

**AGREEMENT BETWEEN
THE CITY OF NEW YORK
AND THE TOWN OF GREENBURGH
FOR WATER DEMAND
MANAGEMENT ASSISTANCE**

THIS AGREEMENT (the “Agreement”) is made and entered into as of _____, 2018, 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 (the “State”), acting by and through the **NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION** (“DEP”), having its principal office at 59-17 Junction Boulevard, Flushing, New York 11373-5108, and **THE TOWN OF GREENBURGH** (the “Customer”), a municipal corporation organized and existing under the laws of the State, in the County of Westchester, New York, having its principal office at 177 Hillside Avenue, White Plains, NY 10603 (DEP and the Customer, collectively, the “Parties”).

WHEREAS, DEP is responsible for providing over one billion gallons of water daily to the City and its upstate customers, mainly with a supply of water from the Catskill and Delaware watersheds; and

WHEREAS, the Water Supply Act of 1905, codified in New York City Administrative Code Section 24-360(a), provides that “[i]t shall be lawful” for certain enumerated upstate municipalities and water districts (hereinafter, the “Upstate Communities”) to “take and receive from any of the reservoirs, aqueducts, conduits, streams or pipes of the City of New York a supply of water for the uses and purposes of such Upstate Communities”; and

WHEREAS, water supply industry best practices favor its upstate customers having and maintaining a water conservation plan, and through a request for proposals process, the New York City Water Board (the “Water Board”) selected and retained a team of water conservation consultants to assist certain Upstate Communities, including the Customer, in creating and/or updating a plan, and pursuant to an agreement between the Water Board and the Customer for water demand management planning assistance, dated NOVEMBER 12, 2014, the Customer has worked with one of the consultants to prepare a water conservation plan, a copy of which is annexed hereto as Attachment A (the “Plan”); and

WHEREAS, DEP is willing to offer certain funding to the Customer in connection with its

implementation of the conservation measures identified in the Plan and further detailed herein, Implementation Proposal, which is annexed hereto as Attachment B, and the Customer wishes to take advantage of this opportunity to benefit from such assistance being offered by DEP, on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and respective representations contained below, the Parties agree as follows:

1. Effective Date; Term and Termination

- a) This Agreement shall be effective when registered pursuant to Section 328 of the New York City Charter. The term of the Agreement shall commence upon a date (the “Commencement Date”) set forth in a Notice to Proceed, which shall be sent by DEP by email and ordinary mail to the Customer at its address as designated in Section 9, below, after the Agreement becomes effective. The term shall expire on October 1, 2022 (the “Expiration Date”) unless sooner terminated by either party upon thirty days’ written notice to the other party at its address as designated in Section 9, below.
- b) In the event of any early termination by DEP under Subsection 1(a), above, DEP agrees to reimburse the Customer for Eligible Costs, as defined below in Section 5, incurred under the terms of this Agreement prior to termination. In the event of any such early termination by the Customer or by DEP, the Customer hereby agrees to reimburse DEP for any funds received that the Customer did not expend prior to notice of termination in accordance with the terms and conditions of this Agreement as more specifically set forth in Subsection 7(d), below.
- c) In the event the Work/Services (as defined in Section 4(a)) being funded hereunder are not completed prior to the Expiration Date, the term of this Agreement may be extended where, in the opinion of DEP’s Agency Chief Contracting Officer (“ACCO”), the Customer, without any fault on the part of the Customer, has been delayed and will not be able to complete the Work/Services prior to the Expiration Date. Upon submission of a written notice from the Customer to the DEP Project Manager (at the address specified in Section 9) documenting the causes of the delay in such form as is satisfactory to the ACCO, the ACCO may, in his/her discretion, grant an extension of the term for up to one year to complete the Work/Services.

Such extension, if granted, would be solely for the purpose of completing the Work/Services, and the Work/Services shall be completed within the extended term with no increase in the Total Eligible Costs (as defined in Section 5).

2. Implementation of Plan: Conditions to DEP Funding

- a) The Customer represents that the Plan has been duly approved by all necessary action by the Customer's Board of Trustees.
- b) The Customer shall provide documentation at or before the time that its first invoice is submitted under this Agreement confirming that its meters on connections between the Customer and the City's water supply and between the Customer and any interconnected communities are accurately functioning to DEP's satisfaction and equipped with remote meter reading technology that is compatible with the meter reading system utilized by DEP, or the Customer shall replace such meters at its own expense with meters from DEP's approved meter list that can be equipped with compatible remote meter reading technology. For the purpose of this Subsection, "compatible" means that the system is able to provide DEP with a file of daily flow totals on a monthly basis and a file for hourly readings on an annual basis.
- c) The Customer shall be responsible for obtaining all permits, easements, licenses, approvals, or any other required documentation or permissions in connection with implementing the Plan, in accordance with the milestone schedule included in Attachment B.
- d) The Customer shall take all actions necessary to comply with the State Environmental Quality Review Act ("SEQRA") and its implementing regulations (Title 6 of the New York Code Rules and Regulations, Part 617) in accordance with Section 3 below, by the date set forth in Attachment B.
- e) The Customer shall, in soliciting or procuring contracts for the implementation of the selected conservation measures to achieve the Plan's conservation goals, comply with all public bidding and procurement requirements that are applicable to the Customer under State or local law or regulations thereunder or that would be applicable to the Customer

under State or local law or any regulations thereunder if it were funding the Work/Services itself. Promptly after opening any sealed bids for the award of any construction contracts, or after tentative selection of a consultant pursuant to a request for proposals, the Customer shall provide to DEP a list of any proposed contractors and/or consultants. Within three business days of the Customer providing such notice of proposed contract awardees, DEP shall have the opportunity to provide notice to the Customer that, in DEP's opinion, the prospective contractor or consultant does not have a satisfactory record of business integrity, would otherwise be found to be a non-responsible bidder or proposer by DEP or that DEP has reason to believe such entity will be unable to complete the required Work/Services in accordance with the requirements of this Agreement. If DEP does not provide notice of an objection to the Customer within three business days, DEP shall waive its opportunity to object to award of a contract to the lowest responsive bidder or selected proposer, as applicable.

