

**KENNETH SCHMITT**  
*Town Supervisor*

**TOWN OF CARMEL**  
**TOWN HALL**

**ANN SPOFFORD**  
*Town Clerk*

**FRANK D. LOMBARDI**  
*Town Councilman*  
*Deputy Supervisor*

60 McAlpin Avenue  
Mahopac, New York 10541  
Tel. (845) 628-1500 • Fax (845) 628-6836  
[www.carmelny.org](http://www.carmelny.org)

**KATHLEEN KRAUS**  
*Receiver of Taxes*

**JOHN D. LUPINACCI**  
*Town Councilman*  
**SUZANNE MC DONOUGH**  
*Town Councilwoman*  
**JONATHAN SCHNEIDER**  
*Town Councilman*

**MICHAEL SIMONE**  
*Superintendent of Highways*  
Tel. (845) 628-7474

**AGENDA**  
**TOWN BOARD WORK SESSION**  
**Wednesday, September 25, 2013 7:00pm**

---

**Pledge of Allegiance – Moment of Silence**

**Town Board Voting Meeting:**

1. Accept Town Board Minutes August 21 and September 3, 2013
2. Res: Authorizing Attendance at NYS Assessor's Seminar
3. Res: Authorizing Advertising for Bids Highway Department Winter Materials
4. Res: Releasing Bond Hudson Valley Federal Credit Union TM#55.11-1-42
5. Res: Authorizing Signing of Services Agreement Between the County of Putnam and Certain Municipalities in the County of Putnam for Electronic Waste Recycling
6. Res: Authorizing Scheduling of Public Hearing on a Local Law Amending the Town Code to add Chapter 112 entitled "Portable Bathrooms and Facilities" (October 16, 2013)
7. Res: Authorizing Scheduling of Public Hearing on a Local Law Amending chapter 104 of the Town Code entitled, "Noise" (October 16, 2013)

**Town Board Work Session:**

1. Glenn Droese, Town Assessor and John Wolhman, NYS Office of Real Property – Explanation of STAR Program
  2. Supervisor Kenneth Schmitt – Town of Kent Revitalization Project – Gateway at NYS Route 52/Town of Carmel Line
  3. Consider O & M Agreement for CSD#7
- **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**

## #2

### RESOLUTION AUTHORIZING ATTENDANCE AT NYS ASSESSOR'S SEMINAR

RESOLVED that the Town Board of the Town of Carmel hereby authorizes Town Assessor Glenn Droese to attend the NYS Seminar for Assessment Administration in Lake Placid New York from October 1, 2013 through October 4, 2013; and

BE IT FURTHER RESOLVED that the cost of registration and other necessary expenses be advanced or reimbursed by the Town Comptroller's Office upon audit and approval.

#### 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	_____	_____

### #3

#### RESOLUTION AUTHORIZING ADVERTISING FOR BIDS HIGHWAY DEPARTMENT WINTER MATERIALS

RESOLVED that, pursuant to the request of Michael Simone, Town of Carmel Highway Superintendent, Town Clerk Ann Spofford is hereby authorized to advertise for bids for the purchase of the following items:

- Sand
- Guide Rail
- Winter Mix

BE IT FURTHER RESOLVED that the Highway Superintendent is to furnish detailed specifications for the above to the Town Clerk 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	_____	_____

## #4

### RESOLUTION RELEASING BOND HUDSON VALLEY FEDERAL CREDIT UNION TM#55.11-1-42

WHEREAS application has been made by Hudson Valley Federal Credit Union for the total release of a site plan bond posted in accordance with the Land Subdivision and/or Zoning Regulations for Tax Map #55.11-1-42; and

WHEREAS said applications have been reviewed by the Town Engineer Ronald J. Gainer, P.E. and release of the bonds has been recommended and approved by the Town Engineer and Town of Carmel Planning Board,

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Carmel hereby authorizes the release of the site plan for Hudson Valley Federal Credit Union in the amount of \$606,840.00.

#### 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	_____	_____

## #5

### RESOLUTION AUTHORIZING SIGNING OF SERVICES AGREEMENT BETWEEN THE COUNTY OF PUTNAM AND CERTAIN MUNICIPALITIES IN THE COUNTY OF PUTNAM FOR ELECTRONIC WASTE RECYCLING

RESOLVED that the Town Board of the Town of Carmel hereby authorizes Town Supervisor Kenneth Schmitt to execute on behalf of the Town of Carmel, a Services Agreement between the County of Putnam, the Town of Carmel and the five remaining Towns located within the County of Putnam with Rochester Computer Recycling, LLC dba RC&R Regional Computer Recycling & Recovery for the provision of an electronic waste recovery program and related electronic waste services, said agreement being in form as attached hereto and made a part hereof, and

BE IT FURTHER RESOLVED that a copy of said Services Agreement be filed with the Town Clerk after signature by the Town Supervisor.

#### 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	_____	_____

Contract # \_\_\_\_\_

**Services Agreement**

**Between**

**THE COUNTY OF PUTNAM, TOWN OF CARMEL, TOWN OF KENT, TOWN  
OF PATTERSON, TOWN OF PHILIPSTOWN, TOWN OF PUTNAM VALLEY, TOWN  
OF SOUTHEAST**

**and**

**ROCHESTER COMPUTER RECYCLING & RECOVERY, LLC d/b/a RCR& R,  
REGIONAL COMPUTER RECYCLING & RECOVERY**

THIS AGREEMENT, made by and among the following parties (hereinafter collectively referred to as the "MUNICIPAL PARTIES"):

**THE COUNTY OF PUTNAM**, a municipal corporation of the State of New York, having an office and place of business at 40 Gleneida Avenue, Carmel, New York 10512, acting by and through its Department of Health (hereinafter referred to individually as the "COUNTY");

**THE TOWN OF CARMEL**, a municipal corporation of the State of New York, having an office and place of business at 60 McAlpin Avenue, Mahopac, New York 10541;

**THE TOWN OF KENT**, a municipal corporation of the State of New York, having an office and place of business at 25 Sybil's Crossing, Kent Lakes, New York 10512;

**THE TOWN OF PATTERSON**, a municipal corporation of the State of New York, having an office and place of business at 1142 Route 311, Patterson, New York 12563;

**THE TOWN OF PHILIPSTOWN**, a municipal corporation of the State of New York, having an office and place of business at 238 Main Street, P.O. Box 155, Cold Spring, New York 10516;

**THE TOWN OF PUTNAM VALLEY**, a municipal corporation of the State of New York, having an office and place of business at 265 Oscawana Lake Road, Putnam Valley, New York 10579;

**THE TOWN OF SOUTHEAST**, a municipal corporation of the State of New York, having an office and place of business at 1360 Route 22, Brewster, New York 10509; and

**ROCHESTER COMPUTER RECYCLING & RECOVERY, LLC d/b/a RCR & R, REGIONAL COMPUTER RECYCLING & RECOVERY**, with a principal place of business at 7318 Victor Mendon Road, Victor, New York 14564 (hereinafter referred to as "CONTRACTOR").

