



236 Third Street  
Greenport NY  
11944

Tel: (631)477-0248  
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**MAYOR**

GEORGE W. HUBBARD,  
JR.  
EXT. 215

**TRUSTEES**

JACK MARTILOTTA  
DEPUTY MAYOR

PETER CLARKE

MARY BESS PHILLIPS

JULIA ROBINS

**VILLAGE  
ADMINISTRATOR**

PAUL J. PALLAS, P.E.  
EXT. 219

**CLERK**

SYLVIA PIRILLO, RMC  
EXT. 206

**INTERIM TREASURER**

STEPHEN GAFFGA  
EXT. 213

**February 23, 2023 at 7:00 PM  
Mayor and Board of Trustees – Regular Meeting  
Third Street Firehouse  
Greenport, NY 11944**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

Christopher A. O'Brien  
Joann Elizabeth Tamin  
John George Travlos

**ANNOUNCEMENTS**

A Village General Election will be held on March 21, 2023 to fill the open positions of the Mayor and two Trustees. Polling will take place at the Third Street Fire Station, and polls will be open from 6:00 a.m. through 9:00 p.m.

**LIQUOR LICENSE APPLICATION**

New application received from AE Menhaden LLC and MJ Menhaden Hotel Manager, LLC for the property at 207 Front Street.

**PUBLIC HEARINGS**

The public hearing regarding a proposed local law of 2023 creating Section 150-51 of the Greenport Village Code creating a six-month moratorium on development in the WC Waterfront Commercial, CR Retail Commercial and CG General Commercial zoning districts of the Village of Greenport remains open.

A public hearing regarding the proposed addition of provisions regarding net metering to the Village of Greenport electric service tariff, with any approved changes to be filed with the New York State Power Authority.

A public hearing regarding the application of Sofia Antoniadis and Michael Antoniadis and On Front Street LLC regarding the property 308 Front Street, Greenport, New York, 11944 for a hardship exemption from the provisions of the moratorium adopted by the Village of Greenport Board of Trustees.

**PUBLIC TO ADDRESS THE BOARD**

**REGULAR AGENDA**

**CALL TO ORDER****RESOLUTIONS****RESOLUTION # 02-2023-1**

RESOLUTION adopting the February, 2023 agenda as printed.

**RESOLUTION # 02-2023-2**

RESOLUTION accepting the monthly reports of the Greenport Fire Department, Village Administrator, Village Treasurer, Village Clerk, Village Attorney, Mayor and Board of Trustees.

**FIRE DEPARTMENT****RESOLUTION # 02-2023-3**

RESOLUTION approving the application for membership of Carol Chilton Miller to the Ladies Auxiliary of the Greenport Fire Department, as approved by the Greenport Fire Department Board of Wardens on February 16, 2023.

**RESOLUTION # 02-2023-4**

RESOLUTION approving the application for membership of Amber Breese to the Ladies Auxiliary of the Greenport Fire Department, as approved by the Greenport Fire Department Board of Wardens on February 16, 2023.

**VILLAGE ADMINISTRATOR****RESOLUTION # 02-2023-5**

RESOLUTION accepting a grant from New York State Energy Research and Development Authority ("NYSERDA"), and authorizing Mayor Hubbard to sign the Memorandum of Understanding between the Village of Greenport and NYSERDA for the grant, to study the ability of the solar/battery storages at the Station One Fire House and Wastewater Treatment Plant to charge and discharge to create a dispatchable resource that can follow commands from a microgrid control system to contribute additional generation, or balance supply of on-site generation with electric demand.

**VILLAGE TREASURER****RESOLUTION # 02-2023-6**

RESOLUTION authorizing Interim Treasurer Gaffga to perform attached Budget Amendment # 5149 to appropriate General Fund Reserves for the purchase of a compact multi-purpose vehicle per Resolution # 07-2021-04, and directing that Budget Amendment # 5149 be included as part of the formal meeting minutes of the February 23, 2023 Regular Meeting of the Board of Trustees.



**RESOLUTION # 02-2023-7**

RESOLUTION authorizing Interim Treasurer Gaffga to perform attached Budget Amendment # 5150 to appropriate Electric, Water, and Sewer Fund Reserves for the purchase of a compact meter reading vehicle per Resolution # 07-2021-04, and directing that Budget Amendment # 5150 be included as part of the formal meeting minutes of the February 23, 2023 Regular Meeting of the Board of Trustees.

**RESOLUTION # 02-2023-8**

RESOLUTION authorizing Interim Treasurer Gaffga to perform attached Budget Amendment # 5151 to appropriate General Fund reserves to fund repairs to the Village Patrol and Pumpout Boats, and directing that Budget Amendment # 5151 be included as part of the formal meeting minutes of the February 23, 2023 Regular Meeting of the Board of Trustees.

**RESOLUTION # 02-2023-9**

RESOLUTION authorizing Interim Treasurer Gaffga to perform attached Budget Amendment # 5152 to appropriate Light Fund reserves to fund the purchase of two Electric Department bucket trucks, and directing that Budget Amendment # 5152 be included as part of the formal meeting minutes of the February 23, 2023 Regular Meeting of the Board of Trustees.

**RESOLUTION # 02-2023-10**

RESOLUTION authorizing Interim Treasurer Gaffga to perform attached Budget Amendment # 5153 to appropriate General Fund reserves to fund the removal of the east pier splashboard at the Mitchell Park Marina dock, and directing that Budget Amendment # 5153 be included as part of the formal meeting minutes of the February 23, 2023 Regular Meeting of the Board of Trustees.

**RESOLUTION # 02-2023-11**

RESOLUTION authorizing Interim Treasurer Gaffga to perform attached Budget Amendment # 5154 to appropriate General Fund reserves to fund the replacement of 10 moorings, and directing that Budget Amendment # 5154 be included as part of the formal meeting minutes of the February 23, 2023 Regular Meeting of the Board of Trustees.

**RESOLUTION # 02-2023-12**

RESOLUTION authorizing Interim Treasurer Gaffga to perform attached Budget Amendment # 5155 to appropriate Sewer Fund reserves to fund the purchase of a replacement pump for the Sam Simeon Nursing Home pump station, and directing that Budget Amendment # 5155 be included as part of the formal meeting minutes of the February 23, 2023 Regular Meeting of the Board of Trustees.



**RESOLUTION # 02-2023-13**

RESOLUTION authorizing Interim Treasurer Gaffga to perform attached Budget Amendment # 5157 to appropriate Electric and Sewer Fund reserves to fund upgrades of the computer servers and software systems at the Village Power Plant and Village Wastewater Treatment Plant, and directing that Budget Amendment # 5157 be included as part of the formal meeting minutes of the February 23, 2023 Regular Meeting of the Board of Trustees.