- f) The Customer must promptly provide any information DEP may reasonably request to ensure the Work/Services will be completed in the most efficient manner possible.
- g) Prior to DEP releasing any funds pursuant to this Agreement, the Customer must have fully paid all outstanding water bills from the Water Board, including any that may be in dispute. Thereafter, the Customer may seek resolution of any disputed bills, according to the resolution process set forth in Part VIII of the Water Board's Water and Wastewater Rate Schedule. The Customer shall submit documentation to DEP with each invoice demonstrating that all Water Board bills have been paid.

3. SEQRA Review

- a) The Customer intends to serve as lead agency under SEQRA for the environmental review required in connection with the implementation of the Plan being funded under this Agreement.
- b) The Customer intends to conduct a coordinated review of the project to be funded hereunder, and shall circulate a notice of its intent to serve as lead agency to all involved agencies as defined under the SEQRA regulations, including DEP. If the Customer determines that the Work/Services do not constitute a Type II action under SEQRA, then

it shall conduct an environmental assessment and any further environmental review required under SEQRA and the SEQRA regulations that will address all potential significant adverse environmental impacts of the implementation of the Plan. In no event shall the Work/Services commence prior to the Customer making a final determination under SEQRA and, if required under SEQRA, DEP issuing findings that support such determination.

4. Implementation Scope, Schedule and Budget

- a) The Customer and DEP have agreed to a schedule of milestones, budget and scope of work/services necessary to implement the Plan (annexed hereto as Attachment B), which (i) outlines the specific work and/or services to be performed by the Customer or its contractors/consultants and funded under this Agreement (the “Work/Services”), and (ii) identifies the maximum Eligible Costs associated with the various items of Work/Services and the timeframes within which they are to be completed under this Agreement.
- b) The Customer may submit to the DEP Project Manager proposed revisions to the budget included in the Scope of Work/Services for the purpose of reallocating a reasonable portion of the Total Eligible Costs amongst the various items in the approved Scope in response to higher or lower line item costs than were reasonably expected. DEP shall review any such proposed revision(s) to ensure that they are reasonable and consistent with the terms of this Agreement. If DEP has any objections to such proposed budget revision, DEP shall notify the Customer of such objection(s) and, within fifteen days thereafter, the Customer may provide DEP with a further revised proposed budget for its Project Manager’s written approval. If the Customer disagrees with DEP’s objections, DEP and the Customer shall work together in good faith to develop reasonable revisions to the budget acceptable to DEP in its sole discretion.
- c) The Customer will be responsible for completing the Work/Services in accordance with the milestones shown on the schedule attached as Attachment B. DEP may declare an event of default under this Agreement if the Customer fails to satisfy its obligations in accordance with the schedule set forth by Attachment B; provided, however, that DEP shall first give the Customer reasonable notice and an opportunity to cure the potential default pursuant to

the terms of this Agreement. In the event the Customer believes that the extension of a milestone is warranted, it may seek such an extension from DEP's Project Manager. If DEP's Project Manager agrees in writing to grant the requested extension to the milestone schedule in Attachment B, in his/her sole discretion, the schedule in Attachment B shall be deemed amended accordingly.

5. Management of the Work/Services

- a) The Customer shall be responsible for managing and completing the Work/Services in accordance with the schedule and budget approved by DEP pursuant to Section 4, above. It is the responsibility of the Customer to ensure that all Work/Services are completed by the Expiration Date.
- b) The Customer shall be responsible for administering all contracts necessary to complete the Work/Services in such a manner as to ensure compliance with all applicable laws and regulations and to include all elements necessary to implement the conservation measures included in the Plan.
- c) Upon request, the Customer shall immediately provide DEP with a copy of any contract entered into by it with respect to any aspect of the Work/Services and of any subcontract entered into by its contractor(s) or consultant(s).
- d) The Customer agrees that it is fully responsible to DEP for the acts and omissions of its contractors, consultants, subconsultants and subcontractors, and of persons either directly or indirectly employed by any of the foregoing, as it is for the acts and omissions of any person directly employed by it. DEP shall not be responsible for the work, direction, compensation, or personal conduct of the Customer's servants, employees, agents, consultants, contractors, subconsultants and/or subcontractors while engaged or performing Work/Services under this Agreement.
- e) The Customer shall not in any way be relieved of any of its responsibilities, duties, and liabilities under this Agreement by virtue of entering into any contract or subcontract for the performance of any portion of the Work/Services.