WHEREAS, the COUNTY, the TOWN OF CARMEL, the TOWN OF KENT, the TOWN OF PATTERSON, the TOWN OF PHILIPSTOWN, the TOWN OF PUTNAM VALLEY, and the TOWN OF SOUTHEAST (the six aforementioned towns are hereinafter referred to collectively as the "TOWNS") desire to contract with CONTRACTOR to provide an Electronic Waste Recycling Program and related electronic waste services for the COUNTY and the TOWNS (the COUNTY and the TOWNS are hereinafter referred to collectively as the MUNICIPAL PARTIES), as more fully described in this Agreement; and

WHEREAS, CONTRACTOR has the personnel with the necessary qualifications, experience and education, and the resources and/or facilities to provide the services desired by the MUNICIPAL PARTIES, as more fully described in this Agreement.

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

FIRST: CONTRACTOR agrees to provide an Electronic Waste Recycling Program and will furnish all related electronic waste services for the MUNICIPAL PARTIES, as more fully described below:

- a) CONTRACTOR shall provide environmentally responsible collection, environmental disposal and/or recycling of electronic equipment.
- b) CONTRACTOR shall provide each MUNICIPAL PARTY with storage containers to hold all materials collected.
- c) Upon request, CONTRACTOR shall collect materials from each MUNICIPAL PARTY, subject to the CONTRACTOR'S reasonable scheduling needs.
- d) CONTRACTOR shall provide transportation assistance, if requested.
- e) CONTRACTOR shall provide the MUNICIPAL PARTIES with all appropriate documents and labels for materials, including a report detailing the amount of materials collected at each Collection Site.
- f) CONTRACTOR shall provide government compliance notification if requested.

The Parties hereto agree that CONTRACTOR has the exclusive right to collect and dispose of all the MUNICIPAL PARTIES' accumulated idle, obsolete or non-working electronic equipment designated for recycling or disposal. The Parties further agree that services related to certified hard drive data destruction are not part of this Agreement and require a separate Agreement with a specific schedule of services.



**SECOND:** The MUNICIPAL PARTIES shall establish regular electronics collection sites (hereinafter referred to as a "Collection Site") for the drop-off of Materials. Each MUNICIPAL PARTY shall be responsible for staffing and operating its respective Collection Site, and shall be responsible for ensuring that items collected at their respective Collection Site consist exclusively of materials suitable for electronics recycling, and that such materials are generally free from all non-electronic items of waste, including without limitation putrescible materials, municipal solid waste, medical waste, yard waste, construction debris, pressurized tanks, and radioactive or hazardous substances that are not inherent to materials (such items being "Non-Conforming Matter"). Each MUNICIPAL PARTY shall be responsible for collecting, segregating and packaging materials into the storage containers, which storage containers shall be provided by the CONTRACTOR, for removal by CONTRACTOR from the Collection Site. The Collection Sites for the MUNICIPAL PARTIES are located at the following addresses:

**TOWN OF CARMEL:** 454 Route 6N, Mahopac, New York 10541. This Collection Site shall serve as a joint Collection Site for the COUNTY and the TOWN OF CARMEL, which is located on property owned by the COUNTY, and shall be exclusively staffed and exclusively operated by the TOWN OF CARMEL.

**TOWN OF KENT:** 16 Ray Singer Court, Carmel, New York 10512.

**TOWN OF PATTERSON:** 271 Cornwall Hill Road, Patterson, New York 12563.

**TOWN OF PHILIPSTOWN:** 59 Lane Gate Road, Cold Spring, New York 10516.

**TOWN OF PUTNAM VALLEY:** 265 Oscawana Lake Road, Putnam Valley, New York 10579.

**TOWN OF SOUTHEAST:** 10 Palmer Road, Brewster, New York 10509.

CONTRACTOR, its agents, employees and representatives shall have reasonable access to the Collections Sites to perform the services contemplated in this Agreement. Each Collection Site shall have sufficient parking, loading and collection areas as may be required to permit the orderly drop-off of materials by the public, and the collection of materials by CONTRACTOR.

THIRD: Once materials have been tendered to CONTRACTOR, CONTRACTOR shall take all appropriate measures to secure collected electronic waste from theft, or from theft of the data stored on such electronic waste.

FOURTH: The Parties agree that title to and liability for materials shall pass from the MUNICIPAL PARTIES to CONTRACTOR upon the completion of loading of the materials at the Collection Site onto the designated vehicles provided by the CONTRACTOR.

FIFTH: CONTRACTOR agrees that it will at all times faithfully, industriously and to the best of its ability, experience and talents perform all of the duties that may be required of and from it pursuant to express and implicit terms hereof, to the reasonable satisfaction of the MUNICIPAL PARTIES.

SIXTH: The term of this Agreement will commence on January 1, 2013 and will terminate on December 31, 2013, unless otherwise terminated in accordance with paragraph "ELEVENTH" hereof. Each MUNICIPAL PARTY reserves the right to renew this Agreement for two (2) additional one (1) year terms.

SEVENTH: For the services described in this Agreement, no fees shall be paid from the MUNICIPAL PARTIES to the CONTRACTOR.

EIGHTH: CONTRACTOR agrees not to hold itself out as an agency, department or office of a MUNICIPAL PARTY, nor shall any of CONTRACTOR'S officers, employees or agents make any claim against a MUNICIPAL PARTY as an officer or employee thereof for such benefit as workers compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit or any other benefits accruing to said officers or employees of a MUNICIPAL PARTY.

NINTH: The work to be performed pursuant to the terms of this Agreement shall commence promptly upon assignment of a matter to CONTRACTOR by the duly authorized representative of each of the respective MUNICIPAL PARTIES, and shall be conducted in the best interest of the MUNICIPAL PARTIES.

TENTH: It is understood and agreed by and between the parties hereto that the services to be rendered by CONTRACTOR in performance of this Agreement are a material element of this Agreement. Any failure to provide such services will be deemed a material breach and this Agreement will terminate in accordance with the provisions in paragraph "ELEVENTH" hereof. No substitution of the services of CONTRACTOR by another will be permitted during the term of this Agreement without the express written consent of the MUNICIPAL PARTY respective to its Collection Site.

ELEVENTH: A MUNICIPAL PARTY, upon ten (10) days' notice to CONTRACTOR, may terminate this Agreement in whole or in part when the respective MUNICIPAL PARTY deems it to be in its best interest.

CONTRACTOR, upon thirty (30) days' notice to the COUNTY may terminate this Agreement in whole or in part when CONTRACTOR deems it to be in its best interest.

TWELFTH: Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the MUNICIPAL PARTIES is void. CONTRACTOR will not subdivide any part of the work without the written consent of the MUNICIPAL PARTIES.

THIRTEENTH: CONTRACTOR will comply, at its own expense, with the provisions of all applicable state and municipal requirements and with all state and federal laws applicable to CONTRACTOR as an employer of labor or otherwise. CONTRACTOR will further comply with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to render the services hereunder.

CONTRACTOR expressly agrees that it shall be solely responsible for supervising its employees; that it shall comply with all rules, regulations, orders, standards, and interpretations promulgated pursuant to the Occupational Health and Safety Act of 1970 and the Public Employees Safety and Health Act (hereinafter referred to as "PESH"), including but not limited to training; provision of personal protective equipment; adherence to all appropriate lockout/tagout procedures; and providing all notices, material safety data sheets, labels, etc. required by the right-to-know standard.

