this Agreement as Exhibit "A" and incorporated herein by this reference.

19. "NYCDEP" means the New York City Department of Environmental Protection.

20. "Operation and Maintenance" or "O & M" means a) activities undertaken to enable the equipment and methods instituted at the WWTP to perform their intended functions; b) activities undertaken to reduce or arrest the rate of deterioration of fixed capital equipment at the WWTP; and c) activities undertaken to maintain such equipment in a state of good repair and to help achieve the optimum useful life of such equipment, including, but not limited to, preventive maintenance, normal periodic repairs, and replacement of certain items, as specified and limited in the list, attached hereto and incorporated herein by this reference as Exhibit "B." Operation and Maintenance shall be performed in accordance with the recommendations of the manufacturers of the equipment at the WWTP and the O&M Manual. In the case of a conflict between the manufacturer's recommendations and provisions of the O & M Manual, the O & M Manual provisions shall prevail.

21. "Operation and Maintenance Contingency Account" means an interest-bearing account maintained by the Owner to be used solely for payment of Operation and Maintenance Costs. In any year, such account, including accrued interest shall be at a level not exceeding the lesser of either (i) ten percent (10%) of the annual budget for Operation and Maintenance of the WWTP for such year developed pursuant to Section 3.03(A) or (ii) \$ 50,000 (the "Contingency

Cap”). The Operation and Maintenance Contingency Account shall be replenished only when necessary to maintain such level. The Contingency Cap shall be adjusted annually to reflect the rate of inflation or deflation, based on the previous year’s Consumer Price Index. The City shall not pay Income Taxes on City Funds for payments made to the Operation and Maintenance Contingency Account by the Owner with Funds paid by the City or on the income earned on such Account.

22. “Operation and Maintenance Costs” or “O & M Costs” means the actual and reasonable costs incurred in Operation and Maintenance at the WWTP that are incurred by the Owner, as defined herein.

a. The O & M Costs shall be calculated to include costs for labor, which shall include direct salary and indirect personnel costs for pension, insurance and other fringe benefits. Indirect personnel costs should be limited to no more than 25% of the direct salary costs incurred for personnel employed to work at the WWTP and no more than 40% of the direct salary costs incurred for personnel providing Operation and Maintenance services for the WWTP from other locations. (These rates reflect the fact that for on-site employees, indirect personnel costs do not include costs associated with workspace and utilities, which are treated as separate O & M Costs.) If the WWTP is municipally-owned, Labor Costs shall not include the direct or indirect personnel costs of elected officials and shall not include the direct or indirect personnel costs of appointed officials of such municipality that owns the WWTP who are performing general governmental functions, not specifically related to actual Operation and Maintenance of the WWTP or administrative work required under this Agreement.

b. O & M Costs include funding of an Operation and Maintenance Contingency Account, as defined and limited herein.

c. O & M Costs include actual administrative and professional expenses incurred because of reporting and budget and other documentation required in connection with Regulatory Upgrades and/or under this Agreement.

d. O&M Costs shall be calculated to include legal and professional fees, insurance premiums, self-insurance retention/deductibles, and administrative costs and interest charges that are associated with the activities listed in Section 1.01(20) above.

e. O&M Costs include Income Taxes on City Funds, to the extent that such Income Taxes on City Funds are based on a final, non-appealable determination issued against the Owner by the Internal Revenue Service or by any State, local or other taxing jurisdiction obtained in accordance with the procedures and requirements set forth in this Agreement, except that O & M Costs do not include any taxes on Funds paid to the Operation and Maintenance Contingency Account, the income earned on such Account, or the taxes attributable to unspent Funds advanced to the Owner by the City after the conclusion of the Tax Reporting Period for which such Funds were advanced. The City shall pay the amount of such Income Taxes on City Funds (but not the amount of any additional Income Taxes on City Funds that may result from said payment). Any such liability for Income Taxes on City Funds shall be computed by taking into account all items of deductions (including deductible net operating loss carryforwards and carrybacks), credits, exemptions and exclusions from the Income Tax base that are applicable to the computation of the Income Tax on City Funds for the Tax Reporting Period in which a payment is made pursuant to this Agreement; provided, however, that the City shall not be liable

for any interest attributable to or resulting from the late payment of such Income Taxes on City Funds or for any penalties imposed by the taxing jurisdiction.

f. "Operation and Maintenance Costs" do not include:

(1) expenditures for acquisition, construction, demolition, complete replacement, or major rehabilitation or reconstruction of fixed capital equipment, as set forth in Exhibit "B," attached hereto and incorporated herein by this reference; or

(2) expenditures to operate or maintain equipment and methods that are installed as SPDES Upgrades or SPDES Upgrades – I & I work; or

(3) expenditures to operate or maintain equipment and methods that are installed at the WWTP as other work approved by NYCDEP and included on the Final Upgrade Plan, but which are not Regulatory Upgrades. A list of such equipment and methods is attached hereto as Exhibit "C" and incorporated herein by this reference; or

(4) expenditures for the operation, maintenance, repair, or rehabilitation of equipment and methods of the WWTP's treatment train and processes, other than Regulatory Upgrades paid for under this Agreement, whether installed at the WWTP prior to or during the term of this Agreement; or

(5) expenditures for the operation, maintenance or repair of the WWTP's Regulatory Upgrades that are attributable to the willful or grossly negligent acts or omissions to act by the Owner or the Owners' employees, servants, agents, officers or independent contractors, including the WWTP operator, to operate the WWTP in accordance with the WWTP's O & M Manual, good engineering practices, the Watershed Regulations or applicable State or federal law and regulations; or

(6) fines or penalties paid by the Owner arising from the Owner's operation of the WWTP, and the costs of any remedial measures that the Owner is ordered to undertake by a regulatory agency or State or federal court arising out of the operation of the WWTP or Start-up and Performance Testing, other than Allowable Fines and Penalties as defined above; or

(7) expenditures for Shakedown and Start-up and Performance Testing activities that are payable or reimbursable by the City under any contract or agreement other than this Agreement; or

(8) expenditures for Shakedown and Start-up Performance Testing activities, other than those for Regulatory Upgrades.

23. "Operation and Maintenance Manual" or "O&M Manual" means the manual prepared by the Owner pursuant to Section 18-36(a)(4) of the Watershed Regulations.

24. "Other O & M Costs" means O & M Costs less Itemizable Costs, Incremental Costs, and Proportional Costs.

25. "Other Regulatory Upgrades O & M Costs" means the amount equal to the Other O & M Costs multiplied by the ratio of (i) the sum of the Proportional Regulatory Upgrades Costs, Incremental Regulatory Upgrades Costs, and the Itemizable Regulatory Upgrades Costs to

(ii) the sum of the Proportional Costs, Incremental Costs and Itemizable Costs. For the first year of payments under this Agreement, this ratio shall be calculated using the amounts for the items listed above, based on the first year's agreed-upon budget. In subsequent years, the ratio shall be calculated using the amounts for such items based on the most recent reconciliation.

26. "Owner" means the WWTP owner, who is responsible for the Operation and Maintenance of the WWTP.

27. "Party" or "Parties" means the City and/or NYCDEP and the Owner.

28. "Proportional Cost" means the actual costs attributable to each item of Operation and Maintenance Costs for which the Parties have determined that the appropriate allocation of costs attributable to the Regulatory Upgrades will be calculated on a percentage basis. The attached Schedule 1 lists such items and also the agreed-upon percentage attributable to the Regulatory Upgrades for each such item.

29. "Proportional Regulatory Upgrades Cost" means, for each item of Operation and Maintenance Costs identified in Schedule 1 as a Proportional Cost, the amount of such cost attributable to the Regulatory Upgrades, based on the percentages set forth in Schedule 1.

30. "Regulatory Upgrade" or "Regulatory Upgrades" means: 1) the equipment installed and methods of operation instituted at the WWTP and required solely by the Watershed Regulations and 2) the equipment installed and methods of operation instituted that replace existing equipment and methods used at the WWTP to comply with federal or State law at the WWTP in accordance with the Final Upgrade Plan in order to comply with the Watershed Regulations, as well as State or federal law.

31. "Regulatory Upgrades Operation and Maintenance Costs" or "Regulatory Upgrades O & M Costs" means the O & M Costs associated with the Operation and Maintenance of the Regulatory Upgrades. Regulatory Upgrades O & M Costs are the sum of all Incremental Regulatory Upgrades Costs, all Itemizable Regulatory Upgrades Costs, all Proportional Regulatory Upgrades Costs, and Other Regulatory Upgrades O & M Costs, plus Income Taxes on City Funds, Incremental Property Taxes, and Allowable Litigation Costs and Allowable Fines and Penalties, as defined herein.

32. "Shakedown" or "Start-up and Performance Testing" means the testing, pursuant to the Final Upgrade Plan, and in accordance with the equipment manufacturers' recommendations, the consultant engineer's directives, and/or the O&M Manual of treatment and processes, equipment, methods of operation, and materials constructed or installed at the WWTP, following construction, installation, and/or implementation of such treatment and processes, equipment and materials.

33. "SPDES Permit" means the State Pollutant Discharge Elimination System permit issued by the New York State Department of Environmental Conservation pursuant to New York State Environmental Conservation Law Title 8, Section 17-0801 et seq., requiring the WWTP to meet certain effluent standards and limitations.

34. “SPDES Upgrade” or “SPDES Upgrades” means the equipment installed and methods instituted in accordance with and pursuant to Paragraph 121 of the Watershed MOA for the rehabilitation, replacement or upgrade of equipment that is unreliable, failing or nearing the end of its useful life and is necessary to the treatment process, as agreed upon by NYCDEP and the Owner, but which measures are not required solely by the Watershed Regulations.

35. “SPDES Upgrades – I & I” means the equipment, if any, installed to correct infiltration and inflow (“I and I”) problems in accordance with and pursuant to Paragraph 121(e) of the Watershed MOA as agreed upon by NYCDEP and the Owner.

36. “Tax Reporting Period” means the tax year or other applicable period with respect to which any Income Tax on City Funds liability is required to be reported by the Owner and paid under the laws of the relevant taxing jurisdiction.

37. “VENDEX” means the Vendor Information Exchange System of the City of New York.

38. “Wastewater Treatment Plant” or “WWTP” means the WWTP that is being, or has been, upgraded pursuant to the Owner Upgrade Contract and in accordance with the Final Upgrade Plan.

39. “Watershed Regulations” means the Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources, 10 NYCRR Part 128; 15 RCNY Chapter 18.

Section 1.02 Purpose of Agreement

The purpose of this Agreement is to implement provisions of the Watershed MOA and Section 1104(1) of the New York State Public Health Law (“PHL”) pertaining to the Operation and Maintenance of Regulatory Upgrades to existing WWTPs in the New York City watershed.

The Owner shall operate and maintain Regulatory Upgrades in good repair and operating condition in accordance with good engineering practices, applicable laws and regulations, including the Watershed Regulations, the WWTP’s O & M Manual, the recommendations of the manufacturers operating manual(s), to the extent that the operating manual(s) applies to the equipment installed at the WWTP, the WWTP’s SPDES Permit, and the terms of this Agreement. The City shall pay the Owner for the actual and reasonable costs that are directly attributable to the Operation and Maintenance of the Regulatory Upgrades, in accordance with the terms of this Agreement and the requirements of the Watershed MOA and PHL § 1104(1).