6. Costs to be Funded Under this Agreement

- a) Eligible Costs. DEP agrees to reimburse for the actual, reasonable and necessary costs of performing the Work/Services in accordance with the terms and conditions of this Agreement (“Eligible Costs”). The Eligible Costs shall include the Customer’s actual costs:
 - i. to retain consultants and/or contractors to perform Work/Services as set forth in Attachment B; and
 - ii. to purchase or lease equipment and materials needed to perform the Work/Services.
- b) Total Eligible Costs. Notwithstanding anything to the contrary herein, the aggregate total of all Eligible Costs payable by DEP hereunder shall not exceed ONE MILLION, ONE HUNDRED NINETY-SEVEN THOUSAND (\$1,197,000.00) dollars (“Total Eligible Costs”).
- c) Administration of Funds by the Customer. The Customer shall manage, coordinate, and administer the costs and payments required in connection with the performance of the Work/Services in accordance with the terms hereof. The Customer shall deposit all funds received pursuant to this Agreement in a separate account not to be co-mingled with funds from other sources and shall use such funds solely to fulfill its obligations hereunder. In no event shall any funds distributed by DEP to the Customer under this Agreement be used for any expense other than Eligible Costs.
- d) Excess Costs. Any costs or expenses related to the Work/Services that exceed the Total Eligible Costs or are determined by DEP in its discretion not to qualify as an Eligible Cost shall be borne by the Customer.

7. Process for Accounting and Payment of DEP Funds:

- (a) The Customer may submit an invoice to DEP after the Commencement Date for an initial advance payment in the amount not to exceed TWO HUNDRED THIRTY-NINE THOUSAND, FOUR HUNDRED (\$239,400.00) dollars.

(b) Up to three additional interim invoices may be submitted, no more frequently than quarterly, for advance payments of up to TWO HUNDRED THIRTY-NINE THOUSAND, FOUR HUNDRED (\$239,400.00) dollars each, provided that the quarterly accounting procedure described below in Subsection 7(d) must have demonstrated that the balance of available funds held by Customer under this Agreement is less than SIXTY THOUSAND (\$60,000.00) dollars.

(c) After completion of all Work/Services in accordance with this Agreement, and no sooner than a calendar quarter after its last invoice, the Customer may submit an invoice for final payment reimbursing it for Eligible Costs that have been paid out by the Customer but not covered by the prior payments, accompanied by its final accounting submission under Subsection (d), below. The total amount of payments by DEP to the Customer shall not exceed the Total Eligible Costs.

(d) The Customer shall submit to DEP a quarterly accounting for approval and reconciliation together with appropriate back-up documentation, itemizing all payments by and expenses of the Customer that have actually been incurred. The Customer shall submit the accounting and related documents by the thirtieth day of the month immediately following the three-month period for which the accounting is submitted. Each accounting shall include a notarized certification from a duly authorized Customer official indicating that the payments made by the Customer were for Work/Services actually performed, that the Work/Services performed were in accordance with the Agreement, and that the cost of such Work/Services was fair and reasonable. Where DEP's reconciliation indicates that there has been an overpayment or underpayment for prior expenses, an appropriate adjustment shall be made in connection with future payment(s), or, if necessary, reimbursement of DEP by the Customer shall be required.

(e) Upon the earlier of (i) completion of the Work/Services, or (ii) the Expiration Date, assuming no extension of the term is granted under Subsection 1(c), or (iii) the termination of this Agreement pursuant to Section 1; any funds that have been paid to the Customer that have not actually been spent on Eligible Costs, nor committed for Eligible Costs in connection with Work/Services already performed, shall be reimbursed by the Customer to

DEP within thirty days. This provision shall survive the expiration or termination of this Agreement.

8. Maintenance and Ownership of the Conservation Measures

DEP shall not take title to and shall not be responsible for the repair or maintenance of any personal property purchased or infrastructure created as part of the implementation of any conservation measures included in the Work/Services, which shall be owned by and maintained and repaired as needed by the Customer. The provisions of this Section shall survive the expiration or termination of this Agreement.

9. Notices

A notice given in accordance with this Agreement will be effective upon receipt by the party to which it is given or, if mailed, upon the earlier of receipt and the fifth business day following mailing. Unless otherwise specified in this Agreement, any notice called for hereunder shall be mailed by ordinary mail and emailed (where addresses are given) to the Parties at the following addresses:

To DEP:

New York City Department of Environmental Protection
Bureau of Environmental Planning & Analysis
59-17 Junction Blvd., 11th Floor
Flushing, New York 11373-5108
Attn: Gina Behnke, Project Manager
E-mail: gshcherbenko@dep.nyc.gov

With copies to:

New York City Department of Environmental Protection
Bureau of Legal Affairs
59-17 Junction Blvd., 19th Floor
Flushing, New York 11373-5108
Attn: General Counsel

-and-

New York City Department of Environmental Protection
Bureau of Water Supply
P.O. Box 358
Grahamsville, New York 12740
Attn: Manager, Community Water Section

E-mail: brichardson@dep.nyc.gov

To the Customer:

The Town of Greenburgh
177 Hillside Avenue
White Plains, NY 10603
Attn: Victor Carosi, Commissioner of Public Works
E-mail: vcarosi@greenburghny.com

With a copy to:

The Town of Greenburgh
177 Hillside Avenue
White Plains, NY 10603
Attn: Corporation Counsel
E-mail:

Either Party may, from time to time, change its address(es) for notices by giving notice of such change to the other Party in the manner specified in this Section.

10. Default

If the Customer defaults in the observance or performance of any term of this Agreement, including the milestone schedule set forth on Attachment B, and such default continues for more than fifteen calendar days after written notice of such default is received by the Customer from DEP, DEP may, in addition to any other rights or remedies available at law or in equity, suspend its performance or terminate this Agreement by written notice of suspension or termination, sent by certified mail to the Customer, specifying a date of suspension or termination that shall not be less than five business days from the date such notice is sent. However, if such default cannot reasonably be cured within fifteen calendar days, the Agreement may not be terminated if (i) the Customer commences appropriate actions to cure the default prior to the end of the fifteen-day period, (ii) such actions have been approved in writing by DEP, and (iii) the Customer thereafter diligently prosecutes the actions necessary to cure the default to the complete satisfaction of DEP.