Nothing contained herein to the contrary, the conduct and control of the performance of the services contemplated hereunder lie solely with the CONTRACTOR.

FOURTEENTH: No discrimination by CONTRACTOR will be permitted during the performance of this Agreement with respect to race, religion, creed, color, national origin, sex, age, handicap, political affiliation, or beliefs.

FIFTEENTH: In addition to, and not in limitation of the insurance requirements contained in Schedule "A" entitled "Putnam County Insurance Requirements," attached hereto and made a part of this Agreement, CONTRACTOR agrees to protect, defend, indemnify and hold the COUNTY and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof. CONTRACTOR further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his sole expense and agrees to bear all costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

It is further agreed that MUNICIPAL PARTIES are acting as a Collection Site for electronic waste and CONTRACTOR shall hold MUNICIPAL PARTIES harmless from any liability for violation of any law, rule or regulation relating to the disposal of electronic waste for any materials accepted by the CONTRACTOR and removed from each MUNICIPAL PARTIES' Collection Site.

SIXTEENTH: The failure of a MUNICIPAL PARTY to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. No waiver by the MUNICIPAL PARTY of any provision hereof shall be implied.

SEVENTEENTH: CONTRACTOR and its employees shall not at any time or in any manner either directly or indirectly use for the personal benefit of CONTRACTOR or divulge, disclose or communicate in any manner any information that is proprietary to the MUNICIPAL PARTIES. CONTRACTOR and its employees shall protect such information and treat it as strictly confidential. This provision will continue to be effective after termination of this Agreement.

EIGHTEENTH: All notices of any nature referred to in this Agreement shall be in writing and hand delivered or sent by registered or certified mail postage pre-paid, to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the COUNTY:

**COUNTY ATTORNEY**  
48 Gleneida Avenue  
Carmel, New York 10512

To the TOWNS:

**TOWN OF CARMEL**  
60 McAlpin Avenue  
Mahopac, New York 10541

**TOWN OF KENT**  
25 Sybil's Crossing  
Kent Lakes, New York 10512

**TOWN OF PATTERSON**  
1142 Route 311  
Patterson, New York 12563

**TOWN OF PHILIPSTOWN**  
238 Main Street  
P.O. Box 155  
Cold Spring, New York 10516

**TOWN OF PUTNAM VALLEY**  
265 Oscawana Lake Road  
Putnam Valley, New York 10579

**TOWN OF SOUTHEAST**  
1360 Route 22  
Brewster, New York 10509

To the CONTRACTOR: **ROCHESTER COMPUTER RECYCLING &  
RECOVERY, LLC d/b/a RCR & R, REGIONAL  
COMPUTER RECYCLING & RECOVERY**  
7318 Victor Mendon Road  
Victor, New York 14564

All notices shall be effective on the date of mailing.

NINETEENTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It will not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

TWENTIETH: Use of the singular term MUNICIPAL PARTY in any clause or term of this Agreement shall confer the same benefits, rights, responsibilities, and obligations on all MUNICIPAL PARTIES, as if the plural term MUNICIPAL PARTIES were used.

TWENTY-FIRST: In the event that any clause or term of this Agreement conflicts with any clause or term contained in an attachment or subsequent writing, the clause or term of this Agreement shall govern.

TWENTY-SECOND: In case any provision of this agreement should be held to be invalid, such invalidity shall not affect, in any way, any of the other provisions herein, all of which shall continue in full force and effect, in any country, state or jurisdiction in which such provisions are legal and valid.

TWENTY-THIRD: This Agreement will be construed and enforced in accordance with the laws of the State of New York. Any and all disputes and/or legal actions or proceedings arising out of this Agreement shall be venued in Putnam County, New York.

TWENTY-FOURTH: This Agreement is executed in eight (8) counterpart originals, each of which will constitute an original and all of which, when taken together, shall constitute one Agreement.

TWENTY-FIFTH: CONTRACTOR is required to provide the following documents to the COUNTY before this Agreement will be finalized and/or executed:

1. "Request for Taxpayer Identification Number and Certification" form (IRS Form W-9).
2. "Notice of Application to Certify Compliance with Federal Law" and "Affidavit of Compliance," in accordance with the provisions of 8 U.S.C. §1324a and Chapter 134 of the Putnam County Code. In the event that CONTRACTOR subcontracts any part of the work under this Agreement in accordance with Paragraph "TWELFTH" of this Agreement, CONTRACTOR shall provide the COUNTY with a completed "Notice of Application to Certify Compliance with Federal Law" and an "Affidavit of Compliance" for each and every subcontractor hired to perform work under this Agreement.
3. Appropriate Certificate of Insurance, in accordance with Paragraph "FIFTEENTH" of this Agreement and the requirements contained in Schedule "A."
4. New York State Department of Environmental Conservation Registration.



IN WITNESS WHEREOF, the parties have executed this Agreement in Carmel, New York, on the date hereinabove set forth.

**READ & APPROVED**

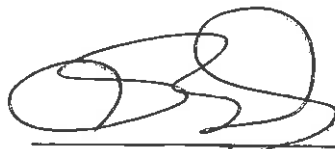
**THE COUNTY OF PUTNAM**

\_\_\_\_\_  
Date  
Adrienne Spadaccini  
Senior Deputy County Attorney for  
Risk and Compliance

\_\_\_\_\_  
Date  
Jennifer S. Bumgarner  
County Attorney

\_\_\_\_\_  
Date  
William J. Carlin, Jr.  
Commissioner of Finance

\_\_\_\_\_  
Date  
MaryEllen Odell  
County Executive

  
\_\_\_\_\_  
Date 8/22/13  
Allen Beals, M.D., J.D.  
Commissioner of Health

\_\_\_\_\_  
Date  
**ROCHESTER COMPUTER  
RECYCLING & RECOVERY, LLC**  
d/b/a RCR & , REGIONAL COMPUTER  
RECYCLING & RECOVERY  
7318 Victor Mendon Road  
Victor, New York 14564

By:   
\_\_\_\_\_  
Please Print Name & Title  
SCOTT PASTORELL  
Client Services Operations Mgr.