Section 1.03 Duration of the Agreement

A. This Agreement shall be effective when fully executed by the Parties. The City shall begin making payments under this Agreement in the first quarter after the Owner submits written notification to the City that the Owner has completed Start-up and Performance Testing, which shall be twelve months after the Owner’s commencement of Start-up and Performance Testing as set forth in the Scope of Engineering Services of the Owner Upgrade Contract

("Commencement Date"). Payment of expenses for operation and maintenance of the Regulatory Upgrades during Start-up and Performance Testing shall be paid by EFC pursuant to the Owner Upgrade Contract.

B. This Agreement shall expire thirty (30) years after the Commencement Date, unless sooner terminated pursuant to Article 10 of this Agreement. For so long as the City continues to have any obligation to pay for any portion of the O & M Costs of the Regulatory Upgrades for the WWTP pursuant to Watershed MOA Paragraph 141(a), and/or pursuant to PHL § 1104(1), this Agreement shall be extended every thirty (30) years for an additional period of thirty (30) years. Extensions of this Agreement will provide for payments, pursuant to MOA Paragraph 141 and/or PHL § 1104(1), based on the then-applicable List of Regulatory Upgrades, as that List may be modified from time to time in accordance with Section 1.04 below. Extensions of this Agreement, if any, shall become effective upon execution by the Parties.

C. Neither this Agreement nor Paragraph 141 of the Watershed MOA provides for the City's payment for replacement of capital equipment required at the WWTP pursuant to State, federal or local law or for the O & M of such equipment. The Parties hereby acknowledge the City's obligation pursuant to PHL § 1104(1) to pay the costs for replacement of capital equipment that is required by the Watershed Regulations and that is not otherwise required at the WWTP pursuant to State, federal or local law and acknowledge their intention to enter into an agreement providing payment for such capital equipment to the extent required by law or valid agreement.

Section 1.04 Updating the List of Regulatory Upgrades

A. The Regulatory Upgrades are included on the List of Regulatory Upgrades, attached hereto as Exhibit "A" and incorporated herein by this reference.

B. At least six (6) months prior to the expiration of each 30-year term of this Agreement, the City will review the List of Regulatory Upgrades for conformity with the requirements of PHL § 1104(1) and will update the List accordingly. The City may remove equipment or methods of operation from the List of Regulatory Upgrades if it is not required solely by the Watershed Regulations, but is required by State or federal law. The City shall not remove equipment or methods of operations from the List of Regulatory Upgrades, where state or federal regulations or permits impose new limits as a direct and sole result of the increased treatment capability brought about by the equipment or methods of operations implemented for compliance with the Watershed Regulations. Using its best efforts, within one hundred twenty (120) days prior to the expiration date, the City will notify the Owner of such change(s) to the List of Regulatory Upgrades and will provide the Owner up to sixty (60) days to provide comments to the City's change(s) to the List of Regulatory Upgrades. The City shall provide the Owner with written notice of such change in the List of Regulatory Upgrades.

C. Prior to the expiration of the term of this Agreement, the City may modify the List of Regulatory Upgrades if an applicable State or federal law or regulation is amended, promulgated or enacted such that the installation of such capital equipment would be required at the WWTP under State or federal law had it not already been installed and not solely because of the Watershed Regulations. The effective date of such removal from the List of Regulatory

Upgrades would be the later of: (i) the date set forth in such new or amended State or federal law by which such capital equipment or method of operation must have been installed or implemented at the WWTP and/or (ii) thirty (30) days after the City notifies the Owner of the City's intention to remove equipment or methods of operation from the List of Regulatory Upgrades.

D. Disputes. If the Owner disagrees with any City determination to modify the List of Regulatory Upgrades, such disagreement may be resolved only by the New York State Department of Health or a court with jurisdiction to decide matters involving the meaning of the New York State Public Health Law.

E. If the List of Regulatory Upgrades is changed based on Section 1.04(B) or 1.04(C) above, the determination of whether or not the City is required to pay O & M Costs of any equipment and methods shall be based on the federal or State law in effect as of the date that such O & M Costs are incurred.

ARTICLE 2

COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

The Owner hereby covenants and agrees that it shall operate and maintain the Regulatory Upgrades of the WWTP in good repair and operating condition in accordance with the Operation and Maintenance Manual, the recommendations of the manufacturers of the equipment installed at the WWTP, good engineering practices, applicable laws and regulations, including the Watershed Regulations, and the WWTP's SPDES Permit, as well as in accordance with this Agreement.

ARTICLE 3

PAYMENT

Section 3.01 Payment Generally

A. The City shall pay Owner an amount not to exceed \$_____ in the first year of this Agreement ("budget cap"). In subsequent years, the City shall pay Owner an amount not to exceed the greater of (i) the previous year's budget cap, adjusted to reflect the rate of inflation or deflation, based on the previous year's Consumer Price Index , and (ii) the Regulatory Upgrades O & M Costs for the WWTP as determined pursuant to Section 3.03 based on the agreed-upon budget for the year in question. (Funds payable under this Agreement are referred to below as "Funds.") The City's annual payments shall be calculated in accordance with the Section 3.02 below and paid in accordance with Section 3.03 below.

To the extent the City disburses funds under this Agreement for Start-up and Performance Testing and/or Operations and Maintenance Costs that have previously been advanced by EFC through the Owner-Upgrade Contract, the Owner agrees to reimburse such funds to EFC immediately upon receipt.

B. In the event that the Owner discovers that the amount(s) budgeted for one or more components of Regulatory Upgrades Operation and Maintenance Costs are insufficient to pay the

actual and reasonable costs for such component(s), and that the shortfall will exceed the amount in the Operation and Maintenance Contingency Account during that budget year, the Owner may request an increase in the Funds available for the current year. Such a request must be in writing, as far in advance of the next quarterly payment as practicable, but in no event later than thirty (30) days prior to said payment, and must set forth: (i) the specific item(s) for which the actual and reasonable costs will exceed the budgeted amount(s); (ii) the amount of the projected shortfall; (iii) when and how the Owner learned of the projected shortfall; (iv) the reason(s) for the projected shortfall; and (v) the reasonable measures taken by the Owner to prevent, eliminate, or reduce the increase from the budgeted amount(s). The City shall not unreasonably deny such a request. Such an adjustment would be reflected in the next quarterly payment following the request.

C. The City shall make payments to the Owner in the form of a check or warrant in the proper amount, made payable to the Owner.

Section 3.02 Calculation of the City's Payments

A. Regulatory Upgrades Operation and Maintenance Costs. The City shall pay the Regulatory Upgrades Operation and Maintenance Costs, calculated in accordance with the provisions of Section 3.01 above, for each year during the term of this Agreement.

B. Revision of Schedule 1.

1. If, during the term of this Agreement, there is a significant change in the WWTP's operation, including significant changes in the treatment process, and the quantity or quality of flow, or if there is a change to the List of Regulatory Upgrades at the initiation of either party hereto, then the baseline set forth in Schedule 1 for Incremental Costs and the percentages set forth in Schedule 1 for Proportional Costs will be recalculated by the City to reflect the actual portion of O & M Costs attributable to the City's obligation to pay Regulatory Upgrades O & M Costs pursuant to the terms hereof. This recalculation will be based on actual costs incurred, if available, and if not available, typical costs of operating a wastewater treatment plant in the WWTP's vicinity based on the treatment processes, other than Regulatory Upgrades, and the quality and quantity of the flow at that WWTP after such significant change.

2. For purposes of this Section 3.02(B), "significant change in the WWTP's operation" means a 25% or more increase in the Initial WWTP Flow; a change in the quantity or quality of the flow or a change in or addition of a treatment process that requires the review and approval of the New York State Department of Environmental Conservation under the SPDES permit; or another change that materially affects the cost of operating and maintaining the WWTP. Either party may initiate a request to change Schedule 1 by sending written notice to the other party. If a request is initiated by the Owner the City will issue a determination within sixty (60) days of receipt of the written notice.

If the Owner disagrees with the recalculation of the baselines and/or percentages in Schedule 1 pursuant to Subsection 3.02(B)(1) above, within sixty (60) days after receipt of the notice of determination the Owner may serve upon the City the Owner's notice of objection ("Owner's

Notice of Objection”) and the Owner may pursue any available judicial remedy. If the Owner serves an Owner’s Notice of Objection, until the dispute is resolved, the City shall pay to the Owner the Regulatory Upgrades’ O & M Costs as if the disputed baselines and/or percentages in Schedule 1 had not been recalculated. If, through a judicial proceeding, the City’s recalculation of the baseline and/or percentage is affirmed, the City may deduct the amount of its excess payment(s), plus interest at the rate set forth in Section 5004 of the New York Civil Practice Law and Rules (“CPLR”), from its next payment or subsequent payments to the Owner. Interest shall accrue from the date the payment was made by the City.

Section 3.03 Payment Procedures

Payment of amounts payable to the Owner under this Agreement shall be made as follows:

A. Budget.

1. Annual budget for Operation and Maintenance: Annually, as part of its annual budget process, the Owner will submit a proposed Operation and Maintenance budget for the WWTP to the City on or before _____ of each year, which annual budget shall estimate the O & M Costs for the following Fiscal Year for each year during the term of this Agreement. Notwithstanding any of the foregoing, the Owner’s first such budget will be proposed and submitted at least sixty (60) days prior to the Commencement Date. The first such budget shall cover the period from the Commencement Date through the end of the Fiscal Year in which the Commencement Date occurs, unless such budget period is less than six months, in which case the first such budget shall cover the period from the Commencement Date through the last day of the first full Fiscal Year. The proposed Operation and Maintenance budgets shall reflect the allocations of costs, including the specific percentages and baselines, set forth in Schedule 1.

2. The Owner will transmit to the City the proposed budget, together with such additional information as may be necessary to identify and verify all costs by item.

3. Within thirty (30) days after receipt of the proposed budget, the City will provide any comments and/or objections. If the City provides no comments, the budget is final at the conclusion of the thirty-day period. Upon finalization of the budget, the Owner will send a copy of the final budget together with an invoice to the City in an acceptable form, requesting payment of O & M Costs. The City will make payments quarterly, based on invoices to be rendered at least sixty (60) days before the date of payment, on an annual cycle consistent with the Fiscal Year. (The first payment under this Agreement will be for the period from the Commencement Date until the beginning of the next quarter in the Fiscal Year, in an amount pro-rated based on the actual payment period.) The invoices will set forth the quarterly portion of the final budget and include any Allowable Litigation Costs, as defined above, or Allowable Fines and Penalties, as defined above, incurred during the previous quarter. In the event that the costs of any environmental benefit project that are Allowable Fines and Penalties are capital costs, the City may elect to pay such costs pursuant to the agreement that the Parties shall enter, under which the City will pay for certain capital costs associated with Regulatory Upgrades, as

acknowledged in Section 1.03(C) above. The invoices will also set forth any adjustment requested by the Owner and approved by the City pursuant to Section 3.01(B) above.

4. If the City objects to any aspect of the proposed budget which affects its payments as provided for in this Section and those objections are not resolved to the satisfaction of the City in the final budget, the City will file objections within thirty (30) days of its receipt of the invoice ("Notice of Objection"). Any such dispute will be subject to the provisions of Sections 3.05 and 14.09 of this Agreement. The basis for the City's objection will be limited to the following issues:

- a. The budget item is unnecessary to fulfill obligations under this Agreement or its cost is unreasonably high; or
- b. The charge relates to any item for which the City is not responsible.

5. The City will be responsible for the timely payment of all undisputed costs according to the schedule set forth above regardless of whether it makes an objection to the final budget. In the event that the City disputes the cost of an item for which there is a prior history of payment, the City will make a timely payment of the disputed cost, up to 150% of the previous year's payment for such item. The City will not otherwise pay disputed costs until and unless such disputes are resolved in favor of the Owner.