11. Independent Contractors

- a) The Customer agrees and acknowledges that it and its contractors and consultants are independent contractors and not employees of DEP or the City. Accordingly, neither the

Customer nor any of its contractors or consultants or any of their respective employees or agents performing Work/Services in connection with this Agreement will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, disability benefits coverage, unemployment insurance benefits, Social Security coverage or employee retirement system membership or credit.

- b) All persons who are employed by the Customer and all consultants or contractors that are retained by the Customer to perform Work/Services for the Customer are not under contract with the City. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities, or obligations of the Customer and its contractors or consultants, or any of their respective officers, employees, or agents, or for taxes of any nature in connection with the Work/Services performed. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

12. Insurance

- a) Prior to this Agreement being registered pursuant to Section 328 of the City Charter, the Customer must provide evidence that it has procured, and must maintain throughout the term of this Agreement, the insurance set forth in Part 1 of Attachment C ("Insurance Requirements"), annexed to this Agreement and incorporated herein by this reference. The City, together with its officials and employees, shall be named as an additional insured on such insurance policies as set forth in Attachment C.
- b) Before Work/Services are commenced, the Customer shall require its consultants, subconsultants, contractors, and subcontractors to procure and provide evidence of insurance in the types and amounts set forth in Part II of Attachment C, and require that such insurance be maintained during the entire period of their respective contracts to provide such Work/Services. The City, together with its officials and employees, shall be named as an additional insureds on such insurance as set forth in Attachment C. Proof

of insurance for each and every policy required in Attachment C, shall be furnished to DEP for its review and approval before the relevant Work/Services are commenced.

13. Indemnification

- a) To the fullest extent permitted by law, the Customer shall indemnify, defend and hold the City and its officials and employees (the "Indemnitees") harmless against any and all claims (including, but not limited to, claims asserted by any employee of the Customer or any of its contractors, consultants, subconsultants and/or subcontractors) and costs and expenses of whatever kind (including, but not limited to, payment or reimbursement of attorneys' fees and disbursements) allegedly arising out of or in any way related to the operations of the Customer and its employees, contractors, consultants, subconsultants and/or subcontractors in the performance of this Agreement or the Customer's and/or its employees', contractors', consultants', subconsultants' and/or subcontractors' failure to comply with any of the provisions of this Agreement or of the law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Section by way of cross-claim, third-party claim, declaratory judgment action, or otherwise. The Parties expressly agree that the indemnification obligation hereunder contemplates (i) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise and (ii) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.

- b) The Customer shall include a provision in all of its contracts related to the Work/Services requiring that its contractors and consultants shall indemnify, defend, and hold the Indemnitees harmless to the same extent set forth in subsection (a) of this Section, immediately above.

- c) Indemnification under this Section or any other provision of this Agreement shall operate whether or not the Customer and its contractors, consultants, subconsultants and/or subcontractors have placed and maintained the insurance required under Section 12.
- d) The Customer waives all rights against the City for any damages or losses for which either is covered under any insurance required under this Agreement (whether or not such insurance is actually procured) or any other insurance applicable to the operations of a contractor, consultant, subconsultant or subcontractor of the Customer.
- e) The provisions of this Section shall not be deemed to create any new right of action in favor of any third parties against the City.

14. Infringements

The Customer shall defend, indemnify, and hold the Indemnitees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for any damages and from the costs and expense to which the City may be subject or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Customer, its contractors, consultants, subconsultants and/or subcontractors of any copyright, trademark, trade secrets, patent rights, or any other property or personal right of any third party in the performance of this Agreement. Insofar as the facts or law relating to any claim would preclude the Indemnitees from being completely indemnified by the Customer, the Indemnitees shall be partially indemnified by the Customer to the fullest extent permitted by law.

15. The Customer's Representations and Warranties

- a) The Customer represents and warrants that:
 - i. it has all requisite power and authority to execute, deliver, and perform this Agreement;
 - ii. this Agreement has been duly authorized by all necessary action on its part, has been duly executed and delivered by the Customer, and assuming due execution and delivery by DEP, and registration pursuant to Section 328 of the Charter,

constitutes the legal, valid and binding agreement of the Customer, enforceable in accordance with its terms; and

iii. the execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation or default under any provision of applicable law, charter, ordinance, or regulation or to the extent of its knowledge, and any information reasonably knowable, of any material agreement, judgment, injunction order, decree or other instrument binding upon it.

b) Acceptance by the Customer of funds provided by DEP hereunder shall be deemed at each such time to be a reaffirmation of the foregoing representations and warranties.

16. No Discrimination

The Customer agrees that it has not and will not, in connection with the performance of this Agreement, engage in any unlawful discrimination based upon actual or perceived race, color, creed, religion, religious practice, political beliefs or affiliations, ancestry, national origin, sex, sexual orientation, gender, disability or other handicap, predisposing genetic characteristics, pregnancy, age, veteran or military status, marital/familial status, partnership status, arrest or conviction record, status as a victim of domestic violence, stalking or sex offenses, unemployment status, or status with regard to public assistance or any other class protected by federal, state or local law with respect to all employment decisions, including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoffs, termination, and all other terms and conditions of employment.

17. Compliance with Law

The Customer agrees that it will comply with all federal, State, and local laws, rules, and regulations in performing its obligations hereunder and in prosecuting and ensuring the completion of the Work/Services.