**RESOLUTION # 02-2023-14**

RESOLUTION authorizing Interim Treasurer Gaffga to make an additional contribution in the amount of \$31,566.00 to the Volunteer Firefighter Length of Service Award Program for the Village of Greenport Fire Department.

**RESOLUTION # 02-2023-15**

RESOLUTION approving the attached Order Form and Software Services Agreement Renewal Contract between the Village of Greenport and The Wanderlust Group, Inc. for the continuation of the provision of on-line reservation services through the DOCKWA system for the Mitchell Park Marina, and authorizing Mayor Hubbard to sign the Software Services Agreement.

**VILLAGE CLERK****RESOLUTION # 02-2023-16**

RESOLUTION approving the Public Assembly Permit Application submitted by Amie Sponza on behalf of Northeast Stage for the use of Mitchell Park from 7:00 p.m. through 9:30 p.m. on August 4th, 5th and 6th, 2023 for the annual Shakespeare in the Park event, with two additional rehearsal dates to be determined, and approving a waiver of the requisite permit application fee.

**RESOLUTION # 02-2023-17**

RESOLUTION approving the closing of North Street from First Street to Main Street, Main Street from North Street to Front Street, and Front Street from Main Street to the Carousel, from 11:00 a.m. through 12:00 noon on October 28, 2023 with a rain date of October 29, 2023 for the Village-sponsored Halloween Parade.

**RESOLUTION # 02-2023-18**

RESOLUTION awarding the contract for liquid sludge hauling to Clear River Environmental Service Corp. – the lowest bidder - at the prices on the attached Bid Form, per the bid opening on February 9, 2023; and authorizing Mayor Hubbard to sign the contract between The Village of Greenport and Clear River Environmental Service Corp.



**RESOLUTION # 02-2023-19**

RESOLUTION approving the Sanitary Sewage Agreement between The Village of Greenport and 160 Route 25 Medical LLC authorizing the connection of 160 Route 25 Medical LLC to the existing Village of Greenport sewer system at the Owner's expense, and authorizing Mayor Hubbard to sign the contract between the Village of Greenport and 160 Route 25 Medical LLC.

**RESOLUTION # 02-2023-20**

RESOLUTION approving an increase in the rates for the Village of Greenport Summer Camp Program beginning in the 2023 season as follows: from \$800.00 per season to \$1,120.00 per season, with a pre-payment discount of \$960.00 per season if the pre-payment is made on or by June 1, 2023.

**RESOLUTION # 02-2023-21**

RESOLUTION rejecting the bid received for the purchase of a Dodge Ram 2500 Big Horn Pick-Up Truck for use by the Village of Greenport Fire Department as a Chief's vehicle, per the bid opening on December 1, 2022 and directing Clerk Pirillo to re-notice the bid for a Chief's vehicle accordingly.

**TRUSTEES****RESOLUTION # 02-2023-22**

RESOLUTION approving the request of the Village of Greenport Carousel Committee to complete and submit the Friends of Mitchell Park Funding Request Form for the painting of specified horses in the Village of Greenport Carousel, and authorizing liaison Trustee Robins to complete and submit the funding request paperwork on behalf of the Village of Greenport Carousel Committee.

**VOUCHER SUMMARY****RESOLUTION # 02-2023-23**

RESOLUTION approving all checks per the Voucher Summary Report dated February 17, 2023, in the total amount of \$ 437,537.73 consisting of:

- o All regular checks in the amount of \$ 390,871.08, and
- o All prepaid checks (including wire transfers) in the amount of \$ 46,666.65.

**MEMORANDUM OF UNDERSTANDING**  
**between the**  
**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT**  
**AUTHORITY**  
**and**  
**VILLAGE OF GREENPORT**

**THIS MEMORANDUM OF UNDERSTANDING (“MOU” or “Agreement”)**, dated as of February 7, 2023, is executed by and between the New York State Energy Research and Development Authority (“NYSERDA”), a New York public benefit corporation having its principal office and place of business at 17 Columbia Circle, Albany, New York 12203-6399, and Village of Greenport (“Awardee”) (each a “Party” and collectively, “Parties”) and shall become effective once it has been executed by each of the signatories for the Parties listed in this Agreement. This MOU constitutes a binding agreement on all signatory Parties.

**WITNESSETH:**

**WHEREAS:** The Awardee has been competitively selected under RFP 4942, “Net-Zero Resilience Preparation for Municipal and Rural Electric Providers”, to receive technical assistance for assessments, analysis, and planning with services provided by a NYSERDA qualified contractor (the “Contractor”).

**WHEREAS:** As established in RFP 4942, awards under Category A will result in a Memorandum of Understanding with the Awardee under which the Awardee and the NYSERDA Project Manager will coordinate the execution of the assessment study by a pre-qualified contractor.

**WHEREAS:** the Parties desire to enter this MOU for the purpose, among other things, of defining the responsibilities of the Parties and establishing certain operating principles with respect to selecting and managing the Contractor.

**NOW THEREFORE,** in consideration of the promises, mutual covenants and representations set forth herein and for other good and valuable consideration, the Parties hereto hereby agree as follows:

**1. DEFINITIONS**

- a. **Statement of Work:** the statement submitted to NYSERDA by Awardee in response to RFP 4942.
- b. **Scope of Work:** the work to be performed by the Contractor based on the Statement of Work.



2. SCOPE OF AGREEMENT: This MOU will facilitate collaboration between NYSERDA and the Awardee in the selection, management, and oversight of the Contractor to execute the Scope of Work.
3. ROLES AND RESPONSIBILITIES
  - a. Key Officials:
    - i. The Parties' key officials, specified below, will ensure maximum coordination and communication between the Parties. If the Parties make a change to a key official, it shall provide timely notice to the other Parties of such change. The notification shall include sufficient information to permit evaluation of any impact of such a change on coordination and communication between the Parties.
    - ii.
    - iii. The key officials for the Village of Greenport are:

Paul Pallas – Village Administrator  
Village of Greenport  
236 3<sup>rd</sup> Street, Greenport, NY 11944-1647  
(631) 477-0248 ext. 219  
[pjpallas@greenportvillage.org](mailto:pjpallas@greenportvillage.org)
    - iv. The key officials for NYSERDA are

Harith Saam – Assistant Project Manager  
New York State Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203  
(518) 862-1090 ext. 3292  
[harith.saam@nyserda.ny.gov](mailto:harith.saam@nyserda.ny.gov)

Anna Brown – Innovation  
New York State Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203  
(518) 862-1090 ext. 3143  
[anna.brown@nyserda.ny.gov](mailto:anna.brown@nyserda.ny.gov)
  - b. The Parties agree that they shall have the following respective or joint obligations pursuant to this MOU:
    - i. NYSERDA shall:
      1. Administer the competitive selection of the Contractor using NYSERDA's RFQL "Technical Assistance in Support of the NYS Clean Energy Transition" (RFQL 4810) contractor pool
      2. Execute an agreement with the Contractor for the completion of the Scope of Work