B. All payments to the Owner under this Agreement shall be placed by the Owner in a separate dedicated account promptly upon receipt by the Owner. To the extent feasible, such accounts shall be interest-bearing.

C. Within sixty (60) days after the end of the Fiscal Year, or within sixty (60) days after the resolution of any dispute affecting the amount of the City's payments as provided for herein, whichever is later, the Owner shall provide the City with a reconciliation statement setting forth the actual O & M Costs paid in the preceding Fiscal Year. This reconciliation statement will reconcile estimated amounts versus actual costs expended for the preceding year. The Owner may either (a) deduct the total dollar amount of estimated funds advanced by the City, but not spent by the Owner, from the Owner's next invoice to be sent to the City after the reconciliation statement, or (b) reimburse the City for such funds advanced to the Owner but not spent during the previous Fiscal Year for Regulatory Upgrades O & M Costs. In no event shall the City pay Income Taxes on City Funds attributable to the Owner's retention of such unspent, advanced funds paid to the Owner and held after the conclusion of the previous Fiscal Year. In the event that an Owner shall become entitled to a refund of Income Taxes on City Funds with respect to a Tax Reporting Period, the Owner shall timely apply for such refund with the relevant taxing jurisdiction in accordance with the requirements of such taxing jurisdiction and the Owner shall promptly pay to the City an amount equal to such refund of Income Taxes on City Funds; such amount shall include any refund interest that is attributable to the City's share of the Income Taxes on City Funds being refunded. Any shortfall between the estimated budget and the amount spent on Regulatory Upgrades' Operation and Maintenance may be added to the following Fiscal Year's estimated budget.

D. Notwithstanding the reconciliation provisions of Section 3.03(C) above, during the first three years following the execution of this Agreement, the Owner may provide the City with quarterly reconciliation statements setting forth the actual O & M Costs paid in the preceding quarter. The City shall review such statements in a timely fashion and provide comments to the Owner, in writing. At the Owner's option, the current year's budget may be adjusted based on such quarterly reconciliations, except that any such adjustment that results in an increase in the City's quarterly payments shall be subject to the provisions of Section 3.01(B) above.

E. The Owner shall submit to the City all documentation in support of expenditures under this Agreement as may be required by and at the expense of the City. Upon reasonable notice, the Owner shall make its records with respect to Regulatory Upgrades' Operation and Maintenance of the WWTP available to the City for inspection and/or copying as the City may deem necessary. Adequate documentation to be submitted shall include, but not be limited to, copies of purchase orders, paid bills, canceled checks, certified payroll and machinery use records. The Owner shall provide the City additional documentation at the City's expense to support each invoice as the City reasonably requires.

Section 3.04 Conditions of Payment

A. The City's obligation to pay Regulatory Upgrades O & M Costs is contingent upon the Owner's submission of annual budgets, invoices and reconciliations required to be made under this Agreement, as specified in Sections 3.01, 3.02, and 3.03 above.

B. The Owner shall ensure that Regulatory Upgrades O & M Costs advanced to it and interest earned on such O & M Costs are intended to be used for expenditures incurred in connection with Operation and Maintenance for the Regulatory Upgrades to be performed under this Agreement and in no event shall such funds be used other than for work performed under this Agreement.

C. The Owner will employ generally accepted cash management practices established by the New York State Comptroller, to the extent applicable.

D. If the Owner is in material breach of the terms of this Agreement and such breach is not cured within the time frames set forth in Section 10.01 below, in addition to any other rights or remedies available to it at law or in equity, the City shall be entitled to withhold payments due under this Agreement to the Owner, in an amount that represents the cost to cure the breach and covering any reasonable damages resulting directly from such breach.

E. Except to the extent stated in Section 1.03(C) of this Agreement, this Agreement does not and is not intended to express any opinion as to the liability of the City to pay for the costs that the City is assuming hereunder. Except for the acknowledgement of certain obligations in Subsection 1.03(C), this Agreement shall not be used as an admission or precedent in any other action, proceeding or document, provided that nothing contained in this Section 3.04(E) shall be deemed to affect or limit the provisions of Subsection 1.03(C) hereof.

F. Upon the Parties' agreement to the reconciliation of payments under this Agreement, the Parties agree that such reconciliation shall serve as a general release of any and all actions, causes of action, demands, suits, proceedings, costs, claims, charges (including but not limited to the fees, costs and disbursements for experts, consultants and attorneys), which either party has or may have against the other under this Agreement for any and all Regulatory Upgrades Operation and Maintenance Costs of the WWTP for the period covered by the reconciliation.

Section 3.05 Payment Adjustments

A. In the event of a disagreement concerning any payments or invoices under this Article, the City will be obligated to serve its Notice of Objection as specified in Section 3.03(A)(4) and make payment as specified in 3.03(A)(5). Thereafter, the Parties shall use their best efforts to settle the disagreement. To this effect, they shall consult and negotiate with each other in good faith and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties.

1. If the Parties do not reach such solution within a period of thirty (30) days from the date of service of the City's Notice of Objection (the "Negotiation Period"), the City may compel the submission of any item or items in dispute to binding arbitration within sixty (60) days thereafter according to the process described below. In no event can the dispute submitted to binding arbitration involve an amount where the disputed portion(s) exceeds fifty thousand dollars (\$50,000) or where an issue of law is involved (disputes involving \$50,000 or less, where no issue of law is involved, being "Eligible Disputes"). With the exceptions noted in the previous sentence, arbitration will be the exclusive legal process for adjusting payments under this Agreement.

2. If the City does not exercise its right to compel binding arbitration within the sixty (60) days after the Negotiation Period, the right to binding arbitration is waived and the Parties agree that the time to dispute or adjudicate any item or items included in the City's Notice of Objection has expired and the City's objections shall be deemed waived by all Parties.

3. Either Party may exercise any available judicial remedies to resolve a dispute in the event that the dispute cannot be submitted to binding arbitration because it is not an Eligible Dispute or in the event that an arbitrator determines that it is not an Eligible Dispute after it has been submitted for arbitration. In no event shall litigation be commenced during the Negotiation Period. In the event that the dispute is not resolved during the Negotiation Period, the Parties agree that any action or proceeding to resolve the dispute must be commenced, if at all, within one hundred and fifty (150) days after the expiration of the Negotiation Period, or one hundred and fifty (150) days after an arbitrator makes the determination that the dispute is not an Eligible Dispute, as the case may be. The Parties agree that any action commenced beyond that date is untimely and that the time for judicial intervention is exhausted.

B. The City shall exercise its right to arbitration by requesting in writing that the New York State Department of Environmental Conservation appoint an Administrative Law Judge ("ALJ") to act as an Arbitrator to conduct the arbitration and issue a binding

determination. Alternatively, if an ALJ is not available, the Parties shall submit to arbitration administered by the American Arbitration Association ("AAA"). Either the ALJ or the individual appointed by the AAA (both hereinafter referred to as the "Arbitrator") shall conduct the arbitration under the version of the AAA Commercial Dispute Resolution Procedures Expedited Procedure Rules then in effect. The City shall notify the other party of such request simultaneously via facsimile and by overnight mail. The request shall state with particularity the nature of, and the dollar amount associated with, the item in question. If the Arbitrator is an ALJ, the arbitration shall take place in the location designated by the ALJ. Otherwise, the arbitration shall take place at NYCDEP's offices in Kingston, New York, for WWTPs located in the West of Hudson watershed, and at NYCDEP's offices in Valhalla, New York, for WWTPs located in the East of Hudson watershed, or at any other location that the Parties may agree to. The Owner's legal and engineering costs associated with such arbitration may be billed to the City as itemizable costs in accordance with Section 3.03 above. The City shall pay the cost, if any, of the Arbitrator and any stenographic record, except that the City reserves the right to request that the Arbitrator reassign all costs, including legal and engineering costs, in the event that the Arbitrator determines that the Owner's position is unreasonable or not based on good faith. Except as provided in Section 14.10, each Party will bear its own costs. The Parties agree that the decision of the Arbitrator is binding upon the Parties.

C. Payment.

1. In the event the City prevails on a disputed item for which it had already made payment, the City may deduct the amount of its excess payment, plus interest at the rate set forth in Section 5004 of the CPLR, from its next payment or subsequent payments to the Owner. Interest shall accrue from the date the payment was made by the City.

2. In the event the Owner prevails on a disputed item for which the City has not made payment, the City will pay so much of the disputed item as has not previously been paid, plus interest at the rate set forth in Section 5004 of the CPLR, within ninety (90) days of receipt of the Arbitrator's decision. Interest shall accrue from the date the payment would have been paid by the City but for the dispute.

ARTICLE 4

CITY ENFORCEMENT OF WATERSHED REGULATIONS

If the City fails to provide Funds under this Agreement and the City's failure to pay directly and solely causes the Owner to violate any term or provision of the Watershed Regulations requiring Regulatory Upgrades, a permit, including a SPDES permit, or other approval, the City agrees that it will not pursue an enforcement action against the Owner for such violation.

Notwithstanding the above, the City's agreement not to pursue an enforcement action shall not apply where the City is in good faith contesting its obligation to pay a request for funds. Nothing in this Article 4 shall prevent the City from pursuing an enforcement action against the Owner for any violation occurring or continuing after the City pays any such amount and after the Owner has had a reasonable period of time to implement the Regulatory Upgrades.

ARTICLE 5
PERSONNEL

Section 5.01 Employees

A. The Owner and the City agree that the Owner, its employees, agents, contractors, subcontractors and/or consultants are not agents or employees of the City or NYCDEP.

B. The Owner covenants and agrees that neither it nor its employees, agents, contractors, subcontractors and/or contractors will hold themselves out as, nor claim to be, officers or employees of the City, or of any of its departments, agencies, or units.

C. All experts, consultants and employees of the Owner who are employed by the Owner to perform work under this Agreement are neither employees of the City by virtue of this Agreement nor under contract to the City for work covered in this Agreement and the City is not responsible for their work, direction, compensation and personal conduct while engaged under this Agreement.

D. Nothing contained in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Owner, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the Owner for the payment of taxes of any nature including, but not limited to, sales taxes, unemployment insurance, workman's compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation. Nothing contained in this Subsection D is intended to preclude such liabilities or costs referenced in this Subsection from being considered as part of the Regulatory Upgrades O & M Costs. Nothing in this Subsection will create or absolve the City of liability that may arise directly or indirectly from the failure of the City to make the payments that are required pursuant to this Agreement, the MOA or the PHL. This Subsection will survive any termination of the Agreement.

E. The City is not responsible for any physical injuries or death to the Owner's agents, servants, or employees or to any other person or for damage to any property sustained during its operations or work under this Agreement that result from any act of omission or commission or error in judgment of any of the Owner's officers, trustees, directors, employees, agents, servants, or independent contractors. The Owner shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Owner, its officers, trustees, employees, agents, servants, or independent contractors to the extent set forth in Article 11. The City shall not be responsible for the safety and protection of the Owner's employees, servants, agents or independent contractors.

F. With respect to the work performed hereunder, the Owner and its agents, employees, contractors and subcontractors shall comply with all applicable State, federal and local laws, rules and regulations, including, but not limited to, the Worker's Compensation Law and minimum wage and unemployment insurance requirements of the Labor Law.

Section 5.02 Equal Employment

With respect to the work performed hereunder, the Owner shall abide by all applicable Federal, State and local laws regarding equal employment.