18. Incorporation of Applicable Laws

The Parties agree that each and every provision of federal, State, or local law, rule, regulation, or order applicable to this Agreement, that is required to be included in this Agreement, is incorporated herein by this reference. Furthermore, it is hereby stipulated that every such

provision is to be deemed inserted herein, and if, through mistake or otherwise, any such provision is not inserted or is not inserted in correct form, then this Agreement shall forthwith, upon the application of either Party, be amended by any such insertion so as to comply strictly with such law, rules, regulation or order and without prejudice to the rights of either Party.

19. Cooperation with Investigations

The Parties agree to cooperate fully and faithfully with any investigation, audit or inquiry relating to the subject matter of this Agreement conducted by a State 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 or entity that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit, or inquiry. Any breach or violation of the foregoing may be deemed a breach or violation of this Agreement.

20. Copyrights and Access to Information

The City shall have the right to use all written materials, documents, data, and information that are gathered or prepared pursuant to the Agreement for any purpose deemed appropriate by the City. In furtherance thereof, the Customer hereby grants to the City a royalty-free, worldwide, non-exclusive, perpetual, irrevocable license to use, execute, reproduce, make, modify, adapt, display, perform and create derivative works of, all written material, documents, data and information that are gathered or prepared pursuant to this Agreement, including, but not limited to, all designs, plans, specifications and models created hereunder.

21. No Claim against Officers, Agents or Employees

No claim whatsoever shall be made by either party against any individual officer, agent or employee of the other party in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

22. Waiver

Neither party shall be deemed to have waived the observance or performance of any term or provision of this Agreement, or any default hereunder, except pursuant to a written instrument of waiver signed by such party. No waiver of the observance or performance of any term or

provision of this Agreement, or of any default hereunder, shall be deemed to be a waiver of any subsequent failure to observe or perform this Agreement, or of any subsequent default hereunder.

23. Retention of Records

- a) The Customer agrees to retain all books, records and other documents relevant to this Agreement for six years after the final payment under, or termination of, this Agreement, whichever is later. City, State and federal auditors and any other persons duly authorized by DEP shall have full access to and the right to examine any of said materials during said period, including ensuring that any funds administered under this Agreement were applied in accordance with the terms and conditions herein. DEP shall have the right, at any time during normal business hours, to inspect, examine and/or make copies of any such books, records, or other documents. The same right shall be afforded to representatives of the State Comptroller or the City Comptroller, or any other person duly authorized by DEP.
- b) All receipts, management, and disbursements of funds provided by DEP pursuant to this Agreement and the records and accounts evidencing such receipts, management, and disbursements shall be subject to audit by the State Comptroller and by the City, including the City Comptroller, pursuant to the rights and powers of such officials as conferred upon them by State and City law. The Customer agrees to cooperate with any such audits.
- c) The Customer shall prepare and maintain its records and accounts of receipts, management, and disbursements of funds under this Agreement in accordance with generally accepted government accounting standards and shall provide a summary of such records and accounts to DEP as requested.

24. Amendments

This Agreement may not be modified or amended except by an instrument in writing signed by both of the Parties and approved in accordance with all applicable requirements.

25. No Third-Party Beneficiaries

This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties.

26. Assignment

This Agreement may not be assigned, in whole or in part, except pursuant to a written instrument signed by both of the Parties.

27. Cooperation; Obligation to Provide Documents

Both Parties acknowledge and agree that during the term of this Agreement, each shall cooperate with the other and provide each other promptly with all documentation, reports, and information that may be necessary to carry out their respective obligations under this Agreement.

28. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State.

29. Severability; Entire Agreement

- a) If any provision of this Agreement or its application is determined to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of all other provisions and applications hereof shall not in any way be affected or impaired.
- b) This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements with respect to such subject matter, whether written or oral.

30. Counterparts

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

31. Force Majeure

The obligations set forth in this Agreement may be delayed if either Party cannot comply with

the terms of this Agreement because of an act of God, war, strike, or other condition as to which conduct on the part of the Party or its agent was not the proximate cause; *provided, however*, that such Party notifies the other Party in writing within ten business days of obtaining knowledge of any such condition and requests an appropriate extension of the relevant terms of this Agreement and provided further that such Party will make its best efforts to provide for alternative arrangements to fulfill the obligation.

IN WITNESS WHEREOF the Assistant Commissioner/Agency Chief Contracting Officer (ACCO) on behalf of the New York City Department of Environmental Protection and the Mayor of the Customer have executed this Agreement, in triplicate, one part to be filed with the Comptroller of the City of New York, one part to be retained by the Department of Environmental Protection, and one part to be delivered to the Customer.

CITY OF NEW YORK

TOWN OF GREENBURGH

BY: _____
Elisa Velasquez
Assistant Commissioner /ACCO
Department of Environmental Protection

BY: _____
Name:
Title:

Dated: _____

Dated: _____

Approved as to Form
and Certified as to Legal Authority:

Acting Corporation Counsel
of the City of New York

Dated: _____

State of New York)

ss.:

County of Queens)

On the _____ day of _____, in the year 2018 before me, the undersigned, personally appeared _____, Agency Chief Contracting Officer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or person upon behalf of which the individual acted, executed the instrument.

Notary Public

State of New York)

ss.:

County of)

On the _____ day of _____, in the year 2018 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ATTACHMENT A: PLAN

ATTACHMENT B:

SCOPE OF WORK/SERVICES, with BUDGET and MILESTONES

Scope of Work/Services and Budget

1. Water Loss Assessment

- a. Complete an American Water Works Association (AWWA) M36 water audit by April 1 each year for the duration of the contract, which will serve as the baseline from which to calculate savings in future interventions. Submit completed AWWA M36 water audit to DEP for review and validation.