3. Administer and manage the agreement with the Contractor, including receiving deliverables and invoices from the Contractor
  4. Provide funding to the Contractor in accordance with successfully completed deliverable milestones as established in the Scope of Work
- ii. Awardee shall:
    1. Work with NYSERDA to further refine the statement of work from its proposal
    2. Work with NYSERDA to review, evaluate, and select proposed statements of work from potential Contractors
    3. Act as the Contractor's primary point of contact for decisions regarding the direction, scope, and specific needs of the project.
    4. Review each deliverable submission and provide written feedback, either of approval or required changes, to NYSERDA and the Contractor
    5. Work with Contractor to submit invoices to NYSERDA for all approved and completed deliverables
  - iii. NYSERDA and Awardee shall:
    1. Work together to ensure that the Contractor meets all milestones as scheduled in the Scope of Work and that the deliverables are completed and meet the standards and needs of the Awardee.

#### 4. INFORMATION SHARING

- a. Any Confidential Information shared by any Party shall be so marked. Each Party shall hold all Confidential Information received by the other Party hereunder in strict confidence, shall not disclose such Confidential Information to any other person or entity or use such Confidential Information for any other purposes set forth herein or as required by law or judicial order. The Parties shall use at least the same degree of care (not less than reasonable care) to protect the confidentiality of such Confidential Information as it uses to protect its own Confidential Information.
- b. Notwithstanding any other provision of this MOU, the Parties agree to keep all Confidential Information in strict confidence for a period of seven years from the date of receipt; provided, however, that the Parties shall maintain the strict confidence of any Confidential Information which may constitute information that is trade secret, confidential commercial, critical infrastructure, personally identifiable information, or customer information for so long as such Confidential Information remains a trade secret, confidential commercial, critical infrastructure, personally identifiable information, or customer information under applicable law. The Parties will at all times exercise reasonable care to safeguard such Confidential Information.
- c. The Parties agree only to disclose Confidential Information to those employees who need to know the Confidential Information and who have been informed of



its confidential nature and who agree to be bound by confidentiality provisions covering such information which are at least as restrictive as those contained in this MOU.

- d. The Parties acknowledge that NYSERDA and other New York State agencies and authorities are required to comply with the NYS Freedom of Information Law ("FOIL"), Public Officers Law, Article 6, which requires public access to information NYSERDA possesses, and other governmental parties have similar statutes in their own state that shall apply here with the same force and effect as New York's. Section 87(2)(d) of that law provides for exemptions to disclosure for records or portions thereof that "are trade secret or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the disclosing party wishes to have treated as proprietary and confidential trade secret information should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 (NYSERDA; <https://www.nyserda.ny.gov/about/new-york-state-regulations>). By so marking such information, the disclosing party represents that information has actual or potential specific commercial or competitive value. Notwithstanding the foregoing paragraph, the Parties acknowledge and agree that bid information that is confidential or proprietary in nature or marked as such by the bidder shall be deemed "Confidential" and "Proprietary" and shall not be disclosed except in aggregated form in accordance with paragraphs (b) and (c) of this Section 6 or as otherwise required by FOIL or other law.

## 5. GENERAL

- a. The relationship between the Parties is solely that of independent contractors, and nothing contained herein shall be construed as creating any partnership, joint venture, agency, or any other relationship between them. Each Party will be solely responsible for payment of all compensation owed to its employees and employment-related taxes, as well as maintenance of appropriate worker's compensation for its employees and general liability insurance.
- b. Each Party and any of its employees, officers and representatives shall have no right, power or authority to bind the other Party, enter into an MOU, grant a promise, provide warranties, guarantees or commitments, transact any business in the other Party's name or on its behalf or incur any liability or expense for or on its behalf, and each Party shall remain an independent party, responsible for its own actions and covering its own expenses.

- c. The Parties will make reasonable efforts to collaborate regarding the preparation of any press release, public announcement, publication or media interview with respect to the subject matter of this MOU, a mere or minor mention being deemed hereby as insufficient to necessitate collaboration. In any such press release, public announcement publication, or media interview, the initiating Party shall notify the other Party regarding the publicity in which the subject matter of this MOU is to be referenced or described. The initiating Party shall credit the other Party and will identify that Party's contributions to the Project(s). Neither Party will represent that positions taken or advanced represent the opinions or positions of the other Party, the DPS or the State of New York.
  - d. Any notices sent or given under this MOU shall be sent to the Parties at their respective addresses set forth above (as such addresses may be modified in a written notice sent to the other Party in accordance with this paragraph) by certified mail, return receipt requested, by a recognized national overnight courier, or by electronic mail with delivery receipt. A notice sent by certified mail, return receipt requested shall be deemed delivered five (5) days after being properly posted. A notice sent by a recognized national overnight courier shall be deemed delivered on the next business day after being properly deposited with such courier. A notice sent by electronic mail shall be deemed delivered on the business day the notice is sent, as indicated by the time stamp on the notice, except for notices sent after business hours, which for purposes of this MOU shall be 8:00 am – 5:00 pm Eastern Prevailing Time ("EPT"), in which case the notice shall be deemed delivered on the following business day.
  - e. In the event that any provision of this MOU shall be held invalid or unenforceable for any reason, that provision shall be ineffective to the extent of such invalidity or unenforceability and such invalidity or unenforceability shall not affect any other provision of this MOU.
  - f. This MOU contains the entire understanding between the Parties and may not be modified in any manner except by written amendment executed by the Parties.
6. **TERM OF AGREEMENT.** The term of this MOU shall commence as of the date of the last signature below and shall continue for one year with the option to add time as deemed necessary to complete the work outlined in the Scope of Work.
7. **TERMINATION.** Either Party may terminate this Agreement or any requested services at any time upon ninety (90) days' prior written notice to the other Party. In the event that this Agreement is canceled or terminated in whole or in part, the Awardee will (a) direct the Contractor(s) to discontinue all work and the placement of all orders for materials, software and equipment otherwise required for the terminated services, as applicable; (b) cancel or direct the Contractor(s) to cancel all existing orders and subcontracts related to



performance of the terminated services, as applicable; c) take actions reasonably necessary, or as directed by NYSERDA in writing, for the protection and preservation of the work; and (d) issue a final invoice to NYSERDA indicating the reimbursement sought in connection with the terminated work.

8. **GOVERNING LAW** This MOU will be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflicts of law provisions.
9. **NO ARBITRATION**. Disputes involving this MOU, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.
10. **SERVICE OF PROCESS**. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Awardee hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Awardee's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Awardee must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Awardee will have thirty (30) calendar days after service hereunder is complete in which to respond.