ARTICLE 6 **PROCUREMENT OF GOODS AND SERVICES**

Section 6.01 Procurement of Work

The Owner shall comply with all public procurement requirements applicable to the Owner by State or local law. The Owner shall certify to the City compliance with all applicable public procurement laws and regulations. The Owner shall provide the City with prompt written notice of each subcontract entered into for work done under this Agreement. If the City so requests, the Owner shall provide a complete and accurate copy of each such subcontract at the City's expense.

Section 6.02 Consultants and Other Subcontractors

A. A contract between the Owner and a subcontractor (the Subcontract) to perform Operation and Maintenance to be paid with Funds provided by the City pursuant to this Agreement shall include the following provisions:

1. A requirement that the subcontractor perform all work in accordance with the terms of this Agreement and the O & M Manual;
2. A requirement that the subcontractor perform all acts to be performed under the Subcontract in compliance with all applicable Federal, State and local laws, rules, regulations, including the Watershed Regulations, orders, and the SPDES Permit;
3. A statement and a requirement that the subcontractor agrees to indemnify the City and assume liability for injuries on the same basis identified in this Agreement, pursuant to Article 11;
4. A statement and requirement that nothing contained in the Subcontract shall create any contractual relationship between the subcontractor and the City;
5. A statement and requirement that nothing contained in the Subcontract shall impair the rights of the City under this Agreement or the Watershed MOA;
6. A statement and requirement that the subcontractor will not engage in any unlawful employment discrimination under the Subcontract based upon race, creed, color, national origin, sex, age, disability, marital status or sexual orientation; and
7. A requirement that subcontractors performing public work within the meaning of Section 220 of the New York State Labor Law pay not less than the prevailing wage

to laborers, workmen and mechanics performing such public work pursuant to said Section 220 and comply with all other applicable provisions of said Section 220.

B. The Owner shall take reasonable measures to enforce the foregoing provisions of each Subcontract. Nothing in this Section 6.02 constitutes a guarantee to the City that the Owner's subcontractors will comply with the foregoing provisions. That notwithstanding, the WWTP Owner shall be deemed to have knowledge of a breach of the foregoing provisions of a Subcontract and shall be in default under this Agreement if the Owner fails promptly to cure or cause the Subcontractor to cure such breach in the following circumstances: (i) WWTP Owner knows of the existence of a breach of the foregoing provisions by the Contractor, or (ii) the WWTP Owner, maintaining a level of oversight consistent with that of a similarly situated reasonable business person, should have known of the existence of such breach. However, the Owner is responsible for the performance of the terms of this Agreement, whether they are performed by the Owner or by its subcontractors.

Section 6.03 Background Investigation Compliance for Subcontracts

A. For purposes of this Section 6.03, the following definitions apply:

1. "Affiliate" shall mean an entity in which the parent of the proposed Contractor or Subcontractor owns more than 50 percent voting stock or an entity in which a group of principal owners which owns more than 50 percent of the proposed Contractor or Subcontractor also owns more than 50 percent of the voting stock.
2. "Contract" shall mean any contract for the procurement of labor, materials, equipment or services paid for, in whole or in part with City funds provided pursuant to this Agreement.
3. "Contractor" shall mean a person or entity other than a Governmental Entity, which enters into a Covered Contract with the Owner to perform work at the WWTP.
4. "Covered Contract" shall mean a Contract of \$100,000 or more with a Contractor or Subcontractor, or which is valued at \$100,000 or more when aggregated with the value of all other contracts funded with funds provided by the City awarded to the same Contractor or Subcontractor during the immediately preceding twelve-month period. In determining whether a Contract is a Covered Contract, the Owner shall be entitled to rely on a certificate of the subject Contractor or Subcontractor, except where the Owner has actual knowledge that a Contract is a Covered Contract.
5. "Eligible Contractor" shall mean a Contractor or Subcontractor that has a satisfactory record of business integrity.
6. "Governmental Entity" shall include the State or any political subdivision thereto, any entity described in Section 99-r of the New York General Municipal Law, and any federal, state or local agency, department, board, bureau, public authority or public benefit corporation.

7. "Principal Owner" shall mean an individual, partnership, joint venture or corporation that holds a ten- percent (10%) or greater ownership interest in a proposed Contractor or Subcontractor.

8. "Subcontractor" shall mean any person or entity other than a Governmental Entity that enters into a Covered Contract with a Contractor.

B. A Covered Contract shall not be awarded (or approved in the case of Subcontractors) to persons or entities other than Eligible Contractors. A Contractor or Subcontractor shall be deemed to lack the requisite record of business integrity if any of the following criteria are met within or during the period commencing from ten (10) years prior to completion of the VENDEX Questionnaire through the date of determination:

1. Criminal conduct in connection with government contracts or the conduct of business activities involving: (a) the infliction, attempted infliction, or threat of death, intentional personal injury, or intentional property damage in connection with involvement in a pattern of racketeering, labor racketeering, extortion, obstruction of justice, or other comparable crimes; (b) bribery, fraud, bid rigging, embezzlement, theft, perjury, forgery, or other comparable crimes; (c) serious moral turpitude, fundamental lack of integrity, or a pattern or practice of a knowing disregard for the law so as to call into question the integrity of the proposed Contractor or Subcontractor; or (d) conspiracy to do any of the above acts. Evidence of such conduct shall consist of (a)(1) a judgment of conviction, (2) a pending criminal indictment, (3) a formal grant of immunity in connection with a criminal prosecution, in each case of a proposed Contractor or Subcontractor, any director or officer, any principal, and any employee primarily responsible for contracting procedures, or any holder of five percent (5%) or more of the shares or equity of the proposed Contractor or Subcontractor, or any affiliate or subsidiary of the proposed Contractor or Subcontractor; or (b) any ongoing criminal investigation by a law enforcement agency in which the proposed Contractor or Subcontractor, any director or officer, any principal, employee primarily responsible for contracting procedures, or any holder of five percent (5%) or more of the shares or equity of the proposed Contractor or Subcontractor, or any affiliate of the proposed Contractor or Subcontractor is a target.

2. An actual determination by a person or entity which has jurisdiction of a willful noncompliance with the prevailing wage requirements of Section 220 of the Labor Law, by the proposed Contractor or Subcontractor, or any affiliate thereof.

3. An actual determination by a person or entity, which has jurisdiction of a significant willful violation of the Workers' Compensation Law, including but not limited to, the failure to maintain required workers' compensation or disability coverage.

4. An actual determination by a person or entity which has jurisdiction of a submission by the proposed Contractor or Subcontractor to a government agency of a false or misleading statement on a uniform questionnaire or other form, in connection with a bid or proposal for or award of a contract or request for approval of a subcontractor.

5. A conviction or judgment of civil liability against the Proposed Contractor or Subcontractor for fraud in connection with a bid or proposal for or award of a contract or request for approval of a Subcontractor.

6. Debarment or current suspension of the proposed Contractor or Subcontractor for reasons of business integrity from consideration for the award of contracts with a government, Governmental Entity or public authority pursuant to any procedure enacted by statute or adopted by regulation, providing for notice and hearing.

7. Arrears for more than one (1) year on income, sales or payroll taxes, unless such person is in good faith disputing such payments with the appropriate taxing authority.

C. Before any Covered Contract is awarded to a Contractor (or approved in the case of a Subcontractor), the Owner shall require the proposed Contractor or Subcontractor to complete the appropriate VENDEX questionnaire, or such revised standard VENDEX questionnaire as the City provides from time to time. The Owner shall also require that the proposed Contractor or Subcontractor submit the completed VENDEX questionnaire to the City by first class mail at least thirty-five (35) days before the Covered Contract is awarded (or approved) to the following address: NYCDEP, 59-17 Junction Boulevard, 18th Floor, Flushing, New York 11373, Attention: Agency Chief Contracting Officer ("ACCO"). The ACCO shall be the contact person for the City who shall provide information during regular business hours as to whether the City has received a particular VENDEX questionnaire and the status of the City's review of such questionnaire. Within five (5) business days of receiving a VENDEX questionnaire, the City shall notify the Owner if the VENDEX questionnaire is not complete. If the City fails to notify the Owner within such five (5) business day period, the VENDEX questionnaire shall be deemed complete. Within thirty-five (35) days of receiving the VENDEX questionnaire, the City may provide a report indicating whether any of the criteria of Subsection B are met, including an explanation of the non-confidential evidence that such criteria are met. If the report states in fact that such criteria are met, the Contractor or Subcontractor will be deemed not to be an Eligible Contractor unless the City and Owner agree that the Contractor possesses a satisfactory record of business integrity.

D. Even if the Contractor or Subcontractor does not meet the criteria set forth in Subsection B, the City may provide the Owner with information within the thirty-five (35) day period set forth in Subsection C which may be relevant to the question of whether a proposed Contractor or Subcontractor for a Covered Contract has a satisfactory record of business integrity. Before awarding the Contract or approving a Subcontract for a Covered Contract, the Owner shall receive and consider such information provided by the City. If after receiving and considering such information, the Owner intends to proceed to award the Covered Contract to such Contractor or approve such Subcontractor, before making such award, the Owner shall respond in writing to any such information provided by the City. If the Owner intends to award the Covered Contract and if the City and the Owner continue to disagree, the Owner shall refer the issue to the Executive Committee of the Watershed Protection and Partnership Council for a recommendation. The Executive Committee shall be given the information provided to the Owner by the City, the Owner's written response, and any additional written material that the

City or the Owner desires to submit. The Executive Committee shall have fifteen (15) days in which to issue a recommendation as to whether a proposed Contractor or Subcontractor has a satisfactory record of business integrity. The Owner shall make a determination whether to award the Covered Contract to the proposed Contractor or Subcontractor after one of the following, whichever is applicable: (1) the Executive Committee fails to make a recommendation within fifteen (15) days allotted for Executive Committee review; or (2) the Owner reviews any recommendation made by the Executive Committee.

E. If no report referred to in Subsection C or no information referred to in Subsection D is received from the City within the thirty-five (35) day period following the submission of a VENDEX questionnaire as provided in Subsection C, the Contractor or Subcontractor may be deemed to be an Eligible Contractor for purposes of this Subsection.

F. The City shall not use this Section as a means of restricting the selection or approval of an Eligible Contractor or Subcontractor over another Eligible Contractor or Subcontractor, or the decision that one project be undertaken instead of another. The report shall be based solely on the criteria set forth in Subsection B, and shall not be based on other factors including, without limitation, financial resources, technical qualifications, experience, organization, material, equipment, facilities, personnel resources and expertise, a satisfactory record of performance, the existence of accounting and auditing procedures, or compliance with requirements for the utilization of small, minority-owned and women-owned businesses as subcontractors; provided that the City shall be entitled to review and rely upon any facts and circumstances relevant to the criteria set forth in Subsection B.

G. In addition to and not in limitation of the indemnification provision in Article 11, at the Owner's request, the City shall defend, indemnify and hold harmless the Owner, its officers, agents and employees from and against any liability, damage, claims, demands, costs, judgments, fees, attorneys fees or loss arising directly or indirectly out of a determination with respect to a Covered Contract pursuant to this Section, including, the requirements that Contractors and Subcontractors complete and submit the VENDEX questionnaire and meet the criteria in Subsection B, the requirement of submitting disputes to the Executive Committee in Subsection D, the report or other information provided by the City to the Owner; and any other dissemination of the information provided by the City necessary to comply with this Section. The Owner agrees to cooperate with and provide reasonable assistance to the City in defending any actions or claims that the City has undertaken to defend pursuant to this Subsection 6.03(G).