\_\_\_\_\_  
Date

**TOWN OF CARMEL**  
60 McAlpin Avenue  
Mahopac, New York 10541

By: \_\_\_\_\_  
Please Print Name & Title

\_\_\_\_\_  
Date

**TOWN OF KENT**  
25 Sybil's Crossing  
Kent Lakes, New York 10512

By: \_\_\_\_\_  
Please Print Name & Title

\_\_\_\_\_  
Date

**TOWN OF PATTERSON**  
1142 Route 311  
Patterson, New York 12563

By: \_\_\_\_\_  
Please Print Name & Title

\_\_\_\_\_  
Date

**TOWN OF PHILIPSTOWN**  
238 Main Street  
P.O. Box 155  
Cold Spring, New York 10516

By: \_\_\_\_\_  
Please Print Name & Title

\_\_\_\_\_  
Date

**TOWN OF PUTNAM VALLEY**

265 Oscawana Lake Road

Putnam Valley, New York 10579

By: \_\_\_\_\_

Please Print Name & Title

\_\_\_\_\_  
Date

**TOWN OF SOUTHEAST**

1360 Route 22

Brewster, New York 10509

By: \_\_\_\_\_

Please Print Name & Title

**ACKNOWLEDGMENT OF PUTNAM COUNTY:**

STATE OF NEW YORK )

) ss.:

COUNTY OF PUTNAM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013 before me personally came MARYELLEN ODELL to me known, who being by me duly sworn, did depose and say that she resides in Putnam County, New York; that she is the County Executive of Putnam County, the corporation described in and which executed the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; and the same was affixed to said instrument under authority of the Putnam County Charter and that she signed her name thereto under the same authority.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF CONTRACTOR:**

STATE OF NEW YORK )

) ss.:

COUNTY OF Ontario )

On this 19<sup>th</sup> day of August, 2013 before me personally came SCOTT PASTORELL to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

\_\_\_\_\_  
*Mary D. Manno*  
Notary Public

Mary D Manno  
Notary Public  
State of New York Ontario Co.  
My Commission Expires Dec 2, 2014

**ACKNOWLEDGMENT OF TOWN OF CARMEL:**

STATE OF NEW YORK     )

) ss.:

COUNTY OF PUTNAM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013 before me personally came \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF TOWN OF KENT:**

STATE OF NEW YORK     )

) ss.:

COUNTY OF PUTNAM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013 before me personally came \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF TOWN OF PATTERSON:**

STATE OF NEW YORK     )

) ss.:

COUNTY OF PUTNAM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013 before me personally came \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF TOWN OF PHILIPSTOWN:**

STATE OF NEW YORK     )

) ss.:

COUNTY OF PUTNAM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013 before me personally came \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF TOWN OF PUTNAM VALLEY:**

STATE OF NEW YORK    )

) ss.:

COUNTY OF PUTNAM    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013 before me personally came \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF TOWN OF SOUTHEAST:**

STATE OF NEW YORK    )

) ss.:

COUNTY OF PUTNAM    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013 before me personally came \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public



# CERTIFICATE OF LIABILITY INSURANCE

ROCHE13

OP ID: AE

DATE (MM/DD/YYYY)

08/12/13

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Rose & Kiernan, Inc. (Pitts) Suite 220 1163 Pittsford-Victor Rd Pittsford, NY 14534		<b>585-264-0520</b> <b>585-264-0828</b>	<b>CONTACT NAME:</b> <b>PHONE</b> (A/C, No, Ext) <b>FAX</b> (A/C, No): <b>E-MAIL</b> <b>ADDRESS:</b>	
<b>INSURED</b>	<b>Rochester Computer Recycling Recovery DBA Regional Computer Recycling &amp; Recovery 7318 Victor Mendon Road Victor, NY 14564</b>	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
		<b>INSURER A: Greenwich Insurance Company</b>		
		<b>INSURER B: Cincinnati Insurance Co.</b>		<b>633</b>
		<b>INSURER C: Hartford Life &amp; Accident Ins.</b>		
		<b>INSURER D:</b>		
		<b>INSURER E:</b>		

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR		GEC003592701	10/01/12	10/01/13	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					
	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <b>DED</b> <input checked="" type="checkbox"/> <b>RETENTION \$</b> 10000					
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	V/N <input type="checkbox"/> N/A				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>Pollution Liab</b>		PEC003592901	10/01/12	10/01/13	Per Claim 1,000,000
C	<b>NYS Disability</b>		LNY636577	01/01/12		Until Cancelled

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
All operations usual and incidental to the business of the named insured

**CERTIFICATE HOLDER****CANCELLATION**

COUNTY OF PUTNAM  
LAW DEPT./RISK MANAGER  
48 GLENEIDA AVENUE  
CARMEL, NY 10515

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2010 ACORD CORPORATION. All rights reserved.





# New York State Insurance Fund

Workers' Compensation & Disability Benefits Specialists Since 1914

100 CHESTNUT STREET - SUITE 1000, ROCHESTER, NEW YORK 14604  
Phone: (585) 258-2068

## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

\*\*\*\*\* 161521178

ROCHESTER COMPUTER RECYCLING &  
RECOVERY LLC DBA RCR&R  
7318 STATE ROUTE 251  
VICTOR NY 14564

### POLICYHOLDER

ROCHESTER COMPUTER RECYCLING &  
RECOVERY LLC DBA RCR&R  
7318 STATE ROUTE 251  
VICTOR NY 14564

### CERTIFICATE HOLDER

COUNTY OF PUTNAM  
ATTN: LAW DEPT/RISK MANAGER  
48 GLENEIDA AVENUE  
CARMEL NY 10512

POLICY NUMBER	CERTIFICATE NUMBER	PERIOD COVERED BY THIS CERTIFICATE	DATE
R 2064 708-7	710080	04/08/2013 TO 04/08/2014	8/12/2013

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 2064 708-7 UNTIL 04/08/2014, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW.

IF SAID POLICY IS CANCELLED, OR CHANGED PRIOR TO 04/08/2014 IN SUCH MANNER AS TO AFFECT THIS CERTIFICATE, 10 DAYS WRITTEN NOTICE OF SUCH CANCELLATION WILL BE GIVEN TO THE CERTIFICATE HOLDER ABOVE. NOTICE BY REGULAR MAIL SO ADDRESSED SHALL BE SUFFICIENT COMPLIANCE WITH THIS PROVISION. THE NEW YORK STATE INSURANCE FUND DOES NOT ASSUME ANY LIABILITY IN THE EVENT OF FAILURE TO GIVE SUCH NOTICE.

THIS POLICY AFFORDS COVERAGE TO THE SOLE PROPRIETOR, PARTNERS AND/OR MEMBERS OF A LIMITED LIABILITY COMPANY.

MICHAEL J WHYTE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

DIRECTOR, INSURANCE FUND UNDERWRITING

This certificate can be validated on our web site at <https://www.nysif.com/cert/certval.asp> or by calling (888) 875-5790  
VALIDATION NUMBER: 435359717

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)  
**Rochester Computer Recycling & Recovery LLC**

Business name/disregarded entity name, if different from above  
**Regional Computer Recycling & Recovery LLC, RCR&R**

Check appropriate box for federal tax classification:

☐ Individual/sole proprietor    ☐ C Corporation    ☐ S Corporation    ☐ Partnership    ☐ Trust/estate

☒ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ **S**    ☐ Exempt payee

☐ Other (see instructions) ▶

Address (number, street, and apt. or suite no.)  
**7318 Victor Mendon Road**

City, state, and ZIP code  
**Victor, NY 14564**

List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
			-			-		

Employer identification number									
1	6	-	1	5	2	1	1	7	8

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign Here**    Signature of U.S. person ▶ *Michael J. ...*    Date ▶ **1/16/13**

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

Contract # \_\_\_\_\_

**PUTNAM COUNTY PURCHASING DEPARTMENT  
NOTICE OF APPLICATION TO CERTIFY COMPLIANCE WITH FEDERAL LAW  
(8 U.S.C. SECTION 1324A)**

**WITH RESPECT TO LAWFUL HIRING OF EMPLOYEES**  
To be completed by Applicant/Covered Employer/Owner

EMPLOYER/BUSINESS/COMPANY NAME: Regional Computer Recycling & Recovery, LLC.