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[PLACE SIGNATORY PAGE ON FINAL PAGE OF MOU]

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed and delivered as a document under seal as of the date first above written.

**New York State Energy Research and Development Authority**

Signature: \_\_\_\_\_

Name: Wendy M. MacPherson

Title: Director of Contract Management

Date: \_\_\_\_\_

**Village of Greenport**

Signature: \_\_\_\_\_

Name: Paul Pallas

Title: Village Administrator

Date: \_\_\_\_\_



## EXHIBIT B

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I

#### Definitions

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and Exhibits noted thereon, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth at Exhibit A hereto.

Cash-based Expenses: Those obligations of Contractor that shall be settled in cash.

Contract Administrator: NYSERDA's Director of Contract Management, Wendy M. MacPherson, or such other person who may be designated, in writing, by NYSERDA.

Contract Information: Recorded information regardless of form or characteristic first produced in the performance of this Agreement, that is specified to be compiled under this Agreement, specified to be delivered under this Agreement, or that is actually delivered in connection with this Agreement, and including the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable.

Expiration Date: The date, located on Page One, Item No. 7, beyond which any funding balances will be disencumbered, unless NYSERDA, in its sole discretion, elects to extend. Any extensions of this date are only effective if in writing.

Proprietary Information: Recorded information regardless of form or characteristic, produced or developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable, be considered Proprietary Information.

Person: An individual, a corporation, an association or partnership, an organization, a business or a government or political subdivision thereof, or any governmental agency or instrumentality.

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law Section 163(1)(c).

Statement of Work: The Statement of Work attached hereto as Exhibit A.

Subcontract: An agreement for the performance of Work by a Subcontractor, including any purchase order for the procurement of permanent equipment or expendable supplies in connection with the Work.

Subcontractor: A person who performs Work directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor) but not including any employees of the Contractor or the Subcontractors.

Work: The Work described in the Exhibit A (including the procurement of equipment and supplies in connection therewith) and the performance of all other requirements imposed upon the Contractor under this Agreement.

## Article II

### Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such Work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform the Work in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Statement of Work. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that the Project Director identified at Item 3, Page One of this Agreement shall be responsible for the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall



notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

Section 2.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

### Article III

#### Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A, Statement of Work.

### Article IV

#### Payment

##### Section 4.01. Payment Terms.

In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement. Subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D, payment will be made according to the Milestone Billing Events set forth in Exhibit A, Statement of Work. NYSERDA is not obligated to make any payments beyond the Expiration Date of this contract. Any funding balances will be disencumbered at that time, unless NYSERDA, in its sole discretion, elects to extend the Expiration Date. Any changes to expiration dates will be effective only if in writing.

##### Section 4.02. Payments

(a) Invoicing: Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event, for projects not managed through NYSERDA's Salesforce application, the Contractor shall submit invoices electronically to NYSERDA's online invoice system at: <https://services.nyserda.ny.gov/Invoices/>. For projects managed through NYSERDA's Salesforce application, the Contractor shall submit the identified deliverables, including documentation reasonably sufficient to demonstrate completion and evidence of the Contractor's cost share, if applicable, and may request payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work. The agreement number shown as Item 1 on page 1 of this Agreement, as well as the purchase order number, which will be generated and provided to the Contractor upon contract execution, should be referenced when submitting documentation of deliverables. Documentation shall be submitted electronically via email to the assigned Project Manager along with a statement "I hereby request that upon NYSERDA's approval of these deliverable(s), payment of the corresponding milestone payment amount be made in accordance with NYSERDA's Prompt Payment Policy, as detailed in the NYSERDA agreement" or, if this project is managed through

NYSERDA's Salesforce application, via NYSERDA's Salesforce Contractor Portal with the Contractor's log-in credentials.

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA prior to the Expiration Date of the contract. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

Section 4.04. Release by the Contractor. The acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.05. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Contractor's performance under this Agreement.

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 5 of page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

## Article V

### Assignments, Subcontracts and Performance



Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Prior to beginning any Work, Contractor shall notify the NYSERDA Project Manager of all subcontractors performing work under the Agreement, as well as all changes in subcontractors throughout the term of the Agreement. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. For each Subcontract valued at \$100,000 or more, the Contractor shall obtain and maintain, pursuant to Section 4.05, a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form from such Subcontractor prior to the execution of the Subcontract. Such form shall be made available to the Contractor by NYSERDA. Each such Subcontract shall contain a provision whereby the Subcontractor warrants and guarantees that there is and shall be no actual or potential conflict of interest that could prevent the Subcontractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of the Subcontract and that the Subcontractor shall have a duty to notify NYSERDA immediately of any actual or potential conflicts of interest. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s)



specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

## Article VI

### Schedule: Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. The draft and final versions of all deliverables shall be submitted by the dates specified in the Exhibit A Schedule. It is understood and agreed that the delivery of the draft and final versions of such deliverables by the Contractor shall occur in a timely manner and in accordance with the requirements of the Exhibit A Schedule and Project Period noted in Item No. 7 of this Agreement.

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in Exhibit A, Statement of Work. Where the specified deliverable is in the form of report, acceptance of such report is contingent on Contractor complying with all its obligations set forth in the corresponding task and that the report be complete, and sufficiently and accurately described.

## Article VII

### Force Majeure

Section 7.01. Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by any



Subcontractor by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

## Article VIII

### Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information; Confidentiality.

(a) NYSERDA shall have the right to use, duplicate, or disclose Contract Information, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) The Contractor shall have the right to use Contract Information for its private purposes, subject to the provisions of this Agreement.

(c) NYSERDA shall have no rights to any Proprietary Information.

(d) No information shall be treated by NYSERDA as confidential unless such information is clearly so marked by Contractor at the time it is disclosed to NYSERDA; see Exhibit C regarding NYSERDA's obligations under the Freedom of Information Law. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, be considered confidential or Proprietary Information.

(e) The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

(f) In conjunction with Contractor's performance of the Project, NYSERDA or other entities may furnish Contractor with information concerning the Work that is collected and stored by, or on behalf of, NYSERDA (the "Information"). The Contractor must follow the policies and procedures outlined in the **New York State Information Classification Policy (NYS-S14-002)** (<https://its.ny.gov/document/information-classification-standard>) and the **New York State Information Security Controls Standard** (<https://its.ny.gov/document/information-security-controls-standard>).

Any non-public, confidential, or proprietary Information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by Contractor, Contractor's agents, employees, contractors or professional advisors, in any manner whatsoever, in whole or in part, and will not be used by Contractor, Contractor's agents, employees, contractors or professional advisors other than in connection with the Work. Contractor agrees to transmit the Information only to Contractor's agents, employees, contractors and professional advisors who need to know

the Information for that purpose and who are informed by Contractor of the confidential nature of the Information and who will agree in writing to be bound by the terms and conditions of this Agreement.