ARTICLE 7

TRAINING

The Owner agrees that to the maximum extent possible, in the acquisition of the Regulatory Upgrades and appurtenances pursuant to the Owner Upgrade Contract, the Owner shall require that training shall be provided by the applicable vendor or manufacturer of such Regulatory Upgrades. The Owner shall require that training shall be provided in accordance with the scope of work that is set forth in the Owner Upgrade Contract. Charges for any supplemental training associated with the Regulatory Upgrades must be pre-approved by NYCDEP.

ARTICLE 8 INSPECTION

The Owner agrees to allow the City reasonable access to the WWTP during hours when Owner's employees, servants, agents or independent contractors who operate the WWTP or represent the Owner are present to permit inspection and observation of Operation and Maintenance of the WWTP for the purpose of establishing compliance with this Agreement, the Watershed Regulations and the WWTP's SPDES Permit. The Owner may require the City to provide reasonable notice prior to such inspection and observation and to comply with all security, health and safety procedures. The Owner also agrees to allow the City reasonable access to the WWTP during hours when Owner's employees, servants, agents or independent contractors who operate the WWTP or represent the Owner are present in order for the City to take samples of the effluent from the WWTP. Nothing in this Agreement shall affect the City's authority under other applicable laws or regulations.

ARTICLE 9 RECORDS AND REPORTS

Section 9.01 General

The Owner agrees that a copy of any and all non-privileged written materials and documents that are prepared pursuant to this Agreement shall be forwarded to the City upon request. The City shall have the right to use all non-privileged and non-confidential written materials, documents and information that are gathered or prepared pursuant to this Agreement for any purpose deemed appropriate by the City.

Section 9.02 Maintenance of Records

The Owner shall maintain complete and accurate records in readily accessible files of all of its activities in connection with this Agreement. Such records shall include, but are not limited to, records indicating the dates of all maintenance activities at the WWTP required by the O&M Manual and/or the SPDES permit, and financial records detailing the receipt, management, and disbursement of all funds provided pursuant to this Agreement. The Owner shall maintain all records relating to this Agreement for a period of at least seven (7) years after the generation of the document.

Section 9.03 Audit and Inspection

A. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the State, including the State Comptroller, and the City, including the City Comptroller, pursuant to the powers and responsibilities as conferred by State and/or City law, including Section 93 of the City Charter.

B. The Owner shall prepare and maintain any and all documentation and justification in support of expenditures or fees under this Agreement in accordance with generally accepted

business practices and shall make such documentation available to the State, including the State Comptroller, and the City, including the City Comptroller, as the State and City requesting such documentation consider necessary.

C. This Section 9.03 shall survive expiration of this Agreement.

Section 9.04 Annual Reports

Within sixty (60) calendar days after the end of each Fiscal Year, the Owner shall submit to the City reports with respect to the continued implementation of this Agreement. Such annual reports will cover the following items: (1) any unanticipated Operation or Maintenance problems arising during the preceding year and measures taken to address such problems; (2) any violations of the WWTP's SPDES Permit during the preceding year and measures taken to address such violations; (3) any recommendations for changes to the WWTP's Operation and Maintenance Manual and the reasons therefor; (4) any foreseeable, unusual, and large Operation and Maintenance expenses anticipated for the upcoming year; and (5) any other matters that the Owner and the City shall hereafter agree upon for inclusion in such reports. To the extent that there are annual reporting requirements for any other State, federal or local agency regarding the operation of the WWTP, such reports shall also be submitted to the City in a timely fashion.

Section 9.05 Insurance Coverage

Prior to the Commencement Date, the WWTP Owner shall obtain insurance of the kind and amount set forth in the Insurance Specifications, which are annexed to this Agreement as Exhibit D. The WWTP Owner shall insure that any Consultant, Contractor and/or Subcontractor retained by the WWTP Owner shall have insurance in an amount and scope sufficient to protect the interests of the City and the WWTP Owner, the kind and amount of which are also set forth in the Insurance Specifications, annexed to this Agreement as Exhibit D. No later than the beginning of each Fiscal Year, the Owner shall provide documentation of all insurance policies to be held by the Owner and the Owner's Contractor, Consultant, and Subcontractor, including a contract WWTP operator, in a form acceptable to the City, in order to confirm that the Owner and the Contractor, Consultant and/or Subcontractor continue to maintain said insurance throughout the term of this Agreement. The documentation will be accompanied by a request that the City determine that the coverages comply with the Insurance Specifications. The City will respond to this request within 90 days either by determining that the coverages comply with the Insurance Specifications or by specifying the ways in which the insurance policies need to be supplemented. The Owner's coverage and coverage of the Owner's Contractor, Consultant and/or Subcontractor will be deemed to meet the Insurance Specification when the City confirms that in writing or fails to respond within ninety (90) days after receipt of a request from the Owner. The City shall not unreasonably withhold a determination that the coverages meet the Insurance Specifications. The City shall be named as an additional insured on all such policies.

ARTICLE 10
DEFAULT, SUSPENSION OR TERMINATION

Section 10.01 Default; Termination Upon Occurrence of Certain Events

A. In the event either party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party, such non-defaulting party may (in addition to any other remedies available at law or in equity) terminate this Agreement on not less than ten (10) days prior written notice to the defaulting party. If a material breach of this Agreement cannot reasonably be cured within thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may not terminate this Agreement if the defaulting party commences appropriate actions to cure the breach prior to the end of such thirty day period and thereafter diligently pursues all reasonable measures to cure the breach.

B. For purposes of this Agreement, “default” includes, but is not limited to, failure to retain during the term of this Agreement an operator with the proper level of State certification to be responsible for the WWTP in accordance with the SPDES Permit and applicable State and federal law; failure to operate the WWTP with the staffing levels required by State law and regulation and applicable State and federal technical guidance during the term of this Agreement; willful or grossly negligent commission of acts or omission of acts by the Owner or the Owner’s employees, servants, agents or independent contractors, including the WWTP’s operator, that result in additional O & M of the WWTP or replacement of the Regulatory Upgrades or other equipment of the WWTP.

C. Either Party may terminate this Agreement on not less than ten (10) days prior written notice to the other Party, after the occurrence of any of the following events:

1. the Owner permanently ceases to operate the WWTP; or
2. the City’s obligations under the Watershed MOA are modified, and the Parties enter into another agreement satisfying any obligations the City may continue to have under the MOA, any successor agreement, and the Public Health Law with respect to the subject matter hereof; or
3. all equipment has been removed from the List of Regulatory Upgrades in accordance with the provisions of Section 1.04 hereof.

Section 10.02 Termination Procedures

If either Party terminates this Agreement pursuant to Section 10.01, the following procedures shall be followed:

- A. City’s Termination.

1. In the event of termination by the City pursuant to Section 10.01, the City shall not be responsible for any obligations under this Agreement from the date on which the Owner receives written notice of the termination from the City pursuant to Section 10.01. Any obligation necessarily incurred by the Owner in good faith on account of this Agreement prior to receipt of notice of termination and falling due after such date shall be paid by the City in accordance with the terms of this Agreement.

2. Nothing in this Subsection or Section 10.01 shall be deemed to excuse the Owner from continuing to operate and maintain the WWTP in compliance with applicable laws, rules, or regulations pertaining to the WWTP, notwithstanding termination of this Agreement by the City.

3. The City's termination of this Agreement does not affect any obligation the City may have under the Watershed MOA or under PHL § 1104 to fund Operation and Maintenance Costs relating to Operation and Maintenance of the Regulatory Upgrades at the WWTP.

B. **Owner's Termination.** If the Owner should terminate this Agreement pursuant to Section 10.01, the termination shall in no way relieve the Owner from complying with any and all applicable laws, rules, and regulations pertaining to the WWTP. The Owner's termination of this Agreement does not affect any obligation the City may have, under the Watershed MOA or under PHL § 1104, to fund Regulatory Upgrades Operation and Maintenance Costs.

C. Upon termination, the Owner shall deliver to the City a final invoice within sixty (60) days of the expiration or termination of this Agreement, covering all eligible Operation and Maintenance Costs incurred by the Owner in good faith prior to the effective date of the City's notice of termination of this Agreement, and not covered by previous invoices submitted. Any remaining Funds shall be returned to the City within thirty (30) days of the date of termination.

Section 10.03 Force Majeure

In the event the City or the Owner cannot comply with the terms and conditions of this Agreement because of an act of God, war, strike or other condition as to which conduct the City or the Owner (as the case may be) was not the proximate cause, the City's or the Owner's performance under this Agreement may be excused or delayed provided that, within ten (10) days of obtaining knowledge of the effect of such condition, the Party asserting the force majeure notifies the other Party by written notice: 1) identifying the condition, 2) estimating its effect on compliance with the terms and conditions of this Agreement, and 3) requesting an appropriate extension of the relevant terms and conditions of this Agreement. If the nature of the Force Majeure is such that the Party asserting it cannot give written notice to the other Party within ten (10) days, that period may be extended for so long as that Party remains unable to provide written notice, up to a maximum of sixty (60) days. The Party seeking such extension shall make its best efforts to provide for alternate arrangements to fulfill the terms and conditions of this Agreement.

ARTICLE 11
INDEMNIFICATION

The Parties agree to indemnify each other and save each other harmless from all claims, liabilities, losses or expenses of every character whatsoever for bodily injury, including death, and/or damage to real or tangible personal property, where such injury or damage is the result of the indemnifying Party's negligence or willful tort occurring while working on activities relating to this Agreement. In the event such injury or damage is caused by the combined negligence of the Parties, each Party shall be responsible for its relative culpability. Any indemnification by the City shall be strictly in excess of any and all insurance coverage carried by the Owner and the Owner's contract operator, if any.

ARTICLE 12
INVESTIGATIONS

The Owner agrees to cooperate fully and faithfully with any investigation, audit or inquiry relating to the subject matter of this Agreement conducted by a State of New York or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, contract, lease, permit or license that is the subject of an investigation, audit or inquiry. Any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES

Section 13.01 Representations and Warranties of the Owner

The Owner represents and warrants that:

A. The Owner has all requisite power and authority to execute, deliver and perform this Agreement.

B. This Agreement has been duly authorized by all necessary action on the part of the Owner and has been duly executed and delivered by the Owner and, assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of the Owner.

C. The execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of, or default under, any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Owner is bound, or to the knowledge of the Owner, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Owner or any of its activities or properties.

D. Acceptance of Funds hereunder shall be deemed at such time a reaffirmation of the representation and warranties hereof.

Section 13.02 Representations and Warranties of the City and NYCDEP

A. The City has all requisite power and authority to execute, deliver and perform this Agreement. NYCDEP is a validly authorized and existing agency of the City, with full right and power to execute, deliver and perform its obligations under this Agreement.

B. The execution, delivery and performance by the City and NYCDEP of this Agreement are within the powers of the City and NYCDEP, have been duly authorized by all necessary action by or in respect of, or filing with, any governmental body, agency or official. The City and NYCDEP also represent that they have complied with all applicable laws in connection with the execution, delivery and performance of this Agreement.

C. The execution and delivery of this Agreement by the City and NYCDEP, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of, or default under, any provision of applicable law, charter, ordinance or regulation or, to the extent of the City's knowledge, of any material agreement, judgment, injunction, order, decree or other instrument binding upon the City or NYCDEP.

ARTICLE 14 **MISCELLANEOUS PROVISIONS**

Section 14.01 Severability

If any term or provision of this Agreement or the application thereof shall be held invalid, illegal or unenforceable in any respect, then such term or provision shall be ignored. To the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision, and the validity, legality and enforceability of all other terms and provisions and applications hereof shall not be affected or impaired in any way.

