

AGREEMENT

Between City of Beacon and New Windsor Treatment, LLC

This Agreement is entered into this ____ day of ____, 2019 by and between New Windsor Treatment, LLC, a domestic limited liability company, with corporate offices located at 117 Green Road, Sparta, New Jersey and local offices located at 77 Lehigh Avenue Chester, New York (hereinafter “New Windsor”) and the City of Beacon, a municipal corporation, duly organized and existing under the laws of the State of New York, having its principal office at One Municipal Plaza, Beacon, New York (hereinafter the “City”) (collectively referred to herein as the “Parties”).

WHEREAS, the City’s Wastewater Treatment Facility Plant (the “Plant”) receives all the wastewater produced in the City of Beacon and the Dutchess Park area of Fishkill; and

WHEREAS, the Treatment Facility also accepts and processes septage and sewer sludge from New Windsor, an outsider hauler, to generate revenue to assist in the Plant’s operation and maintenance.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is agreed as follows:

1. PURCHASE AND USE OF UNUSED SEWAGE CAPACITY.

- a. New Windsor may purchase from the City of Beacon portions of the permitted, unused leachate/sewage capacity as determined by the City of Beacon.
- b. New Windsor shall pay the City, one-month in advance, two (2) cents per gallon, in 20,000-gallon increments for the above-referenced capacity.
- c. Only sewage pre-approved by the City of Beacon Waste Water Treatment Plant may be delivered to the Plant and placed in a storage tank supplied by New Windsor.
- d. Every vehicle delivering sewage shall have a current, valid New York State Department of Environmental Conservation (DEC) permit.
- e. New Windsor shall provide the Plant Operator a list of all delivery vehicles. The list shall include, at a minimum, the following information for each vehicle: (i) New York State DEC permit number, (ii) capacity and (iii) license plate number.
- f. If at any time, the Plant requires maintenance or there is a Plant malfunction delivery will cease immediately and resume only when the Plant maintenance or malfunction has been corrected. The Plant Operator shall provide reasonable notice to New Windsor, if feasible, of any scheduled maintenance. The Plant Operator shall notify New Windsor when deliveries are permitted to continue.

2. **PERMITTED STORAGE TANK.** New Windsor shall install one storage tank in a location approved by the Wastewater Superintendent. The Wastewater Superintendent, may at any time, in his or her sole discretion, select a new location for the storage tank. New Windsor shall be required to move the storage tank to the approved location upon ten (10) days written notice.
3. **OPERATIONS.**
 - a. The Wastewater Superintendent must approve any and all waste before it can be dumped into a storage tank.
 - b. New Windsor shall pay the City of Beacon a one-time \$75.00 waste acceptability verification approval fee for each new customer.
 - c. The Wastewater Superintendent shall review and approve the analyticals for each new customer.
 - d. Hauled wastes are subject to sampling by the City. The hauler may be required to suspend the discharging of wastes until the analysis is complete. The City reserves the right to refuse permission to dump any load.
 - e. Any waste that may cause pass-through of pollutants or interfere with the wastewater treatment plant operations, or that violates Federal, State, or local restrictions, shall not be discharged to the Plant.
4. **DUTY TO MITIGATE.** New Windsor shall take all reasonable steps to minimize or correct any adverse impact to the Plant or the environment resulting from New Windsor's use of the Plant and any noncomplying discharge or release, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge or release.
5. **MONTHLY RENTAL FEE.** New Windsor shall pay the City a monthly rental fee of \$100.00 by the last day of every month, to receive and process septage and sewer sludge from New Windsor.
6. **TERM.** This Agreement shall commence on the date set forth herein and shall continue in effect for ten (10) years, unless terminated earlier as provided herein.
7. **TERMINATION.** This Agreement can be terminated by either party at any time upon thirty (30) days written notice to the other party for any reason. Upon termination of the Agreement, New Windsor shall stop all work and remove all equipment from the site.
8. **DEFENSE AND INDEMNIFICATION.** New Windsor agrees to the fullest extent permitted by law to defend, indemnify and hold the City, its Administrator, officers, officials, and employees harmless from any and all losses, claims, liens, demands and causes for action, including but not limited to, judgments, penalties, interest, court costs, and legal fees, which, in whole or in part, arise from, relate to, or are connected with the

willful, reckless or negligent actions of New Windsor, its employees, directors, officers, agents or assigns under this Agreement; and any breach or violation by New Windsor of any provision of this Agreement, or any federal, state or local law or regulation.