The NYS Office of Information Technology Services (ITS) establishes and regularly updates policies, standards, and guidelines for technology and information security (collectively referred to as "ITS Security Policies") for State Entities, including NYSERDA. Contractor shall conform to the requirements of ITS Security Policies when conducting work on behalf of NYSERDA including, but not limited to, application development, web development, hosting, or managing NYSERDA's sensitive data are required to comply with the NYS requirements. These requirements include, but are not limited to, the NYS Information Security Policy NYS-P03-002 which sets forth the minimum requirements, responsibilities, and accepted behaviors to establish and maintain a secure environment and achieve the State's information security objectives. In addition to this umbrella policy, the following standards establish specific minimum information security requirements:

- **Vulnerability Scanning Standard (NYS-S15-002)**
- **Security Logging Standard (NYS-S14-005)**
- **Patch Management Standard (NYS-S15-001)**
- **Encryption Standard (NYS-S14-007)**

A complete list of ITS Security Policies is available at: <https://its.nv.gov/tables/technologypolicyindex>.

Contractor shall notify NYSERDA's Information Security Officer immediately upon discovery or notification of any security breaches or vulnerabilities:

- **information.security@nyserda.ny.gov**
- (518) 862-1090 x3486

Contractor will keep a record of the location of the Information. At the conclusion of the Project Period, Contractor will return to NYSERDA all the Information and/or provide proof to NYSERDA that the Information was destroyed. Contractor also agrees to submit to an audit of its data security/destruction practices by NYSERDA or its representative during the contract term and for up to two (2) years following the expiration of the Agreement.

Additional information on the above can be found on the Doing Business with NYSERDA webpage at <https://www.nyserda.ny.gov/About/Doing-Business-with-NYSERDA>, as amended and superseded.

(g) If, in the course of performance of the Agreement, Contractor or Subcontractors (if any) encounter any information in NYSERDA's Salesforce or other database platforms that a reasonable person would identify as unrelated to the Agreement or otherwise inadvertently produced to Contractor or Subcontractors, Contractor shall notify NYSERDA immediately and neither Contractor nor Subcontractor shall use such inadvertently produced information for its own



use. Any Contractor access to NYSERDA information shall be used solely for NYSERDA-related matters. This shall include, but not be limited to, access to the Salesforce CRM.

## Article IX

### Warranties and Guarantees

Section 9.01. Warranties and Guarantees. The Contractor warrants and guarantees that:

(a) all information provided and all representations made by Contractor as a part of the Proposal Checklist or application, if any, submitted to NYSERDA in order to obtain this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;

(c) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, and New York State Executive Orders in effect during the contract term, if any, that may in any way affect the performance of this Agreement;

(d) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted scientific standards and engineering practices;

(e) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and engineering practices;

(f) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(g) to the best of Contractor's knowledge, there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

(h) it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material

fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Work;

(i) all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate;

(j) Contractor is familiar with and will comply with NYSERDA's *Code of Conduct for Contractors, Consultants, and Vendors* with respect to the performance of this Agreement, including, but not limited to, the provisions that ensure the appropriate use of public funds by requiring Contractors, Consultants and Vendors to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement; and to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA (<http://www.nyserda.ny.gov/-/media/Files/About/Board-Governance/NYSERDA-Code-of-Conduct-Contractors.pdf>); and

(k) its rates for the indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

(l) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYSERDA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(m) Contractor represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Contractor shall have a duty to notify NYSERDA immediately of any actual or potential conflicts of interest.

## Article X

### Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Contractor's or its Subcontractors' performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.



Article XI

Insurance

*"intentionally blank"*

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Contractor, require the Contractor to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

(c) If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

(d) Notwithstanding the provisions of this Section 12.01, the maximum amount payable by NYSERDA to the Contractor pursuant to this Section 12.01 shall not be increased or deemed to be increased except by specific written amendment hereto.

#### Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon ten (10) days prior written notice to the Contractor. In such event, payment shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefore). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVII shall survive until the payment obligations pursuant to Article VIII have been met.

(b) NYSERDA specifically reserves the right to terminate this agreement upon its determination of excessive project schedule lapses or delays. NYSERDA also reserves the right to deny schedule extensions for project completion beyond those to which the parties agreed upon the initial execution of the agreement.

(c) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (c) will be effective upon Notice.

(d) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Contractor so elects: (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

#### Section 12.03 Suspension or Termination for Non-Responsibility.

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into



question the Responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

(b) Termination. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Contractor's expense where the Contractor is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

### Article XIII

#### Independent Contractor

##### Section 13.01. Independent Contractor.

(a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

(b) Contractor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

### Article XIV

### Compliance with Certain Laws

Section 14.01. Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in Exhibit C hereto.

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

Section 14.03. Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

Section 14.04. Sexual Harassment Policy. The Contractor and all Subcontractors must have a written sexual harassment prevention policy addressing sexual harassment in the workplace and must provide annual sexual harassment training to all employees.

### Article XV

#### Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

1. via certified or registered United States mail, return receipt requested;
2. by facsimile transmission;
3. by personal delivery;
4. by expedited delivery service; or
5. by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

#### NYSERDA

Name: Wendy M. MacPherson

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091



E-Mail Address: Wendy.MacPherson@nyserda.ny.gov  
Personal Delivery: Reception desk at the above address

Village of Greenport

Name: Paul Pallas  
Title: Village Administrator  
Address: 236 3rd Street, Greenport, NY 11944-1647  
Facsimile Number:  
E-Mail Address: pjpallas@greenportvillage.org

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except for no-cost time extensions, which may be signed by NYSERDA and require no counter-signature by the Contractor, and except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

Section 15.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Article XVI

Publicity

Section 16.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Communications Department to prepare any press release and to plan for any news conference concerning the Work. In addition the Contractor shall notify NYSERDA's Communications Department regarding any media interview in which the Work is referred to or discussed.

(b) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.



EXHIBIT C

REVISED 12/19

STANDARD TERMS AND CONDITIONS  
FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

The parties to the Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement to the extent applicable:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.



3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be



considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.ny.gov/about/foil2.html>) and NYSERDA's Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. As a condition to NYSERDA's obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

8. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit C, the terms of this Exhibit C shall control.

9. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

10. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete



upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

13. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5884



<http://www.esd.ny.gov>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York

State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

- a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <https://ogs.ny.gov/iran-divestment-act-2012>).

21. COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006. Contractor shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 (“DERA”), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology



("BART"). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: <https://www.dec.ny.gov/regs/2492.html>.

22. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

## EXHIBIT D

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

**504.1. Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations. (This is only a summary; the full text of Part 504 can be accessed at: ( <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx> ))

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

**504.2. Definitions.** Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.

(d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:



(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) "Set-off" means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

**504.3. Prompt Payment Schedule.** Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

**504.4. Payment Procedures.**

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or

(3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

**504.5. Exceptions and Extension of Payment Due Date.** NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the



inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

**504.6. Interest Eligibility and Computation.** If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

**504.7. Sources of Funds to Pay Interest.** Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

**504.8. Incorporation of Prompt Payment Policy Statement into Contracts.** The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

**504.10. Judicial Review.** Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

**504.11. Court Action or Other Legal Processes.**

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.





# VILLAGE OF GREENPORT

## Budget Adjustment Form

Year: 2023	Period: 1	Trans Type: B2 - Amend	Status: Batch
Trans No: 5150	Trans Date: 01/31/2023	User Ref: STEPHEN	
Requested: S. GAFFGA	Approved:	Created by: STEPHEN	01/31/2023
Description: TO APPROPRIATE RESERVES FROM ELECTRIC, WATER, AND SEWER FUNDS FOR THE PURCHASE OF SMALL COMPACT METER READING VEHICLE PER VBR 07-2021-04			Account # Order: No
			Print Parent Account: No

Account No.	Account Description	Amount
E.5990	APPROPRIATED FUND BALANCE	12,081.51
E.0384	TRANSPORTATION EQUIPMENT	12,081.51
F.5990	APPROPRIATED FUND BALANCE	2,013.58
F.8310.406	METER READING..	2,013.58
G.5990	APPROPRIATED FUND BALANCE	6,040.76
G.8130.202	TRTMNT PLANT MISC EQUIPMENT..	6,040.76
<b>Total Amount:</b>		40,271.70











# VILLAGE OF GREENPORT

## Budget Adjustment Form

Year: 2023 Period: 2 Trans Type: B2 - Amend Status: Batch  
 Trans No: 5154 Trans Date: 02/08/2023 User Ref: STEPHEN  
 Requested: R. ALBANESE Approved: Created by: STEPHEN 02/08/2023  
 Description: TO APPROPRIATE GENERAL FUND RESERVES TO FUND THE REPLACEMENT OF 10 MOORINGS Account # Order: No  
 Print Parent Account: No

Account No.	Account Description	Amount
A.5990	APPROPRIATED FUND BALANCE	29,200.00
A.7110.419	PARKS.. MOORING EXP	29,200.00
<b>Total Amount:</b>		<b>58,400.00</b>





# VILLAGE OF GREENPORT

## Budget Adjustment Form

Year: 2023	Period: 2	Trans Type: B2 - Amend	Status: Batch
Trans No: 5157	Trans Date: 02/16/2023	User Ref: STEPHEN	
Requested: P. PALLAS	Approved:	Created by: STEPHEN	02/16/2023
Description: TO APPROPRIATE ELECTRIC AND SEWER FUND RESERVES FOR UPGRADES TO EXISTING COMPUTER SYSTEMS AND SERVERS			Account # Order: No
			Print Parent Account: No

Account No.	Account Description	Amount
E.5990	APPROPRIATED FUND BALANCE	5,900.00
E.0385	COMMUNICATION EQUIPMENT	5,900.00
G.5990	APPROPRIATED FUND BALANCE	5,900.00
G.8110.411	MISCELLANEOUS EXPENSE..	5,900.00
<b>Total Amount:</b>		<b>23,600.00</b>





**dockwa**

ACCOUNT # - jnc382

# DOCKWA CONTRACT FORM

## ACCOUNT INFORMATION -

CONTACT NAME	Stephen	LAST NAME	Gaffga
MARINA NAME	Mitchell Park Marina		
TAX STATUS	Taxable Entity	Tax Exempt	
CONTACT EMAIL(S)	sgaffga@greenportvillage.org		
PHONE NUMBER	631-477-2200		
PHYSICAL ADDRESS	115 Front Street		
CITY	Greenport		
STATE	NY		
ZIP	11944		

## SUBSCRIPTION DETAILS -

PLAN NAME	Dockwa Optimize		
MARINA SIZE	Medium (50 - 99 assets)		
BILLING FREQUENCY	Annual		
SETUP FEE	With Setup Fee	<input type="checkbox"/>	No Setup Fee
SUPPORT	With Premium Support	<input checked="" type="checkbox"/>	Standard Support
SUBSCRIPTION TERM	12	months	



DOCK SIMPLY.

**ENROLLMENT -**

Make change at contract renewal

Renewal Date: 3/29

**ADDITIONAL TERMS -**

**DOCKWA PROCESSING FEE -**

2.99%

## RECURRING FEE BREAKDOWN

LINE ITEM	FREQUENCY	LIST PRICE (USD)	SALES PRICE (USD)
Dockwa Optimize	Annual	8,000.00	8000

TOTAL QUOTE AT SIGNING (EXCLUDING SALES TAX) 8,000.00

TOTAL CONTRACT VALUE (EXCLUDING SALES TAX) 8,000.00





DOCK SIMPLY.

# SOFTWARE SERVICES AGREEMENT

This SaaS Services Agreement ("Agreement") is entered into on this \_\_\_\_\_ (the Effective Date) between The Wanderlust Group, Inc., with a place of business at 449 Thames Street, Newport, RI 02840 ("Company"), and the Customer listed above ("Customer"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

----- Signed for ("Customer")	----- Date
Stephen Gaffga <del>Stephen Gaffga</del> <b>GEORGE W. HUBBARD, JR.</b>	
----- Name (Print)	----- Title

----- Address	----- City/State/Zip
------------------	-------------------------

----- DocuSigned by: <b>Dan Sules</b> ----- EFE9395667F64AD	----- Date
Signed for The Wanderlust Group, Inc.	<b>2/7/2023</b>
Dan Sules	----- Marina Success Manager
----- Name (Print)	----- Title

----- 449 Thames St	----- Newport / RI / 02840
----- Address	----- City/State/Zip



## TERMS AND CONDITIONS

This Dockwa Software-as-a-Service (SaaS) Agreement (collectively with any documents incorporated by reference, the "Agreement" or the "Terms and Conditions") is by and between The Wanderlust Group, Inc. dba Dockwa ("Company") and the entity identified in the applicable order ("Customer"), (each a "party" and collectively, the "parties").

THE EFFECTIVE DATE OF THIS AGREEMENT SHALL COMMENCE UPON CUSTOMER'S ACCEPTANCE OF THIS AGREEMENT BY CLICKING "ACCEPT" OR EXECUTING AN ORDER FORM THAT INCORPORATES THIS AGREEMENT BY REFERENCE. BY ACCEPTING THIS AGREEMENT CUSTOMER AGREES TO COMPLY AND BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. IF CUSTOMER DOES NOT HAVE AUTHORITY OR DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CUSTOMER MAY NOT USE THE SERVICES.