Section 14.02 Compliance with the Law

The Owner agrees that all acts to be performed by it in connection with this Agreement shall be performed in compliance with all applicable federal, State and local laws, rules, regulations and orders, including the State Environmental Quality Review Act and the Watershed Regulations.

Section 14.03 Assignment or Other Disposition of the Agreement

A. The Owner agrees to notify NYCDEP at least thirty (30) days prior to any assignment, transfer, conveyance, sublet or other disposition of this Agreement or any part thereof, or of its right, title, or interest therein, to another person, company, corporation or governmental entity.

B. Such assignment, transfer, conveyance, sublet or other disposition of this Agreement shall be effective only upon execution of an agreement between the City and the assignee, in form and substance satisfactory to the City, in which the assignee expressly agrees to assume, perform and be bound by all of the liabilities and obligations of the Owner hereunder. The City shall not unreasonably withhold its consent to such an assignment.

C. Notwithstanding this Section 14.03, the Owner may retain and employ subcontractors to assist in performing Operation and Maintenance services at the WWTP hereunder subject to the limitations and restrictions on subcontractors set forth in Article 6 of this Agreement.

D. Nothing in this Section affects the City's obligations under Paragraph 143 of the Watershed MOA or under PHL Section 1104, where applicable.

Section 14.04 Modification

This Agreement may not be modified or amended except by an instrument in writing signed by both of the Parties hereto. This Agreement may not be modified or amended orally.

Section 14.05 Notification

A. Unless otherwise expressly provided in this Agreement, any notice from one Party to the other Party that is required or permitted to be given hereunder shall be in writing and shall be delivered by ordinary mail, which shall be by first class mail, postage prepaid, to the following addresses:

If to NYCDEP:

New York City Department of Environmental Protection
465 Columbus Avenue
Valhalla, New York 10595
Attention: Deputy Commissioner, Bureau of Water Supply

with a copy to:

New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373
Attention: General Counsel

If to the Owner:

Town of Carmel
60 McAlpin Avenue
Carmel, New York 10541
Attention: Kenneth Schmitt, Supervisor

with a copy to:

Costello & Folchetti, LLP
P.O. Box 1200
1875 Route 6
Carmel, New York 10512
Attention: Thomas J. Costello, Esq.

B. At any time, either Party may designate a new address for the receipt of notices by providing written notice of such new address to the other Party, in the manner specified in Subsection 14.05(A) above.

C. Notices sent to the other Party in accordance with this Section 14.05 shall be deemed to be delivered when sent.

Section 14.06 Claims or Actions

A. No director, officer, employee, agent or other person authorized to act on behalf of the City shall have any personal liability in connection with this Agreement or in connection with any failure of the City to perform its obligations hereunder. If the Owner is a municipal, business, or public benefit corporation, no director, officer, employee, agent or other person authorized to act on behalf of the Owner shall have any personal liability in connection with this Agreement or in connection with any failure of the Owner to perform its obligations hereunder.

B. Upon the initiation by a Party or service upon a Party of any claim, legal action or proceeding in connection with or relating to this Agreement, that Party will provide written notice to the other Party within ten (10) business days of such initiation or receipt of service. In the event any claim is made or any legal action or proceeding is brought that relates in any way to this Agreement (except an action brought by one Party against the other Party), the Parties shall diligently render to each other, any and all assistance which may be necessary to prosecute or defend such action or claim.

C. Additionally, as soon as is practicable, the Owner shall also report to the City all potential claims related to the Operation and Maintenance of the Regulatory Upgrades.

Section 14.07 No Third Party Beneficiary

This Agreement is not intended to create any benefit or interest in any third party.

Section 14.08 Cooperation

The Parties acknowledge and agree that during the term of this Agreement they will provide each other promptly with all documentation, reports, and information that may be necessary to carry out their respective obligations under this Agreement. Nothing in this Agreement shall be deemed as consent by, or an obligation of, either Party to provide documents

or information protected by, or to waive, the attorney-client privilege or attorney-work product privilege.

Section 14.09 Dispute Resolution

A. The dispute resolution procedures in Section 3.05 of this Agreement shall be the exclusive procedures for Eligible Disputes under this Agreement. For any other disputes arising under this Agreement, the Parties may use the procedures provided in Paragraph 177 of the Watershed MOA or any other procedures allowable by applicable law.

Except as specifically provided for resolving Eligible Disputes, nothing in this Section 14.09 will be interpreted as a condition precedent to filing a civil action for breach of contract or any other remedy.

Section 14.10 Civil Litigation

A. In any civil litigation brought by the Owner against the City based on the City's alleged breach of this Agreement, the Owner will be entitled to recovery of its reasonable attorney's fees from the City in the event the Owner substantially prevails.

B. The Parties acknowledge that this Section does not create, or absolve the City from, any liability it might otherwise have for reimbursement of attorney's fees, fines, penalties or other costs in the event that the Owner is sued by a third party in connection with violations of the WWTP's SPDES permit or otherwise in connection with the operation and maintenance of the WWTP. The City does not believe that it would be liable for such reimbursement, even in the event that the Owner substantially prevailed in a defense that such violations were caused solely by the City's failure to make payments under this Agreement. The Owner reserves the right to make a claim for such reimbursement in State court or in any other forum with jurisdiction.

C. Income Taxes on City Funds.

1. Audits and Examinations. In the event that the Owner is notified that a taxing jurisdiction will commence an audit or examination ("Audit") to determine the amount of income taxes for any Tax Reporting Period in which Funds have been made pursuant to this Agreement and the Owner intends to seek additional City Funds for any additional payment of income taxes on City Funds as a result of such Audit, the Owner shall notify the City within five (5) days from the date of receipt of such notice, and provide a copy of such Audit notice. If the Owner fails to provide such notice to the City, the City shall not be responsible for any payments of taxes arising or resulting from said Audit. The Owner shall permit the City to fully participate in such Audit, including attendance at all meetings and teleconferences and receipt of all correspondence pertaining to the Audit. The Owner must obtain prior approval from the City of any settlement of the Owner's liability for Income Taxes on City Funds for any Tax Reporting Period in which a payment was made pursuant to this Agreement.

2. Tax Rulings. At any time and at its sole discretion, the City may require the Owner to seek a ruling or determination ("Ruling") from a taxing jurisdiction concerning the

tax consequences to the Owner of payments of City Funds. The City may require the Owner to obtain a qualified tax representative, approved in advance by the City, the actual and reasonable costs of which the City shall pay pursuant to this Agreement as Itemizable Costs, to handle all matters in connection with the Ruling request and Ruling. The City shall fully participate in the Ruling request, including but not limited to, prior review and approval of all written correspondence from the Owner or its representative, including the Owner's Ruling request, and notification of all communications from the taxing jurisdiction to the Owner or its representative in connection with such Ruling request and Ruling.

3. **Income Tax Notices.** If the Owner intends to seek additional payments from the City for Income Taxes on City Funds based on receipt of a proposed determination of the Owner's liability for Income Taxes on City Funds for a Tax Reporting Period in which a payment has been made pursuant to this Agreement, including a "notice of determination," "notice of deficiency," "notice of tax due," and "notice of disallowance of refund" from a taxing jurisdiction ("Notice"), the Owner shall deliver such Notice to the City within five (5) days of receipt of such Notice. If the Owner fails to provide such notice to the City as set forth above, the City shall not be responsible for any payments of taxes arising or resulting from said Notice or determination.

a. The Owner shall take all actions necessary to timely protest the proposed determination in such Notice in accordance with the requirements of such taxing jurisdiction, including, but not limited to, retaining qualified representation, the actual and reasonable costs of which services the City shall pay pursuant to this Agreement as Itemizable Costs, filing a timely protest of the determination, and diligently prosecuting the protest of such proposed determination. At its sole discretion, the City may participate in the preparation of the protest.

b. Also at its sole discretion, the City may participate in the protest and/or litigation of the determination set forth in the Notice. The City shall notify the Owner of its intention to participate prior to issuance of a final, non-appealable determination against the Owner. The Owner shall notify the City of all conferences, depositions, and other pre-trial/hearing meetings at which counsel or other representative of the taxing jurisdiction is present, and the City may attend such meetings and shall be duly authorized by the Owner to participate in such meetings. The Owner must obtain the City's prior approval of any settlement of the determination that could affect Income Taxes on City Funds by the taxing jurisdiction for a Tax Reporting Period in which a payment has been made pursuant to this Agreement.

c. The City shall fully participate in any litigation in connection with protest of the Notice. The City's participation shall include the review and prior approval of all pleadings, motions, memoranda of law and other papers filed in connection with such an action or proceeding, and approval of the litigation strategy in connection with prosecuting such protest.

d. If the Owner receives a notice of an income tax refund, a portion of which tax refund is attributable to Income Taxes on City Funds, the Owner shall reimburse the City in accordance with the reconciliation provisions of Section 3.03 above upon receipt of such tax refund.

D. Real Property Taxes. In the event that the City determines that the taxing jurisdiction's assessment of real property taxes for the value of the Regulatory Upgrades is excessive, unequal or unlawful, or that the property is misclassified, the City may bring an action to challenge such assessment either in its own name or in the name of the Owner. In either case, the Corporation Counsel of the City of New York shall be counsel of record for the proceeding. The Owner shall cooperate fully with counsel for the City in any action brought by the City to challenge a real property tax assessment. In addition, in the event that the Owner independently initiates a proceeding challenging an assessment of the real property taxes in connection with property on which any portion of the WWTP or its equipment is located, the Owner shall not object to the City's intervening in such proceeding, should the City decide in its sole discretion to intervene, and the Owner shall cooperate fully with counsel for the City in such proceeding.

Section 14.11 Miscellaneous

A. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. To the fullest extent permitted by law, the Parties consent to the jurisdiction of the Supreme Court of the State of New York for disputes arising from this Agreement.

B. With the exception of the Watershed MOA, this Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. In the event of a conflict between the terms of this Agreement and the Watershed MOA, the terms of the Watershed MOA shall govern. Other than the Watershed MOA, this Agreement supersedes all prior agreements with respect to the subject matter hereof, whether written or oral. Except for the foregoing, by entering into this Agreement, the WWTP Owner accepts all of the terms and conditions of this Agreement as governing its rights and obligations.

C. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

D. The titles of sections and subsections of this Agreement have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provision herein. All references herein to the singular shall include the plural, and vice versa.

E. Neither the failure of either Party to exercise any power given such Party hereunder, or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

IN WITNESS WHEREOF the Commissioner of Department of Environmental Protection on behalf of the City and the authorized representative of the Owner, have executed this Agreement, in quadruplicate, three parts to be retained by the Department of Environmental Protection and one part to be delivered to the Owner.

For TOWN OF CARMEL

BY: _____

For THE CITY OF NEW YORK

BY: _____

Commissioner
New York City Department of Environmental Protection

Approved as to Form and Certified as to Legal Authority
by Standard Type of Class:

Acting Corporation Counsel

Dated: _____, 20__

ACKNOWLEDGEMENTS

STATE OF NEW YORK :
COUNTY OF QUEENS : ss.

On this _____ day of _____, 20__, before me personally came _____ to me known, who being by me duly sworn did depose and say that he is the Commissioner of the Department of Environmental Protection of the City of New York, the individual described herein and who executed the foregoing instrument, and that he signed his name thereto as authorized by said municipal corporation.

Notary Public

STATE OF NEW YORK :
COUNTY OF _____ ss.