(1) ADDRESS: 7318 Victor Mandon Rd. Victor, NY 14564

(2) VENDOR # \_\_\_\_\_ (if known) (3) CONTRACT ID: \_\_\_\_\_ (if known)

(4) CONTACT: Scott Pastorell (5) TELEPHONE: 888-563-1340 ext. 103

(6) TERM OF CONTRACT OR EXTENSION: \_\_\_\_\_

(7) AMOUNT OF CONTRACT OR EXTENSION: 0

(8) BRIEF DESCRIPTION OF PROJECT OR SERVICE: Electronics Recycling

SUBCONTRACTOR: N/A

(1) ADDRESS: \_\_\_\_\_

(2) VENDOR # \_\_\_\_\_ (3) TELEPHONE: \_\_\_\_\_

(4) CONTACT: \_\_\_\_\_

(5) DESCRIPTION OF COMPENSATION, PROJECT OR SERVICE: \_\_\_\_\_

(6) **EVIDENCE OF COMPLIANCE:** COPIES OF THE FOLLOWING MUST BE MAINTAINED BY COVERED EMPLOYERS OR THE OWNERS THEREOF FOR EACH EMPLOYEE FOR THE TIME PERIODS SET FORTH IN PUTNAM COUNTY CODE, CHAPTER 134, SECTION 5:

- A. United States passport; or
- B. resident alien card or alien registration card; or
- C. birth certificate indicating that person was born in the United States; or
- D. (1) a driver's license, if it contains a photograph of the individual; and (2) a social security account number card (other than such a card which specifies on its face that the issuance of the card does not authorize employment in the United States); or
- E. employment authorization documents such as an H-1B visa, H-2B visa, and L-1 visa, or other work visa as may be authorized by the United States Government at the time the County contract is awarded for all covered employees.

AFFIDAVIT OF COMPLIANCE  
WITH THE REQUIREMENTS OF  
8 U.S.C. SECTION 1324a  
WITH RESPECT TO LAWFUL HIRING OF EMPLOYEES


STATE OF NEW YORK COUNTY OF

ONTARIO

) ss:  
)

, being duly sworn, deposes and says: SCOTT PASTORELL  
(print name of deponent)

1. I am the owner/authorized representative of Regional Computer Recycling & Recovery  
(circle one) (name of corp., business, company)
2. I certify that I have complied, in good faith, with the requirements of Title 8 of the United States Code (U.S.C.) Section 1324a (Aliens and Nationality) with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as set forth in Putnam County Code Chapter

  
(signature of deponent)

Subscribed and sworn to before me this 13 day of August, 2013

  
Notary Public, State of New York

Mary D Manno  
Notary Public  
State of New York Ontario Co.  
My Commission Expires Dec 2, 2014



# Registration Form for Electronic Waste Collection Sites, Consolidation Facilities and Recycling Facilities

Please complete this registration in accordance with the New York State Electronic Equipment Recycling and Reuse Act (Environmental Conservation Law, Article 27, Title 26). Additional guidance on how to complete this form is available on page 5 of this document.

Each electronic waste collection site, consolidation facility, or recycling facility located in New York State must register with the NYS Department of Environmental Conservation (Department) by **January 1, 2011**. After January 1, 2011, any person who commences the operation of an electronic waste collection site, consolidation facility or recycling facility must register with the Department at least **thirty (30) days** prior to receiving any electronic waste.

Each electronic waste consolidation or recycling facility must complete and submit all parts of this registration form, and must also submit the Electronic Equipment Recycling and Reuse Act Registration Fee Form (REG-FEE) to the Department by **January 1, 2011**, accompanied by a registration fee of \$250.<sup>1</sup> In the case of multiple facility locations under the same owner/operator, a separate registration form and registration fee form must be submitted for *each* facility location. An electronic waste recycling facility that is also operating as an electronic waste consolidation facility, or vice versa, must comply with the requirements of the Act that are applicable to each type of facility; *however*, only one registration fee and one registration fee form must be submitted for each facility location.

Each electronic waste collection site must complete and submit all parts of this registration form, but does not need to submit the registration fee form or registration fee. Multiple retail collection sites under the same ownership may attach a list of each individual collection site's name, address, and telephone number, in addition to which types of covered electronic equipment (CEE) each site accepts (if different from those listed in **Part III** of this registration) to a single registration form.

Registrations must be updated within *thirty (30) days* of any material change to the information required by the registration. Please direct all questions regarding this form to [ewaste@gw.dec.state.ny.us](mailto:ewaste@gw.dec.state.ny.us) or call (518) 402-8706.

This registration is for an electronic waste (check all that apply): ☒ Collection Site<sup>2</sup> ☒ Consolidation Facility<sup>3</sup> ☒ Recycling Facility<sup>4</sup>

Name of Site or Facility: Regional Computer Recycling & Recovery

Location Address: 7318 Victor Mendon Road

City: Victor

NY

Postal (ZIP) Code: 14564

County: 35- Ontario

Federal Tax ID Number:<sup>5</sup> 16-1521178

When did this site/facility commence operations (or when does it intend to do so)? Jul 1, 2005

Please provide the following affirmations, if applicable, to the electronic waste collection site's, consolidation facility's, or recycling facility's operations:

1. Is electronic waste safely stored to minimize breakage and to prevent releases of hazardous materials to the environment?  
☒ Yes ☐ No ☐ N/A
2. Is the site/facility taking steps to control entry to the portion of the site/facility designated for electronic waste?  
☒ Yes ☐ No ☐ N/A
3. Are site/facility employees who handle or have responsibility for managing electronic waste informed about the proper handling and emergency procedures appropriate to the types of electronic waste handled at the site/facility?  
☒ Yes ☐ No ☐ N/A

If this registration is for an Electronic Waste Recycling Facility, please provide a detailed description of all dismantling or recycling processes utilized by the facility:

- Receiving: Equipment is initially labeled to identify the client source. We use a proprietary database tracking software called RIPSS (Receiving-Inventory-Process-Security-Services) & Batch System to track incoming CEE by location name, location address & weight
- Sorting: Equipment is sorted and consolidated by major type i.e. printers, monitors, CPU's etc. Equipment is then segregated into working/non-obsolete or non-working/obsolete.
- Working/non-obsolete product is evaluated, refurbished and or dismantled for parts as necessary and funneled through our own retail store or re-marketed through our extensive marketing network.
- Non-working/obsolete product is de-manufactured and processed into base material categories including iron/aluminum, cast aluminum, sheet aluminum, extruded aluminum, cabling/wire, circuit boards (multiple grades), copper, copper bearing scrap, brass, steel, plastics (multiple grades), whole CRT. To further consolidate material we utilize a vertical baler, horizontal baler, and shredder.
- Asset Management: Premium, Option Fee-based services include serial # tracking, electronic data destruction services, asset identification, asset re-marketing, asset destruction, asset tag removal, asset repair and redistribution (optional fee based service).

☐ Check here if additional pages are attached.