### 1. SAAS SERVICE AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services. As part of the registration process, Customer will identify an administrative user name and password for Customer's Company account. Company reserves the right to refuse registration of or cancel passwords it deems inappropriate. "Services" mean the software-as-a-service applications and platform provided by Company as ordered/purchased by Customer under an Order Form, including support and maintenance of the SaaS, but excluding professional services. An "Order Form" means one or more ordering documents for purchases of Services and products, that are executed by Customer and Company from time to time. By entering into an Order Form, Customer agrees to be bound by the then current and/or updated version of this Agreement. Order Forms are incorporated into this Agreement.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the Company's standard practice.

The Company will provide Technical Support to Customer via both telephone and electronic mail seven (7) days a week during the hours of 9:00 am through 5:00 pm Eastern time, with the exclusion of Federal Holidays ("Support Hours").

Customer may initiate a helpdesk ticket during Support Hours by calling (401) 236-8304 or any time by emailing support@dockwa.com.

Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.

### 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for time sharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.

2.2 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's terms of service then in effect (available at <https://ahoy.dockwa.com/about-us/terms-of-service>) and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and

attorneys' fees) in connection with any claim or action that arises from a violation of the foregoing or otherwise from Customer's use of Services.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

2.4 Customer shall (a) be responsible for its users' compliance with this Agreement, (b) be responsible for the accuracy, quality, integrity, and legality of Customer Data and of the means by which Customer acquired Customer Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Company promptly of any such unauthorized access or use, (d) use the Services only in accordance with the documentation and applicable laws and government regulations, and (e) provide Company with assistance, information and materials that are reasonably requested as necessary to effectively provide the Services. "Customer Data" means any data of the Customer, regardless of whether in printed or electronic form, that is (i) provided to or accessed by Company in order for Company to perform its obligations under this Agreement, (ii) provided to Company by its users, or (iii) derived from Customer's use of the Software and Services. Customer Data expressly excludes any Aggregated Data as defined in Section 3.3.

2.5 Company may temporarily suspend Customer's and its users' access to the Services in the event that either Customer or any of its users is engaged in, or Company in good faith suspects Customer or any of its users is engaged in, any unauthorized conduct (including, but not limited to any violation of this Agreement including failure to pay any fees when due). Company will attempt to contact Customer prior to or contemporaneously with such suspension; provided, however, that Company's exercise of the suspension rights herein shall not be conditioned upon Customer's receipt of any notification. A suspension may take effect for Customer's entire account and Customer understands that such suspension would therefore include its user sub-accounts. Customer agrees that Company shall not be liable to Customer or any of its users or any other third party if Company exercises its suspension rights as permitted by this Section. Upon determining that Customer has ceased the unauthorized conduct leading to the temporary suspension to Company's reasonable satisfaction, Company shall reinstate Customer's and its users' access and use of the Services. Notwithstanding anything in this Section to the contrary, Company's suspension of Services is in addition to any other remedies that Company may have under this Agreement or otherwise, including but not limited to termination of this Agreement for cause. Additionally, if there are repeated incidences of suspension, regardless of the same or different cause and even if the cause or conduct is ultimately cured or corrected, Company may, in its reasonable discretion, determine that such circumstances, taken together, constitute a material breach.

### 3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality, and performance of the Service. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and



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(ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (a) is required to be disclosed by law.

3.2 As between Company and Customer, Customer owns all right, title and interest in and to the Customer Data.

3.3 As between Company and Customer, Company owns and retains all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with support for the Services, (c) Company Confidential Information and/or Aggregated Data, and (d) all intellectual property rights related to any of the foregoing. "Aggregated Data" is anonymous, statistical, analytical and other aggregated data that is collected automatically while performing the Services for the main purpose of improving the Services and that does not personally identify Customer or its users. Aggregated Data cannot be re-identified.

3.4 There are no licenses by implication under this Agreement and no rights or licenses are granted except as expressly set forth herein.

#### 4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees, including processing fees, described in the Order Form for the Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change its pricing as set forth in Section 5.1 below. Company may offer promotional pricing or offers which shall be applicable solely while such promotion or offer lasts, at Company's sole discretion. Company does not provide price protection or refunds in the event of promotions or price decreases.

4.2 If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit, provided that (i) Customer pays all undisputed amounts when due; (ii) Customer identifies the specific charge(s) in dispute and provides a reasonably detailed written explanation of the basis for the dispute; and (iii) Customer reasonably cooperates with Company in investigating and resolving the dispute. Inquiries should be directed to Company's customer support department.

4.3 The Customer agrees to enroll in automatic billing. The customer will authorize the Company, (a) to initiate recurring automated clearing house (ACH) debit entries or debit card payments from the checking or savings account you specify, or (b) to initiate recurring charges from your specified credit card.

4.4 The amount debited from the customer's checking or savings account or charged to the customer's credit card every billing period will be the amount indicated on the Order Form, or, for any renewal term, the price as of the date of such renewal set forth in our pricing page (<https://ahoy.dockwa.com/main-a-management/pricing>), plus additional charges billed to your account during the term, less credits or payments posted to your account. Once the enrollment is processed, all payments will be automatically withdrawn from the specified checking or savings account or charged to the designated

credit or debit card at the beginning of each subscription term, unless the Customer cancels the subscription in accordance with section 5. Customer understands and agrees that if Customer suspends or terminates its payments (or its payment authorization), and Customer does not cure such payment breach as set forth in Section 5.2, Company may, in accordance with Section 2.5, suspend all Services, including suspending Company's transaction payouts to Customer's bank account.

4.5 Company may choose to bill through an invoice, in which case full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice.

4.6 Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, and may result in immediate termination of Service.

4.7 Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

4.8 Payments by check must be mailed to:

**Dockwa**  
P.O. Box 175  
Freeport, ME 04032

#### 5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for an initial Subscription Term of twelve (12) months, and shall be automatically renewed for additional periods of the same duration as the initial Subscription Term (collectively, the Initial Subscription Term plus all renewal terms, the "Term"), unless either party requests not to renew at least thirty (30) days prior to the end of the then-current term. The pricing for any automatic renewal term will be the same as that during the immediately prior Subscription Term unless Company has given Customer written notice of a price change at least thirty (30) days before the end of the expiring Subscription Term, in which case the price change will be effective upon renewal. Customer understands and agrees that if Company agrees to provide Services to Customer in the future after Customer's subscription terminates for any reason, the amount Customer paid under any prior term or time period is not determinative of the amount Customer will pay should Company provide Services to Customer again.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement.

5.3 Customer will pay in full for the Services up to and including the last day on which the Services are provided. Company shall have the right to terminate this Agreement for convenience upon at least sixty (60) days prior written notice to Customer. If Company exercises such termination right, Company shall refund to Customer the amount of any pre-paid fees for the remainder of the terminated Term.