9. **INSURANCE.**

- a. New Windsor shall, at its sole cost and expense, maintain and keep in full force and effect during the Term of this Agreement the following types of insurance:
 - i. General Liability Insurance, with limits of no less than \$1,000,000 each occurrence and \$2,000,000.00 annual aggregate limits. The City of Beacon shall be named as an additional insured on the policy. The insurance policy shall be written on a primary and non-contributing coverage basis, including any self-insured retentions. To the extent permitted by New York law, New Windsor waives all rights of subrogation or similar rights against the City of Beacon, its assigns, officers, employees, representatives and agents.
 - ii. Workers' Compensation, Employers Liability Insurance and New York State Disability Insurance, covering operations in New York State. Policy shall include all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. To the extent permitted by New York law, New Windsor waives all rights of subrogation or similar rights against City of Beacon, its assigns, officers, employees, representatives and agents.
 - iii. Comprehensive Automobile Policy, with limits no less than \$1,000,000 Bodily Injury and Injury and Property Damage liability including coverage for owned, non-owned, and hired private passenger and commercial vehicles. The policy shall be written on a primary and non-contributing coverage basis. To the extent permitted by New York law, New Windsor waives all rights of subrogation or similar rights against City of Beacon, its assigns, officers, employees, representatives and agents. The City of Beacon shall be named as an Additional Insured on the policy.
 - iv. Umbrella Liability, with limits no less than \$5,000,000, including coverage for General Liability and Automobile Liability. The City of Beacon shall be named as an Additional Insured on the policy. The insurance policy shall be written on a primary and non-contributing coverage basis, including any self-insured retentions. To the extent permitted by New York law, the New Windsor waives all rights of subrogation or similar rights against the City of Beacon, its assigns, officers, employees, representatives and agents.
 - v. Environmental Contractors Liability (Pollution Liability) in the amount of \$2,000,000 occurrence/\$2,000,000 aggregate, including products and completed

operations. If a retroactive date is used, it must pre-date the inception of the contract. If the contractor is using motor vehicles for transporting hazardous materials, the contractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948 or equivalent) as well as proof of MCS 90. The Additional Insured status should also be primary and non-contributory with all rights of subrogation waived for the City of Beacon, its assigns, officers, employees, representatives and agents.

- b. Certificates shall provide that thirty (30) days written notice, by registered mail with return receipt requested, prior to cancellation or expiration be given to the City of Beacon. Policies that lapse and/or expire during term of work shall be recertified and received by the City of Beacon no less than thirty (30) days prior to expiration or cancellation.
 - c. New Windsor shall furnish to the City of Beacon Certificates of Insurance as evidence of coverage naming the City of Beacon as an Additional Insured by endorsement. The cost of furnishing the above insurance shall be borne by New Windsor. Copies of the required insurance certificates shall be provided by June 15th of each year.
10. **COMPLIANCE.** New Windsor, at its sole cost and expense, shall comply with all federal, state and municipal laws, rules and regulations applicable to the work and/or services to be performed hereunder.
11. **NOTICES.** Wherever in this Agreement notices are required to be delivered by one party to the other, then the same shall be in writing by first-class mail or personal delivery and addressed to the City at One Municipal Plaza, Beacon, New York 12508, and to New Windsor at both addresses set forth above.
12. **NON-ASSIGNMENT.** New Windsor, shall not assign, transfer or convey any of its respective rights or obligations under this Agreement or subcontract any portion of the services set forth herein, without the prior written consent of the City, which consent may be withheld for any reason whatsoever.
13. **NON-WAIVER.** No failure by the City to insist upon the strict performance of any term, covenant, agreement or provision of this Agreement or to exercise any right or remedy upon a breach thereof, and no acceptance by the City of any services during the continuance of any breach, shall constitute a waiver of any breach or of any term, covenant, agreement or provision.
14. **MODIFICATION OR AMENDMENT.** No amendment, change or modification of this Agreement shall be valid unless in writing, signed by both parties hereto.

15. **ENTIRE UNDERSTANDING.** This Agreement shall constitute the entire understanding between the parties and any and all prior agreements, commitments, understandings and representations are merged herein and are of no further force and effect.
16. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of New York. Any litigation between the parties shall be venued in an appropriate court located in Dutchess County, New York.
17. **SEVERABILITY.** If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby but shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last written above.

BY:

BY:

Frank G. Coppola
New Windsor Treatment, LLC

Anthony Ruggiero
City Administrator, City of Beacon

ACKNOWLEDGEMENTS

STATE OF NEW YORK)
COUNTY OF DUTCHESS) ss.:

On the ____ day of _____, in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF DUTCHESS) ss.:

On the ____ day of _____, in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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 he executed the same in his capacity, and that by his signatures on the instrument, the individual, and the person upon behalf of which the individual acted, executed the instrument.

Notary Public