Please provide the approximate square footage of the portion of the site/facility designated for electronic waste drop-off, storage, and/or dismantling/recycling?

100,000

Square Feet

Which types of covered electronic equipment (CEE)<sup>6</sup> will be accepted for reuse or recycling at this site/facility (check all that apply):

☒ Computers<sup>7</sup> ☒ Computer peripherals<sup>8</sup> ☒ Small electronic equipment<sup>9</sup> ☒ Small scale servers<sup>10</sup> ☒ Televisions<sup>11</sup>

If applicable to the registering site or facility, please provide the following permit, registration or identification information:

6 NYCRR Part 360 Permit Number:

☒ N/A

6 NYCRR Part 360 Registration Number:

☒ N/A

6 NYCRR Part 364 Permit Number: \*Application In process

☐ N/A

US EPA ID Number: NYR000169862

☐ N/A

The following questions are applicable only to registering electronic waste recycling facilities:

1. Are you planning to pursue certification as a Responsible Recycler (R2/RIOS)?<sup>12</sup> ☒ Yes ☐ No ☐ Currently Certified
2. Are you planning to pursue certification under the e-Stewards program?<sup>13</sup> ☐ Yes ☒ No ☐ Currently Certified

Electronic waste is potentially a hazardous waste. Electronic waste directed for recycling is exempted from regulation under the hazardous scrap metal exemption (6 NYCRR 371.1(g)(1)(iii)(b)), or excluded from regulation under the processed scrap metal exclusion (6 NYCRR 371.1(e)(1)(xiii)) provided that scrap metal will ultimately be reclaimed.

Completion of **Part V** of this registration form satisfies the requirement to submit a "c7" notification to the Department pursuant to 6 NYCRR 371.1(c)(7), which states, in part: "Parties who raise a claim that a certain material [such as CEE checked in **Part III** of this registration form] is not a solid or hazardous waste, or is exempt or conditionally exempt from regulation, based on the intent to reclaim, recycle or reuse, must notify the department, in writing, before utilizing the exemption or exclusion."

Collection sites, consolidation facilities and recycling facilities must list the facility type, name, and address of each electronic waste consolidation facility and recycling facility to which electronic waste will be sent in the table below. Recycling facilities must also list the facility type, name, and address of each scrap metal recycler and smelter to which electronic waste component materials will be sent.

Please note: registration numbers are not required on registration forms submitted prior to January 1, 2011, and it is unlikely that scrap metal recyclers or smelters will have registration numbers even after January 1, 2011. Registration numbers are not applicable for out-of-state facilities.

Facility Type	Name	Address	Registration # (if known/applicable)
Consolidation Facility	Regional Computer Recycling & Recovery	705 Corporate Park Scotia, NY 12302	
Scrap Metal Recycler	Edward Arnold Scrap Processors	2216 Angling Road Corfu, NY 14036	
Scrap Metal Recycler	MRP Co. Inc	10823 Williamson Lane Cockeysville, MD 21030	
Scrap Metal Recycler	Dlubak Glass Company	11567 County Highway 110 Upper Sandusky, OH 43351	
Scrap Metal Recycler	WM - Lamp Tracker	1823 William Penn Way Lancaster, PA 17601	

☐ Check here if additional pages are attached.

A registration will be considered incomplete unless signed by the legally responsible party (e.g. owner/operator) for the electronic waste collection site, consolidation facility, or recycling facility.

I certify that the information provided on this form is accurate and complete, and that this electronic waste collection site, consolidation facility, or recycling facility will comply with the requirements of New York State's Electronic Equipment Recycling and Reuse Act, the Environmental Conservation Law, and all other applicable laws, rules and regulations, and that all applicable fees have been submitted. I hereby affirm under penalty of law that the information provided in this form and attached statements and exhibits is true to the best of my knowledge and belief. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Signature:		Date:	Dec 27, 2010
Type or Print First Name:	Michael	Title:	President
Type or Print Last Name:	Whyte	E-mail:	Mike@ewaste.com
Phone Number:	585-924-3840	Fax:	585-924-3841
Mailing Address:	7318 Victor Mendon Road		
City:	Victor	State:	New York
		Postal (ZIP) Code:	14564

Please identify the primary contact for the electronic waste site/facility below only if different from the individual listed in **Part VI**:

First Name:		Title:	
Last Name:		E-mail:	
Phone Number:			

Please SUBMIT this completed registration form and all supporting/additional documentation to:

New York State Department of Environmental Conservation  
Division of Materials Management  
Bureau of Waste Reduction and Recycling  
625 Broadway, 9th Floor  
Albany, NY 12233 - 7253

Please SUBMIT the separate Electronic Equipment Recycling and Reuse Act Registration Fee Form (REG-FEE) and \$250 Registration Fee (if applicable) to the above address as well.



## Additional Information for the Registration Form

- 1) For more information on the \$250 registration fee required to be paid by electronic waste consolidation facilities and electronic waste recycling facilities, please see the Electronic Equipment Recycling and Reuse Act Registration Fee Form (REG-FEE) available on the Department's website at: <http://www.dec.ny.gov/chemical/65583.html>.
- 2) "Electronic waste collection site" means a facility at a fixed or temporary site at which electronic waste is accepted from consumers and temporarily stored for more than five days in a calendar year before such waste is transported to an electronic waste consolidation facility or electronic waste recycling facility. Electronic waste collection sites include, but are not limited to, dedicated sites and facilities for the acceptance of electronic waste, and retail stores and outlets, municipal or private electronic waste collection sites and not-for-profit donation sites that have agreed to accept electronic waste. "Electronic waste" means covered electronic equipment that has been discarded or is no longer wanted by its owner, or for any other reason enters the waste collection, recovery, treatment, processing, or recycling system.
- 3) "Electronic waste consolidation facility" means a facility that receives and stores electronic waste for the purpose of organizing, categorizing or consolidating items of electronic waste before such waste is transported to an electronic waste recycling facility or other electronic waste consolidation facility. Electronic waste consolidation facilities include, but are not limited to, facilities of brokers acting as intermediaries between electronic waste buyers and sellers, and regional centers at which electronic waste is organized, categorized or consolidated after being transported to such centers from electronic waste collection sites or other electronic waste consolidation facilities.
- 4) "Electronic waste recycling facility" means a facility at which electronic waste is recycled. "Recycle" means to separate, dismantle, or process the materials, components, or commodities contained in electronic waste for the purpose of preparing the materials, components or commodities for use or reuse in new products or components thereof, but not for energy recovery or energy generation by means of combustion, gasification, pyrolysis or other means. Recycling includes manual and mechanical separation of electronic waste to recover materials, components or commodities contained therein for the purpose of reuse or recycling, and changing the physical or chemical composition of electronic waste to segregate components for purposes of recycling those components.
- 5) A Federal Tax ID Number (also known as an Employer Identification Number or EIN) is used to identify a business entity located in the United States. A site's/facility's Federal Tax ID Number can be found by calling the IRS Business & Specialty Tax Line at (800) 829-4933. The hours of operation are 7:00 a.m. - 10:00 p.m. local time, Monday through Friday. An assistor will ask you for identifying information and provide the number to you over the telephone, as long as you are a person who is authorized to receive it.
- 6) "Covered electronic equipment" includes a computer, computer peripheral; small electronic equipment; small scale server; or television.
- 7) "Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing a logical, arithmetic or storage function, including a laptop computer and desktop computer, and includes any cable, cord, or wiring permanently affixed to or incorporated into such product, and may include both a computer central processing unit and a monitor.
- 8) "Computer peripheral" means a monitor; electronic keyboard; electronic mouse or similar pointing device; facsimile machine, document scanner, or printer intended for use with a computer; and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product. "Computer peripheral" shall not include any document scanner or printer which weighs one hundred pounds or more.
- 9) "Small electronic equipment" means any portable digital music player that has memory capability and is battery-powered, video cassette recorder, a digital video disc player, digital video recorder, digital converter box, cable or satellite receiver, or electronic or video game console, and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product.
- 10) "Small scale server" means a computer that typically uses desktop components in a desktop form factor, but is designed primarily to be a storage host for other computers. To be considered a small scale server, a computer must have the following characteristics: designed in a pedestal, tower, or other form factor similar to those of desktop computers such that all data processing, storage, and network interfacing is contained within one box/product; intended to be operational twenty-four hours per day and seven days a week, and unscheduled downtime is extremely low (such as on the order of hours per year); is capable of operating in a simultaneous multi-user environment serving several users through networked client units; and designed for an industry accepted operating system for home or low-end server applications.
- 11) "Television" means a display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, cable or satellite transmission, having a viewable area greater than four inches when measured diagonally.
- 12) For more information on the R2/RIOS standards, visit: <http://www.epa.gov/waste/conserve/materials/recycling/r2practices.htm> and <http://www.certifiedelectronicsrecycler.com/>.
- 13) For more information on the e-Stewards program, visit: <http://e-stewards.org/>.