2. Water Loss Control: Leak Detection and Pressure Management – Not To Exceed \$250,000

- a. Retain a consultant and/or purchase equipment (Greenburgh to maintain ownership of equipment following completion of services), as necessary, to complete a total of three system-wide leak detection surveys, in 2020, 2021 and 2022 (termed “comprehensive leak detection surveys” in Attachment A and “Milestones for Completion of Deliverables”).
- b. Retain a consultant and/or purchase equipment (Greenburgh to maintain ownership of equipment following completion of services), as necessary, to complete ongoing leak detection surveys throughout the contract term on an as-needed basis (termed “maintenance leak detection surveys” in Attachment A and “Milestones for Completion of Deliverables”).
- c. Retain a consultant, as necessary, to inventory actual operating pressures, in 2020 and 2021.
- d. Reduce leakage by optimizing pressure regimes, throughout the contract term.

3. Water Loss Control: Leak Repairs – Not to Exceed \$542,000

- a. Retain a leak repair company, and/or purchase materials (Greenburgh to maintain ownership of materials following completion of services), as necessary, to repair leaks identified in the initial comprehensive leak detection survey (termed “Round 1 of leak repairs” in Attachment A and “Milestones for Completion of Deliverables”).
- b. Each year, for the duration of the contract, retain a leak repair company, and/or purchase materials (Greenburgh to maintain ownership of materials following completion of services), as necessary, to repair additional leaks identified in the subsequent comprehensive leak detection surveys and any maintenance leak detection surveys (termed “Round 2 of leak repairs” in Attachment A and “Milestones for Completion of Deliverables”).

4. Residential Toilet Replacement Voucher Program – Not To Exceed \$180,000

Create a program to provide up to 800 residential customers (homeowners and/or tenants) with \$225 vouchers to be applied to the cost of purchasing high-efficiency residential toilets, for the purposes of replacing low-efficiency residential toilets.

- a. Establish necessary rules and requirements, including application review and approval process, and create an online or paper application system that includes all information customers will need to participate.
- b. If necessary, develop a landlord consent letter for tenants to complete, prior to the installation of new toilets under the voucher program.
- c. Enter into an agreement(s) with a retail plumbing supplier (termed “Greenburgh plumbing supply partner” in Attachment A) to establish an approved list of stores or suppliers where customers can purchase qualifying toilets (i.e., qualifying gallons per flush rating) with vouchers.
- d. Review and approve voucher applications, and distribute vouchers to approved applicants.
- e. Reimburse Greenburgh plumbing supply partner for eligible toilets redeemed through the voucher program by approved applicants.

5. Transition to Monthly Billing – Not to Exceed \$225,000

- a. Purchase software to develop a monthly billing schedule.
- b. Retain a consultant, as necessary, to install, program, and set up monthly billing system to transfer all customers to monthly billing.

Milestones for Completion of Deliverables

Sequence	Deliverable(s)	Milestones
A	SEQRA Compliance	Complete by 60 days from NTP
	Permits, Easements, Licenses, Approvals, and Permissions	Complete by 90 days from NTP
B	<p>Submit Results of Water Loss Assessment</p> <ul style="list-style-type: none"> • Complete annual AWWA M36 water audit • Submit results of AWWA M36 water audit to DEP for review and validation 	<p>All deliverables not to commence prior to conclusion of A</p> <p>Completion of initial Water Loss Assessment 180 days from NTP</p> <p>Completion of annual AWWA audit and submission to DEP by April 1 of each year throughout the life of the contract, beginning in 2020</p>
C	<p>Complete Water Loss Control: Leak Detection</p> <ul style="list-style-type: none"> • Complete three comprehensive leak detection surveys • Complete ongoing maintenance leak detection surveys 	<p>All deliverables not to commence prior to conclusion of A and B</p> <p>Completion of comprehensive leak detection survey by June 1, 2020, and completion of subsequent comprehensive leak detection surveys by April 1, 2022</p> <p>Completion of ongoing maintenance leak detection surveys for the life of the contract</p> <p>Submission of leak detection survey reports, as available, for the life of the contract, and as requested by DEP</p>
	<p>Complete Water Loss Control: Pressure Management</p> <ul style="list-style-type: none"> • Complete two inventories of actual operating pressures 	<p>All deliverables not to commence prior to conclusion of A and B</p> <p>Completion of first inventory of actual operating pressures by no later than October 1, 2020, and</p>

	<ul style="list-style-type: none"> Complete ongoing pressure regime optimization 	<p>completion of second inventory of actual operating pressures by no later than October 1, 2021</p> <p>Completion of ongoing pressure regime optimization for the life of the contract</p> <p>Submission of pressure management inventories and optimization reports, as available, for the life of the contract, and as requested by DEP</p>
D	<p>Complete Water Loss Control: Leak Repairs</p> <ul style="list-style-type: none"> Complete Round 1 of leak repairs Complete Round 2 of leak repairs 	<p>All deliverables not to commence prior to conclusion of A and B</p> <p>Completion of Round 1 leak repair deliverables by no later than July 1, 2021</p> <p>Completion of Round 2 leak repair deliverables by no later than the end of the life of the contract</p> <p>Submission of leak repair reports, including flow rate estimates, as available, for the life of the contract, and as requested by DEP</p>
E	<p>Commence Residential Toilet Replacement Voucher Program</p> <ul style="list-style-type: none"> Submit rules and requirements, including application review and approval process, to DEP for review Create an online or paper application system Enter into agreement with Greenburgh plumbing supply partner Distribute vouchers to approved applicants and reimburse Greenburgh plumbing supply partner for redeemed toilets 	<p>All deliverables not to commence prior to conclusion of A</p> <p>Completion of rules and requirements by June 1, 2020</p> <p>Launch of application system and voucher program by no later than October 1, 2020</p> <p>Completion of voucher program by July 1, 2022</p>