On this _____ day of _____, 20__ , before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she is the _____ of the _____, the corporation or partnership described in and which executed the foregoing instrument, and that he/she signed his/her name thereto by the authority of said corporation or partnership.

Notary Public

Exhibit A
List of Regulatory Upgrades

Carmel Sewer District #7
Wastewater Treatment Facility

| <u>Requirement</u> | <u>Equipment or Method</u> |
|-----------------------------|-----------------------------------|
| Phosphorus removal | |
| Sand Filtration | |
| Disinfection | |
| Micro or equivalent | |
| Standby power | |
| Power alarm | |
| Auto start-up | |
| Disinfection backup | |
| Disinfection backup startup | |
| Backup sand filtration | |
| Recording flow meters | |
| Alarm telemetering | |

Exhibit B

Fixed Capital Equipment Chart

The following tables detail the eligibility of replacement and/or repair of capital equipment. The tables are as follows:

Table 1 - Table 1 includes items which generally may not be replaced with O&M funds from NYCDEP. This Table includes numerous exceptions, generally with regard to emergency repairs or routine maintenance. When one of these exceptions is met, NYCDEP approval is not required prior to the commencement of work.

Table 2A - Table 2A is similar to Table 1, but with additional criteria for exceptions. These criteria include NYCDEP approval and, if the replacement occurs more than 30 years after startup of the upgrade equipment, a review for cost effectiveness prior to initiating the work.

Table 2B – Table 2B is similar to Table 2A. In this Table, the exceptions allow replacement, possibly without a review for cost effectiveness, for malfunctioning, unsafe, unreliable, etc. equipment. As with Table 2A, NYCDEP approval is required prior to initiating the work.

Table 2C - Table 2C includes items that may be replaced with O&M funds from NYCDEP at any time, provided that the item has become obsolete and NYCDEP approval is obtained.

The items listed in the left columns of the following tables identify the widest range of items that may have been installed at the WWTP pursuant to the Regulatory Upgrade Program. Thus, the lists include more items than may have been installed as part of any individual WWTP upgrade. For each WWTP, only those items installed at the WWTP with funds from the WWTP Regulatory Upgrade Program are eligible for replacement and/or repair as described in the tables.

Table 1. Strict Capital Expense Items

This Table includes items that shall not be replaced using O&M funds provided by NYC. Any exceptions, such as for emergency and O&M repairs, are listed in the right column of the Table. O&M funds provided by NYCDEP may not be used for any planned or scheduled repairs for items in this Table.

| | Equipment Exceptions and Conditions |
|--|--|
| Piping, all hard water, wastewater, air, chemical & sludge piping, including non-buried & buried valves, manholes, and appurtenances | <p>Except emergency repairs to piping containing moving parts accessible to repair without excavation or building demolition, such as valves, and specialized non-moving parts such as flow control orifices, static mixers or similar parts/components; and also excepting the replacement of small sections of pipe, as part of the repair, immediately adjacent and necessary to the repair, not to exceed 20 feet.</p> <p>Chemical delivery piping accessible without excavation or building demolition may be repaired/replaced.</p> <p>Air diffusers may be repaired/replaced.</p> |
| Duct Work for heating, ventilation, and odor control | Except parts analogous to those listed in piping above, moving parts; and repair and maintenance of insulation. |
| Tankage related to SBR, aeration, RBC, trickling filter, and sludge digester. | |
| Primary and Secondary settling tanks | |
| Sluice gates, drain valves or similar valves set in concrete or other elements | |
| Weirs, flumes, stilling wells, flow splitters or similar structures set in concrete or other structural elements | |
| Sand filter shell, underdrains and integral piping or appurtenances | |

| | |
|--|---|
| Electrical supply/distribution infrastructure wiring | Except replacements of small sections of wiring during normal maintenance and repair (this excludes planned and/or scheduled repairs) |
| Generators | This limitation refers to complete replacement of the unit, not replacement of individual components. |
| Buildings, vaults, slabs, steps, rails, covers, catwalks, sumps and all structural elements of pump stations. | Except associated doors and windows and access hatches, and mechanical/electrical component addressed in Tables 2A-C; and except minor concrete work or parging necessary to assure that the structural elements meet their estimated useful lives. |
| Miscellaneous structures such as storage sheds, grit removal channels, equalization tanks or ponds, mixing bays, chlorine and de-chlorination contact tanks, UV chambers and similar structures. | |
| Equipment storage steel shelving | Except replacement of small sections of shelving that are part of repair and maintenance of the building and its components. (this excludes planned and/or scheduled repairs) |
| Fuel storage tanks | |
| Steel, FRP, other synthetic, or poured concrete permanent primary or secondary petroleum or chemical containment | Except emergency replacement due to breakage not caused by negligence of WWTP employees. |
| Storm drain piping, structures, grating and other similar drains. | |
| Sludge/scum collector arms for circular and rectangular clarifiers | Except wearing surfaces and parts such as scrapper blades or rakes. |
| Building slabs, building shells, walls, roofs, fencing, rails, catwalks, walk ways, drive ways | Except windows, doors, and resurfacing of paved areas and partial ad hoc replacements (this excludes planned and/or scheduled repairs). |
| Sludge dewatering equipment. This may include belt or plate and frame press, sludge bagging units or centrifuges | This limitation refers to complete replacement of the unit, not replacement of individual components; also note exceptions in Table 2. |

Table 2. Replacement of Capital Items Requiring DEP Approval

Where items in the following tables are eligible for replacement with O&M funds, the replacement may be paid for with O&M funds provided by NYCDEP only with the prior written approval of NYCDEP. NYCDEP approval shall not be unreasonably denied or delayed if the conditions specified are met.

A. The items in the left column are generally not eligible for replacement with O&M funds provided by NYCDEP. However, if the proposed replacement is approved by NYCDEP and if (a) replacement occurs within the first 30 years after the upgraded WWTP begins operation or replacement occurs thereafter, if such replacement is shown to be cost effective pursuant to Footnote 2 below, and (b) the specific conditions shown below for replacement are met, then the replacement will be eligible for payment with O&M funds provided by NYCDEP.

| Equipment Exceptions and Conditions | |
|--|--|
| Transformers, control panels, motor control centers | |
| Raw, partially treated, or effluent wastewater pump sets (pump station or in-plant) delivering 100% of plant flow or with an installed cost over \$7,500 per unit. | All pumps, compressors, blowers with installed costs at or below \$7,500 may be replaced with O&M funds. |
| HVAC mechanical equipment, chillers, fans, boilers with an installed cost over \$7,500 per unit. | |
| Air supply blowers or compressor units with an installed cost over \$7,500 per unit. | |
| Lab equipment with replacement cost of \$5,000 or greater, installed. | All lab equipment with installed costs at or below \$5,000 may be replaced with O&M funds. |
| RBC shafts and media, SBR Decanter mechanism, complete sludge and scum collector drive mechanisms | Units may be replaced with O&M funds, in the case of substantially complete failure provided said failure is not due to lack of proper O&M. ¹ |

¹“Proper O&M” means O&M performed in accordance with the O&M Manual, or any addendum thereto, approved by NYCDEP.

²To demonstrate cost effectiveness: The WWTP Owner must estimate for a period equal to the manufacturer’s service life for a proposed piece of equipment the cost to continue to operate the piece of equipment, including any necessary repairs to continue operation. The resulting cost estimate must then be compared to the cost of equipment replacement, taking into account installation costs (based on suppliers quotes) and O&M for the service life of the piece of equipment.

B. Items which may be replaced at any time in light of cost effectiveness. Replacement of the following items may be funded with O&M funds from NYCDEP only if the specific conditions shown below are met.

| Equipment Exceptions and Conditions | |
|---|--|
| Pumps and blowers as described in Table 2A above and any single piece or functional set of mechanical equipment costing over \$7,500 installed. | Where a malfunction impedes, makes unsafe or unreliable, or adds expense to normal operation and where replacement is shown to be more cost effective. |
| Control panels, motor control centers. | |

C. Items which may be replaced at any time due to obsolescence. Replacement of the following items may be funded with O&M funds only if the piece of equipment has become obsolete. Obsolescence occurs when [i] compatible replacement parts are no longer available; [ii] when standards for worker safety established by employee unions, government or industry require new equipment; [iii] improvements in energy efficiency make the continued use of the existing technology not cost effective; or [iv] technological developments make the use of existing control panels and/or motor control centers inconsistent with good engineering judgment.

| Equipment |
|--|
| Gas and oxygen sensing safety systems. |
| Dissolved oxygen and chemical feed control systems with an installed cost over \$7,500. Those systems with an installed cost at or below \$7,500 may be replaced with O&M funds without NYCDEP approval. |
| Control panels, motor control centers. |
| CPU, SCADA software and any hardware necessary for centralized information processing, including any specialized I/O points, UPS, printers and related cables |

All dollar figures mentioned are subject to the inflation adjustments included in the O&M Agreement.

Exhibit C
List of Other Upgrade Work

Carmel Sewer District #7
Wastewater Treatment Facility

| <u>Equipment or Method</u> |
|----------------------------|
| |
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EXHIBIT D

Insurance Specifications

I. Insurance Coverages Required to be Maintained by WWTP Owner (Agreement, Article 9)

Notes: Insurance indicated by (X) is required.

Insurance certificates, policies, and endorsements shall be sent to the New York City Department of Environmental Protection ("DEP"), 59-17 Junction Boulevard, 19th Floor, Flushing, New York 11373-5108, Attention: DEP General Counsel. A copy of each insurance certificate shall also be sent to: DEP, 465 Columbus Avenue, Valhalla, New York 10595, Attention: Regulatory Upgrade Program .

| | | |
|-----|-----------------------|---|
| (X) | Worker's Compensation | Statutory per New York State law without regard to jurisdiction (<u>See</u> Section 1.01.1 below.) |
|-----|-----------------------|---|

| | | |
|-----|----------------------|---|
| (X) | Employer's Liability | Statutory (<u>See</u> Section 1.01.2.) |
|-----|----------------------|---|

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

| |
|--|
| \$1,000,000 per occurrence |
| \$2,000,000 products/completed operations aggregate |
| \$2,000,000 general aggregate |
| \$25,000 maximum deductible |

(See Section 1.01.3 for additional requirements.)

| | |
|-----|---|
| (X) | Automobile Liability: CA 00 01 (ed. 6/92) or equivalent. Combined Single Limit - Bodily Injury and Property Damage |
|-----|---|

| |
|---------------------------|
| \$500,000 each occurrence |
|---------------------------|

The following coverage must be provided:

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

(See Section 1.01.4.)

II. Insurance Coverages Required to be Maintained by Consultants/Subcontractors Retained by WWTP Owner (Agreement, Articles 9 and 6)

Notes: Insurance indicated by (X) is required.

Insurance certificates, policies, and endorsements must be sent to the New York City Department of Environmental Protection ("DEP"), 59-17 Junction Boulevard, 19th Floor, Flushing , New York 11373-5108, Attention: DEP General Counsel. A copy of each insurance certificate shall also be sent to: DEP, 465 Columbus Avenue, Valhalla, New York 10595 , Attention: Regulatory Upgrade Program .

(X) Worker's Compensation Statutory per New York State law without regard to jurisdiction (See Section 1.01.1 below.)

(X) Employer's Liability Statutory (See Section 1.01.2.)

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

\$1,000,000 per occurrence
\$1,000,000 products/completed
operations aggregate
\$2,000,000 general aggregate
\$25,000 maximum deductible

(See Section 1.01.3 for additional requirements.)