## #6

### RESOLUTION AUTHORIZING SCHEDULING OF PUBLIC HEARING

RESOLVED that the Town Board of the Town of Carmel hereby authorizes the scheduling of a Public Hearing at the Town Hall, 60 Mc Alpin Avenue, Mahopac, New York 10541 on Wednesday, October 16, 2013 or as soon thereafter that evening as possible on a Local Law amending the Town Code to add Chapter 112 entitled "PORTABLE BATHROOMS AND FACILITIES"; and

BE IT FURTHER RESOLVED that Town Clerk Ann Spofford is hereby authorized and instructed to publish and post the necessary notices in the official newspaper of the Town and on the Town bulletin board regarding this Public Hearing.

#### 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	_____	_____

## #6

### RESOLUTION AUTHORIZING SCHEDULING OF PUBLIC HEARING

RESOLVED that the Town Board of the Town of Carmel hereby authorizes the scheduling of a Public Hearing at the Town Hall, 60 Mc Alpin Avenue, Mahopac, New York 10541 on Wednesday, October 16, 2013 or as soon thereafter that evening as possible on a Local Law amending the Town Code to add Chapter 112 entitled "PORTABLE BATHROOMS AND FACILITIES"; and

BE IT FURTHER RESOLVED that Town Clerk Ann Spofford is hereby authorized and instructed to publish and post the necessary notices in the official newspaper of the Town and on the Town bulletin board regarding this Public Hearing.

#### 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	_____	_____

**#7**

**RESOLUTION AUTHORIZING SCHEDULING OF PUBLIC HEARING**

RESOLVED that the Town Board of the Town of Carmel hereby authorizes the scheduling of a Public Hearing at the Town Hall, 60 Mc Alpin Avenue, Mahopac, New York 10541 on Wednesday, October 16, 2013 or as soon thereafter that evening as possible on a Local Law amending Chapter 104 of the Town Code entitled "NOISE"; and

BE IT FURTHER RESOLVED that Town Clerk Ann Spofford is hereby authorized and instructed to publish and post the necessary notices in the official newspaper of the Town and on the Town bulletin board regarding this Public Hearing.

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	_____	_____

**Town Board Work Session:**

1. Glenn Droese, Town Assessor and John Wollman, NYS Office of Real Property – Explanation of STAR Program
2. Supervisor Kenneth Schmitt – Town of Kent Revitalization Project – Gateway at NYS Route 52/Town of Carmel Line
3. Consider O & M Agreement for CSD#7

WS#3

Vendor	Cost Amounts	Date Paid	Description
<b>Operation &amp; Maintenance Costs</b>			
<b>2012</b>			
Severn Trent	7,280.00	5/23/2012	April O & M Costs
Severn Trent	8,680.00	7/18/2012	May O & M Costs
Severn Trent	8,400.00	8/15/2012	June O & M Costs
Severn Trent	8,680.00	8/15/2012	July O & M Costs
Severn Trent	8,680.00	10/2/2012	August O & M Costs
Severn Trent	8,400.00	10/22/2012	September O & M Costs
Severn Trent	8,680.00	12/10/2012	October O & M Costs
Severn Trent	8,400.00	12/19/2012	November O & M Costs
Severn Trent	8,680.00	12/31/2012	December O & M Costs
	75,880.00		
<b>2013</b>			
Severn Trent	8,680.00	1/31/2013	January 2013 O & M Costs
Severn Trent	7,840.00	2/28/2013	February 2013 O & M Costs
	16,520.00		
<b>Regular Sewer District Chemical Costs for CSD #7</b>			
<b>2012</b>			
Slack Chemical	-473.80	12/12/2012	FW 60 and Bleach for SD #7
Slack Chemical	2,223.80	12/31/2012	Bleach for SD #7
	1,750.00		
<b>2013</b>			
	0.00		
<b>Micro-Filtration Chemical Costs for CSD #7</b>			
<b>2012</b>			
Coyne Chemical	1,392.09	8/1/2012	Sodium Hypochlorite & PACL 2000
Coyne Chemical	1,658.80	9/19/2012	CES PACL 2000
Coyne Chemical	1,618.80	12/12/2012	PACL 2000
	4,669.69		
<b>2013</b>			
Coyne Chemical	1,658.80	2/28/2013	4 drums of PACL 2800
	1,658.80		
<b>Sludge Hauling Costs for CSD #7</b>			
<b>2012</b>			
Fred Cook, Jr Inc	14,202.50		Sludge Hauling 2012
Mahopac Septic	16,892.50		Sludge Hauling 2012
	31,095.00		
<b>2013</b>			
Mahopac Septic	7,072.50		Sludge Hauling 2013
	7,072.50		