		Submission of voucher program reports, as available, for the life of the contract, and as requested by DEP
F	<p>Transition to Monthly Billing</p> <ul style="list-style-type: none"> • Purchase software to develop a monthly billing schedule • Retain a consultant, as necessary, to install, program, and set up monthly billing system to transfer all customers to monthly billing 	<p>All deliverables not to commence prior to conclusion of A</p> <p>Completion of transition to monthly billing system by April 1, 2022</p>
G	<p>Submit Annual Report</p> <ul style="list-style-type: none"> • Submit an Annual Report with a status update of each deliverable identified in Attachment B 	<p>Completion and submission of annual status reports to DEP by April 1 of each year throughout the life of the contract, beginning in 2021</p>

ATTACHMENT C: INSURANCE REQUIREMENTS

Note: All certificate(s) of insurance and additional insured endorsements submitted pursuant to Section 12 of the Agreement must be accompanied by a Certification of Insurance Broker or Agent consistent with the form at the end of this Attachment C and include the following information:

- For each insurance policy, the name and NAIC number of issuing company, number of policy, and effective dates;
- Policy limits consistent with the requirements listed below; and
- Additional insureds or loss payees consistent with the requirements listed below; and
- The name of this Agreement and the number assigned to it by the City (in the “Description of Operations” field).

The Customer’s certificate(s) of insurance (including Certification(s) of Insurance Broker or Agent, where required) must be sent to the New York City Department of Environmental Protection, Attn: Sabrina Bhola, 59-17 Junction Boulevard, 11th Floor, Flushing, New York 11368, or sent via email to Gina Behnke at gshcherbenko@dep.nyc.gov. The City may from time to time, change its designee for submissions of insurance certificates upon notice to the Customer of such change in the manner specified in Section 9 of the Agreement.

Certificates of insurance submitted by the Customer’s consultants, subconsultants, contractors or subcontractors pursuant to Section 12(b) of the Agreement must be sent to the DEP Bureau of Water Supply at the address listed in Section 9 of this Agreement.

I. Specific Types of Insurance Coverage Required to be Maintained by the Customer:

- | | |
|---------------------------------|--|
| • Worker’s Compensation | Statutory per New York State Law without regard to jurisdiction
(See Part III(1), below) |
| • Employer’s Liability | Statutory (See Part III(2), below) |
| • Disability Benefits Insurance | Statutory (See Part III(1), below) |
| • Commercial General Liability | \$1,000,000 per occurrence

\$2,000,000 aggregate, per project
Additional Insureds:
City of New York, including its officials and employees, with coverage at least as broad as ISO Forms CG 20 10 or CG 20 26 and CG 20 37

(See Part III(3), below, for additional requirements) |

- Commercial Automobile Liability
\$1,000,000 per accident Combined Single Limit
(See Part III(4), below)

II. Specific Types of Insurance Coverage Required to be Maintained by Consultants/Contractors Retained by the Customer (see Agreement, Section 12) with Minimum Limits and Special Conditions:

- Workers' Compensation
Statutory per New York State Law without regard to jurisdiction
(See Part III(1), below)
- Employers' Liability
Statutory (See Part III(2), below)
- Disability Benefits Insurance
Statutory (See Part III(1), below)
- Commercial General Liability
\$1,000,000 per occurrence for bodily Injury/property damage
\$500,000 personal and advertising injury
\$2,000,000 aggregate, per project
\$2,000,000 products/completed operations
Additional Insureds:
City of New York, including its officials and employees, with coverage at least as broad as ISO Forms CG 20 10 or CG 20 26 and CG 20 37

(See Part III(3), below)
- Commercial Automobile Liability
\$1,000,000 per accident combined single limit

If vehicles are used for transporting hazardous materials, the contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90

(See Part III(4), below)
- Professional Liability Insurance
(for all professional services contracts)
\$1,000,000 per claim
(See Part III(6), below)
- Builders' Risk
100% of the value of the construction work to be performed

(for construction contracts only)

City should be named as "loss payee as its interests may appear"
(See Part III(5), below)

III. General Provisions Applicable to Insurance Coverage:

In each case below, the reference to "Contractor" shall mean the Party required to maintain insurance coverage, and the reference to "Contract" shall mean the contract pursuant to which the consultant or contractor is providing services to the Customer pursuant to this Agreement, or, in the case of the Customer's obligation to provide insurance, this Agreement itself.

Section 1 Worker's Compensation and Disability Benefits Insurance:

Before performing any work under the Contract, the Contractor shall procure Worker's Compensation and Disability Benefits Insurance in accord with the laws of the State of New York on behalf of all employees who are to provide labor or services under the Contract.

Section 2 Employer's Liability Insurance:

Before performing any work under the Contract, the Contractor shall procure Employer's Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his or her employment under the Contract.

Section 3 Commercial General Liability:

The Contractor shall provide Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, and personal and advertising injury which may arise from any of the operations under the Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office ("ISO") Form CG 0001. Such insurance shall be "occurrence" based rather than "claims-made" and include, without limitation, the following types of coverage damage to work performed by subcontractors; explosion, collapse and underground (XCU); and construction means and methods. Such insurance shall contain a "per project" aggregate limit, as specified above, that applies separately to operations under the Contract. Such Commercial General Liability Insurance shall name the City as an Additional Insured. Coverage for the City shall specifically include the City's officials and employees, be at least as broad as the latest edition of ISO Form CG 20 10 or CG 20 26 and provide completed operations coverage at least as broad as the latest edition of ISO Form CG 20 37. ISO Form CG 20 37 shall be maintained at least three years after completion of the Contract work.