(X) Automobile Liability: CA 00 01 (ed. 6/92) or equivalent
Combined Single Limit - Bodily Injury and Property Damage

\$500,000 each occurrence

The following coverage must be provided:

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

(See Section 1.01.4.)

(X) Other Insurance:

All contracts for professional engineering services for design, engineering surveys, and/or construction management shall require that the consultant maintain and present evidence of a professional Errors and Omissions policy with a U.S. domiciled company providing limits of not less than \$1 Million per claim, \$1 Million aggregate, and a deductible or self-insured retention not to exceed \$25,000 per claim.

III. General Provisions Applicable to Insurance Coverages:

These provisions are applicable to both the insurance coverages required to be maintained by WWTP Owner under the Agreement to which the Exhibit is annexed, and the insurance coverages required to be maintained by any consultant/contractor/subcontractor engaged or retained by the WWTP Owner. In each case, the reference to "Contractor" shall mean the party required to maintain insurance coverage, and the reference to "Contract" shall mean either the Agreement (in the case of the WWTP Owner) of the contract pursuant to which the consultant, contractor or subcontractor is providing services (in the case of a consultant, contractor or subcontractor).

Section 1.01

1.01.1 Worker's Compensation Insurance:

Before performing any work on the Contract, the Contractor shall procure Worker's Compensation Insurance in accord with the laws of the State of New York on behalf of all employees who are to provide labor or service under the contract. One certificate of such insurance or authority for self-insurance shall be furnished to DEP's General Counsel at the address shown above and one certificate shall be furnished to DEP's Regulatory Upgrade Program office at the address shown above.

1.01.2 Employer's Liability Insurance:

Before performing any work on the Contract, Contractor shall procure Employer's Liability Insurance affording compensation for all employees providing labor or services for whom worker's compensation coverage is not a statutory requirement. One certificate of such insurance shall be furnished to DEP's General Counsel at the address shown above and one certificate shall be furnished to DEP's Regulatory Upgrade Program office at the address shown above.

Certificates confirming renewals of insurance shall be presented not less than thirty (30) days prior to the expiration date of coverage until all operations under the subject contract are deemed completed.

1.01.3 Commercial General Liability:

Before commencing work on the Contract, the Contractor shall procure a commercial general liability insurance policy issued by a New York admitted carrier through a New York Licensed resident broker in the contractor's name and naming The City of New York, Department of Environmental Protection as an additional insured (using ISO endorsement CG 20 10) and endorsed to cover liability assumed by the Contractor under the indemnity provisions of the Contract. This insurance policy must be maintained during the life of the contract and shall protect the City, the Contractor and his/her subcontractors performing work on the Contract from Claims for property damage and/or bodily injury which may arise from operations under the contract, whether such operations are performed by him/herself or anyone directly or indirectly employed by him/herself. One certificate of such insurance, together with copies of all endorsements as pertain to the requirements of the subject contract, shall be furnished to DEP's General Counsel at the address shown above and one certificate shall be furnished to DEP's Regulatory Upgrade Program office at the address shown above.

The policy shall contain no exclusions or endorsements which are not acceptable to the City and shall be of a form and by an insurance company acceptable to the City.

Commercial General Liability - Endorsements and Exclusions

The following endorsements are required to be made on the policy:

- (a) Notice: shall be addressed to the Commissioner of the Department of Environmental Protection, c/o DEP General Counsel, 59-17 Junction Boulevard, 19th Floor, Flushing, New York 11373-5108.
- (b) Notice of Cancellation of Policy: The Policy shall not be canceled, terminated, modified or changed by the Company unless thirty (30) days' prior written notice is sent to DEP, Attention: General Counsel

1.01.4 Automobile Liability:

The Contractor will provide the City with evidence of insurance covering all owned, non-owned and hired vehicles to be used in connection with the contract. If on a "schedule autos" basis, Contractor shall present the schedule of insured autos, including the vehicles to be used for operations under the Contracts.

1.01.5 Insurance Agreement:

- (a) The Contractor is required to obtain and to maintain insurance outlined in this Exhibit.
- (b) The insurance required for the Contract must be on forms acceptable to DEP and offered by insurers acceptable to DEP. The insurance for all New York Contractors must be issued by New York authorized carriers except as approved by DEP's General Counsel and in any event must comply with all requirements of New York State laws and regulations and meet the standards of the forms set forth in Section 1.01 above. Insurance for non-New York Contractors must be through insurers and sureties admitted and authorized in the state of headquarters of the Contractor, have an A.M. best rating of

A or better and meet the standards for forms set forth in the above. Additionally, all requirements as to forms set forth in New York State law and regulations apply without regard to jurisdiction as standards of coverage.

- (c) Where circumstances warrant, the DEP may, at its discretion subject to acceptance by the New York City Law Department and/or the Office of the New York City Comptroller, accept letters of credit or custodial accounts in lieu of specific insurance requirements. The letter of credit must be on form prescribed by DEP and payable at a New York City office of a bank approved by DEP.
- (d) The Contractor agrees that all insurance contributing to satisfaction of the insurance requirements set out in this Exhibit shall not be modified, terminated, or canceled by the Contractor without prior written approval of the Department of Environmental Protection.
- (e) The Contractor shall be solely responsible for payment of all deductibles and premiums for insurance contributing to satisfaction of the requirements of this Exhibit and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New York is an insured under the policy.
- (f) Claims made policies will be accepted only for professional liability and such other risks as are authorized by the New York State Insurance Department. All such policies contributing to satisfaction of the requirements of the Exhibit shall have an extended reporting period option or automatic coverage of not less than two years. If provided as an option, the Contractor agrees to purchase the extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.
- (g) The Contractor shall promptly notify DEP's General Counsel within 24 hours of any accidents arising in the course of operations under the contract causing bodily injury or property damage and shall cooperate fully with DEP in providing all such records and information as may be requested by the DEP's General Counsel in anticipation of claims against the City which may arise from the accident. A complete report of the accident shall be made within five (5) business days on such form as may be provided by DEP's General Counsel.
- (h) The Contractor or his engineer may apply to DEP's General Counsel for approval of higher deductible based on financial capacity and quality of the carrier affording coverage.

1.01.6 Forms of Insurance Certificates:

Insurance certificates shall conform to the following:

- (a) Certificates must be issued by the insurance company using the "ACCORD" forms issued by its brokers, except for Worker's Compensation coverage where the contractors must

provide Form C-105.2 issued by an insurance carrier or Form U-26.3 issued by the New York State Insurance Fund.

- (b) Certificates must unconditionally grant to New York City Department of Environmental Protection thirty (30) calendar days' notice of cancellation or non-renewal. "Endeavor" or other qualifying language is not acceptable.
- (c) All additional insureds required by this Exhibit shall be listed as such.
- (d) The authorized representative of the insurance company executing the certificate(s) must indicate his/her title.
- (e) Original executed certificates must be delivered to DEP.

Schedule 1

Carmel Sewer District #7 Wastewater Treatment Facility

Incremental Cost

Baseline

Insurance

Itemizable Regulatory Upgrade Cost

Fuel Oil

Chemicals

Legal

Clerical

Engineering

Office Supplies

Spare Parts

Instrumentation Spare Parts

Laboratory Contract

Maintenance Contract(s)

Contingency

Proportional Cost

% Owner

% City

Electricity

%

%

WWTP Operation labor

%

%

Generator Contract

%

%

Generator Oil

%

%

Building Maintenance

%

%

Auto

%

%

Auto Gas

%

%

Tipping Fees

%

%

Training

%

%

Other O&M Costs

% Owner

% City

Office Supplies

Telephone

Maintenance Supplies

Lab Supplies

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EXHIBIT A – LIST OF REGULATORY UPGRADES
EXHIBIT B – FIXED CAPITAL EQUIPMENT CHART
EXHIBIT C – LIST OF OTHER UPGRADE WORK
EXHIBIT D – INSURANCE SPECIFICATIONS

Schedule 1

Exhibit A
List of Regulatory Upgrades

Carmel Sewer District #7
Wastewater Treatment Facility

| <u>Requirement</u> | <u>Equipment or Method</u> |
|-----------------------------|--|
| Phosphorus Removal | Coagulant addition to a new rapid mix/flocculation system followed by sedimentation within an existing settling tank. |
| Sand Filtration | Pre-upgrade. |
| Disinfection | New open channel UV disinfection system containing three disinfection units. Each unit is sized for 50% of the design peak flow rate. |
| Micro or Equivalent | Siemens Water Technologies microfiltration system consisting of two filtration units. Each unit is sized for 100% of the design peak flow rate. |
| Standby Power | New propane powered generator sized to provide backup power for the equipment installed under the regulatory upgrade project. Backup power for pre-upgrade equipment is provided with a pre-upgrade propane powered generator |
| Power Alarm | The new automatic transfer switch is connected to the WWTP's telemetering system. |
| Auto Startup | A new automatic transfer switch is provided to switch from utility power to backup power upon loss of utility power. |
| Disinfection Backup | The three UV disinfection units are installed in series. Normal operation is two units online and one unit serving as the backup. |
| Disinfection Backup Startup | If one of the online UV units malfunctions, an alarm is generated and the backup unit is automatically turned on to provide the required disinfection. |
| Backup Sand Filtration | Pre-upgrade. |
| Recording Flow Meters | The effluent flow meter used for the SPDES permit required reporting is pre-upgrade. The microfiltration system incorporates flow meters for system control. |
| Alarm Telemetering | The pre-upgrade portion of the WWTP remains connected to a pre-upgrade radio autodialer. The existing autodialer calls out to the Town's alarm monitoring company. Process alarms for the equipment installed as part of the regulatory upgrade and the new building's fire and security alarms are connected a new radio autodialer that also calls out to the Town's monitoring company. |

Exhibit C
List of Other Upgrade Work

Carmel Sewer District #7
Wastewater Treatment Facility

| <u>Equipment or Method</u> |
|--|
| A new below grade cast in place concrete equalization tank (with pumps and mixers) is provided downstream of the RBC tank to attenuate peak flows. |
| A new pump station is provided downstream of the new rapid mix/flocculation system to lift the flow to the new microfiltration system. |
| A new pre-engineered metal building and associated plumbing and HVAC systems is provided to house the microfiltration and UV disinfection systems. |
| A new above grade propane tank is provided for building heat and generator fuel storage. |
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#2

RESOLUTION AUTHORIZING RE-ADVERTISING FOR BIDS

WHEREAS, the Town Board of the Town of Carmel had previously authorized the advertisement for bids in connection with the St. Michael's Terrace Year 2 MS4 drainage project; and

WHEREAS, the Town Board has determined that the re-bidding of the project would be in appropriate as well as in accordance with the requirements of the New York State General Municipal Law;

NOW THEREFORE BE IT RESOLVED that, pursuant to the request of Town Engineer Ronald J. Gainer, P.E., Town Clerk Ann Spofford, is hereby authorized to re-advertise for bids for the St. Michael's Terrace Year 2 MS4 Drainage Project; and

BE IT FURTHER RESOLVED that the Town Engineer is to furnish detailed specifications for the above to Town Clerk Ann Spofford to be used in conjunction with the Town's general bid conditions and specifications.

Resolution

Offered by: _____

Seconded by: _____

| <u>Roll Call Vote</u> | <u>YES</u> | <u>NO</u> |
|--------------------------|------------|-----------|
| Jonathan Schneider _____ | _____ | _____ |
| John Lupinacci | _____ | _____ |
| Suzanne McDonough | _____ | _____ |
| Frank Lombardi | _____ | _____ |
| Kenneth Schmitt | _____ | _____ |