Micro-Filtration Contractual Costs for CSD #7			
		2012	
CIA Alarms	253.33	7/6/2012	Service calls
CIA Alarms	267.86	7/24/2012	Alarm rental, radio rental
CIA Alarms	10.00	9/24/2012	Remote download
CIA Alarms	20.00	12/11/2012	Remote download
CIA Alarms	10.00	12/31/2012	Remote download
Gentech	255.00	10/24/2012	Service calls
Hach Company	6,729.85	6/18/2012	Spectrophometer
Hach Company	3,007.00	6/26/2012	Software
Mahopac Septic	577.50	10/15/2012	Pumped sludge
N&S Supply	129.15	10/5/2012	Brass nipples, tee, valve
Severn Trent	225.00	5/23/2012	Emergency callout 2/25/12-3/9/12
Severn Trent	600.00	5/23/2012	Emergency callout 3/10/12-3/23/12
Severn Trent	64.06	7/18/2012	Signs
Severn Trent	103.43	7/18/2012	Paint & Supplies
Severn Trent	27.50	7/18/2012	Lumber for clarifier
Severn Trent	85.08	7/18/2012	Clarifier oil
Severn Trent	315.00	8/15/2012	Emergency callout 5/5/12-5/18/12
Severn Trent	280.00	8/15/2012	Emergency callout 5/19/12-6/1/12
Severn Trent	600.00	8/15/2012	Installed new motor for flocc
Severn Trent	435.00	10/1/2012	Emergency callout 6/16/12-6/29/12
Severn Trent	210.00	10/1/2012	Emergency callout 7/14/12-7/27/12
Severn Trent	225.00	10/22/2012	Emergency callout 8/11/12-8/24/12
Severn Trent	187.65	12/13/2012	Cleaning supplies
Severn Trent	225.00	12/19/2012	Electrical work
Severn Trent	300.00	12/19/2012	Installed new float tree
Severn Trent	280.00	12/19/2012	Emergency callout 9/22/12-10/5/12
Severn Trent	300.00	12/31/2012	Emergency callout 10/25/12-11/2/12
Severn Trent	175.00	12/31/2012	Emergency callout 11/3/12-11/16/12
Severn Trent	510.00	12/31/2012	Emergency callout 11/17/12-11/30/12
Severn Trent	459.84	12/31/2012	Office supplies
Severn Trent	465.10	12/31/2012	Paint, Office & Supplies
Southeast Plumbing	253.00	12/12/2012	Troubleshooting water heater
US Plastics	514.76	12/27/2012	Drum level sensor
	18,100.11		
		2013	
Fleet Pump & Service Grp	3,309.00	12/19/2012	Sensor probe assembly
Fluid Engineering	2,493.00	12/28/2012	4 Baskets
Gentech LTD	385.90	12/27/2012	Repair to Generator
John Iacano	178.50	12/19/2012	Service Call
Severn Trent	2,105.00	3/28/2013	Emergency callout 12/15/12-12/28/12
Severn Trent	820.00		Emergency callout 1/12/13-1/25/13
	9,291.40		

General Sewer District Utility Costs for CSD #7			
		2012	
NYSEG	17,400.64		Electric Usage/Supply 2012
Verizon	1,830.22		Phone service/usage 2012
Suburban Propane	5,058.09		Propane 2012
	24,288.95		
		2013	
NYSEG/GDF Suez	3,370.03		Electric Usage/Supply 2013
Verizon	48.80		Phone service/usage 2013
Suburban Propane	508.74		Propane 2013
	3,927.57		
Micro-filtration Utility Costs for CSD #7			
		2012	
NYSEG	3,042.24		Electric Usage/Supply 2012
Verizon	420.99		Phone service/usage 2012
CIA Alarms	490.00		Contract fee
Suburban Propane	7,472.97		Propane 2012
	11,426.20		
		2013	
NYSEG	751.33		Electric Usage/Supply 2012
Verizon	256.59		Phone service/usage 2012
CIA Alarms	295.50		Contract fee
Suburban Propane	2,539.33		Propane 2013
	3,842.75		
Total 2012	167,209.95		
Total 2013	42,313.02		



<u>Severn Trent O&amp;M Cost</u>	<u>Servent Trent Alarm Response</u>	<u>Sludge</u>
92,400.00	6,480.00	38,745.00
<u>Misc Service Calls</u>	<u>Chemical TP/Membrane Cleaning</u>	<u>Propane</u>
1,072.40	5,328.49	10,012.30

CIA Alarms Micro Equipment/Material Maintenance Supplies

1,346.69	17,307.76	467.72
----------	-----------	--------

Office Supplies

924.94
--------

**DRAFT Schedule 1 (June 16, 2013)**

Carmel Sewer District No. 7  
Wastewater Treatment Facility

**Incremental Cost**

Insurance

**\$ -** **Assumption and Notes**  
Need additional annual insurance cost incurred by Town for new building and equipment.

**Itemizable Regulatory Upgrade Cost**

O&M Labor (Severn Trent)

Propane Fuel

Electricity

Chemicals (Phosphorus Removal and Microfiltration Cleaning)

Clerical

Legal

Engineering

Operator Office Supplies

Equipment/Materials and Installation

Maintenance Supplies

Laboratory Testing

Maintenance Contracts

Telephone/Internet

Alarm Monitoring Company (CIA)

Alarm Service Calls (Severn Trent)

**Proportional Cost**

UV Lamp Replacement

Sludge Hauling

Annual Cost	City %	Amount	
\$ 2,160	50%	\$ 1,080	Andric's estimate based on replacing all bulbs every year. 50% is City's determined responsibility.
\$ 38,745	10%	\$ 3,875	From itemized cost for Micro provided by Mary Ann Maxwell. Andric's estimated City responsibility.

SUBTOTAL

10% CONTINGENCY

TOTAL

\$ 193,916
\$ 19,392
<u>\$ 213,308</u>

☐ Agenda

**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, 18<sup>th</sup> 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	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.  Chemical delivery piping accessible without excavation or building demolition may be repaired/replaced.  Air diffusers may be repaired/replaced.
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. <sup>1</sup>

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

<sup>2</sup>To 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
<p>Gas and oxygen sensing safety systems.</p> <p>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&amp;M funds without NYCDEP approval.</p> <p>Control panels, motor control centers.</p> <p>CPU, SCADA software and any hardware necessary for centralized information processing, including any specialized I/O points, UPS, printers and related cables</p>

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>

## 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, 19<sup>th</sup> 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, 19<sup>th</sup> 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. 10/01) 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, 19<sup>th</sup> 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		
<b>Itemizable Regulatory Upgrade Cost</b>			
	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		

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - GENERAL PROVISIONS .....	3
ARTICLE 2 - COMPLIANCE WITH LAWS, RULES, AND REGULATIONS .....	11
ARTICLE 3 - PAYMENT .....	11
ARTICLE 4 - CITY ENFORCEMENT OF WATERSHED REGULATIONS.....	17
ARTICLE 5 - PERSONNEL .....	18
ARTICLE 6 - PROCUREMENT OF GOODS AND SERVICES .....	19
ARTICLE 7 - TRAINING .....	23
ARTICLE 8 - INSPECTION .....	24
ARTICLE 9 - RECORDS AND REPORTS.....	24
ARTICLE 10 - DEFAULT, SUSPENSION OR TERMINATION.....	26
ARTICLE 11 - INDEMNIFICATION .....	28
ARTICLE 12 - INVESTIGATIONS .....	28
ARTICLE 13 - REPRESENTATIONS AND WARRANTIES .....	28
ARTICLE 14 - MISCELLANEOUS PROVISIONS .....	29
ACKNOWLEDGEMENTS .....	36

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**

<b><u>Requirement</u></b>	<b><u>Equipment or Method</u></b>
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**

<b><u>Equipment or Method</u></b>
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.