Section 4 Commercial Automobile Liability:

- (a) The Contractor will provide Commercial Automobile Liability Insurance covering liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with the Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.
- (b) If vehicles are used for transporting hazardous materials, the Commercial Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

Section 5 Builders Risk Insurance

The Village or the Village's contractor shall maintain Builders Risk Insurance on a completed value form for the total value of the work under the Contract. Such insurance shall be provided on an All Risk basis and, unless waived by DEP, it shall include coverage, without limitation, for terrorism, windstorm (including named windstorm), water (other than flood-related), storm surge, and earth movement. It shall include coverage for loss to the undamaged portion of the building, demolition cost coverage, and increased cost of construction coverage. Such insurance shall cover, without limitation, (a) all buildings and/or structures involved in the Contract work, as well as temporary structures at the work site, and (b) any property that is intended to become permanent part of such building or structure, whether such property is on the work site, in transit or in temporary storage. Policies shall name the Village and/or the Village's contractor as Named Insured and list the City as both an Additional Insured and a Loss Payee as its interest may appear.

Section 6 Professional Liability Insurance

- (a) If professional services are provided pursuant to the Contract, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under the Contract in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under the Contract arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.
- (b) All subcontractors of the Contractor providing professional services under the Contractor for which Professional Liability Insurance is reasonably commercially available shall also maintain Professional Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to DEP, at the time of its request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to DEP.
- (c) Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 7 Miscellaneous Requirements for Insurance Coverage and Policies

- (a) All required insurance policies shall be procured from companies that are licensed to do business in the State of New York and have an A.M. Best rating of at least A- /VII or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Office of the New York City Corporation Counsel.
- (b) All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.
- (c) The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

- (d) There shall be no self-insurance program with regard to any insurance required under this Agreement unless approved in writing by DEP. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Attachment C, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies.
- (e) The City's limits of coverage for all types of insurance required under this Agreement shall be the greater of (i) the minimum limits set forth above in this Attachment C or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.
- (f) The Contractor may satisfy its insurance obligations under this Agreement through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
- (g) Policies of insurance provided pursuant to this Agreement, other than those provided pursuant to Sections 1, 2 and 4, above, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

Section 8 Proof of Insurance

- (a) For all types of insurance required by this Agreement, except for insurance required by Section 5, above, the Contractor shall file proof of insurance in accordance with this Section 8 within ten (10) days of award of the Contract. For insurance provided pursuant to Section 5, above, proof shall be filed by ten (10) days prior to the commencement of the portion of the Contract work covered by such policy.
- (b) For policies provided pursuant to Sections 1 and 2, above, the Contractor shall submit one of the following forms: C-105.2 Certificate of Workers' Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to DEP. ACORD forms are not acceptable.
- (c) For policies provided pursuant to all of this Attachment C other than Sections 1 and 2, above, the Contractor shall submit one or more Certificates of Insurance on forms acceptable to DEP. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to Section 3, that the City is an Additional Insured with coverage at least as broad as the most recent edition of ISO Forms CG 20 10 or CG 20 26 and CG 20 37 as applicable; and (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number). All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form contained in this Attachment C or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.
- (d) Documentation confirming renewals of insurance shall be submitted to DEP prior to the expiration date of coverage of policies required under the Contract. Such proofs of insurance shall comply with the requirements of subsections (b) and (c), immediately above.

- (e) The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Agreement upon the demand for such policy by DEP or the Office of the New York City Corporation Counsel.

Section 9 Operations of the Contractor:

- (a) The Contractor shall not commence performing services under the Contract unless and until all required certificates have been submitted to and accepted by DEP. Acceptance of a certificate does not excuse the Contractor from securing insurance consistent with all provisions of the Contract or of any liability arising from its failure to do so.
- (b) The Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by the Contract and shall be authorized to perform Contract work only during the effective period of all required coverage.
- (c) In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Contract work, and shall not recommence work until authorized in writing to do so. Contract time shall continue to run during such periods and no extensions of time will be granted. The Contractor may be declared to be in default for failure to maintain required insurance.
- (d) In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Attachment C shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to both DEP and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Attachment C.
- (e) Whenever notice of loss, damage, occurrence, accident, claim or suit to an insurance company is required under a policy maintained in accordance with this Attachment C (whether on behalf of the Contractor as Named Insured or the City as Additional Insured), the Contractor shall provide timely notice thereof. Such notice shall comply with all of the following requirements:
 - (i) The Contractor shall send written notice of any such event to all insurance carriers that issued potentially responsive policies (including commercial general liability insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) days after such event and again no later than twenty (20) days after the initiation of any claim and/or suit resulting therefrom. Such notice shall contain the following information: the number of the insurance policy, the name of the Named Insured, the date and location of the incident, and the identity of the persons injured or property damaged. For any policy on which the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured, as well as the Named Insured."
 - (ii) Whenever such notice is sent under a policy on which the City is an Additional Insured, the Contractor shall provide copies of the notice to the Comptroller, DEP and the City Corporation Counsel. The copy to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York, 10007.

The copy to DEP shall be sent to the address set forth at the beginning of this Attachment C. The copy to the City Corporation Counsel shall be sent to Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

- (iii) If the Contractor fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Contractor shall indemnify the City for all losses, judgments, settlements, and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Worker's Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK

CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/fax number of broker or agent (typewritten)]

[Signature of authorized official, broker or agent]

[Name and title of authorized official, broker or agent (typewritten)]

State of _____)

) ss.:

County of _____)

Sworn to before me this ___ day of _____ 20 ____

NOTARY PUBLIC FOR THE STATE OF _____