5.4 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

#### 6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services. Services may be temporarily unavailable for scheduled maintenance or for









## HARDWARE PRODUCTS TERMS AND CONDITIONS

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY. THESE TERMS APPLY SOLELY IN THE EVENT OF THE PURCHASE OF A HARDWARE PRODUCT.

THE TERMS AND CONDITIONS OF PRODUCT SALES ARE LIMITED TO THOSE CONTAINED HEREIN AND THOSE WITHIN AN ORDER FORM. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU ("BUYER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY MAKING AN ORDER FOR PRODUCTS FROM THE WANDERLUST GROUP, INC. DBA DOCKWA ("SELLER"), BUYER AGREES TO BE BOUND BY AND ACCEPTS THESE HARDWARE TERMS ("TERMS").

These Terms constitute a binding contract between BUYER and SELLER (as defined in the Order Form) and are referred to herein as either "Terms" or this "Agreement." BUYER accepts these Terms by placing an order with SELLER through an Order Form.

### 1. PRODUCTS

"Product" means the tangible hardware equipment (including point of sale devices) supplied by SELLER to BUYER in accordance with an Order Form that is accepted by SELLER.

### 2. PURCHASE PRICE

BUYER agrees to pay SELLER the price for the Products, in the amount and in accordance with the payment terms set forth in the Order Form. Prices for the Products will be listed at the time of BUYER's purchase. SELLER may change pricing and availability at any time. If BUYER does not submit immediate payment, SELLER may delay shipment of the Products until the full amount of BUYER's payment is received. The amounts BUYER pay for the Products are in addition to the fees BUYER pay for other business services that may be offered by SELLER and its affiliates (each, a "SELLER Service" or "Service") that are provided to BUYER under BUYER's agreements with SELLER, including the SELLER SaaS Agreement (collectively, the "SELLER Agreements").

Unless otherwise stated, the prices shown for the Products exclude taxes and shipping costs. SELLER will add all taxes and shipping costs to the total amount of BUYER's purchase, and show BUYER the final amount due before BUYER completes its purchase. BUYER is solely responsible for all taxes and shipping costs that apply to the Products that BUYER purchases.

These Purchase Terms apply to any Products that SELLER chooses to provide to BUYER at no cost, and BUYER's rights and obligations with respect to those Products do not change merely because BUYER did not pay for the Products.

### 3. TAXES

All prices and charges for Products provided hereunder are exclusive of any taxes applicable to the transaction, such as value added taxes, sales or use taxes, duties, or other taxes or levies imposed by any government, public authority, or government agency on BUYER's purchase of the Products hereunder, all of which are the responsibility of BUYER to pay, provided, for avoidance of doubt, that BUYER shall not be responsible for payment of any taxes based on the income, property or employment of employees by SELLER. In the event SELLER is ever assessed or threatened to be assessed taxes, fees, levies, penalties and/or fines regarding BUYER's failure to pay any taxes applicable to the transaction, BUYER agrees to indemnify SELLER for the amount claimed due from BUYER.

### 4. AVAILABILITY

Products are manufactured by third parties and resold by SELLER. While SELLER uses reasonable efforts to maintain sufficient supply of the Products, inventory shortages at SELLER's manufacturers and distributors may affect SELLER's ability to fulfil an order. If there is a delay in manufacture or distribution of a certain Product that SELLER believes will affect BUYER's order, SELLER will use reasonable efforts to notify BUYER of the delay and keep BUYER informed of the revised delivery schedule. SELLER is not obliged to accept any order, and SELLER may cancel accepted orders at any time if SELLER is unable to fulfil the order for any reason.

### 5. SHIPMENT AND DELIVERY

SELLER shall ship products to BUYER as set forth in the Order Form and upon payment of the purchase price specified in such Order Form. BUYER understands that all Products purchases must be paid in full prior to shipment of the Products to BUYER. Either party may notify the other of complications arising with these dates and will reschedule at that time. Exact delivery time cannot be guaranteed. SELLER will select the carrier that will ship the Products. SELLER will inform BUYER of the shipping fees (if any) before BUYER confirm BUYER's order. If SELLER provides BUYER with an estimated shipping or delivery date, that date is not guaranteed, and inventory shortages or events beyond SELLER's control could impact the delivery date. Also, many events beyond SELLER's control can affect the delivery of Products after SELLER provides them to the carrier. SELLER is not liable for late shipment or delivery, or any loss, damage, or penalty BUYER may incur from any delay in shipment or delivery, even if BUYER has paid an additional fee for expedited shipping. Despite any contrary terms in any invoice or purchase order, title and risk of loss for the Products passes to BUYER when SELLER delivers the Products to the address that BUYER provides. Unless otherwise agreed in an Order Form, SELLER only ships Products within the United States of America.

### 6. CANCELLATION/RETURN POLICY

**(a) Cancellation.** If BUYER submits an order, and SELLER accepts the order, BUYER is bound by the order unless SELLER cancels the order. If SELLER cancels BUYER's order, SELLER will fully refund the purchase price to BUYER. In the event BUYER cancels BUYER's order prior to shipment of the Products, SELLER will refund to BUYER within thirty (30) days the amount of BUYER's payment (if any) [LESS any expenses already incurred by SELLER] using the same method of payment BUYER used to purchase the Product.

**(b) Returns.** BUYER may return any Product in its original packaging and condition (including all accessories and components) within 30 days after the date of BUYER's purchase. To begin the return process for a Product, please contact SELLER at support@dockwa.com. SELLER will provide BUYER with return shipping instructions. If BUYER follows SELLER instructions, SELLER will cover the cost of return shipping and will refund BUYER's purchase price in full using the same method of payment BUYER used to purchase the Product. SELLER will not take title to any returned Product until the item arrives at the facility to which SELLER instruct BUYER to return the Product. Returns may be subject to a restocking fee. Notwithstanding the terms of this section to the contrary, BUYER agree that any duties and taxes that may be recoverable by BUYER will not be charged or collected from SELLER. This clause does not limit any rights that BUYER might have to seek a refund under applicable law.





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## 7. USE OF THE PRODUCTS

(a) BUYER may only purchase the Products for BUYER's own use. BUYER may not otherwise resell, rent, lease or further distribute Products, or allow a third party to use Products that BUYER has purchased. SELLER reserves the right to refuse to sell or ship the Products to any person SELLER believes intends to use, resell, distribute or lease the Products in a manner prohibited by these Terms. The foregoing limitations will not apply to the extent prohibited by applicable law.

(b) BUYER agrees that use of the Products is subject to the additional terms of the original equipment manufacturer and/or of the provider of additional payment services applicable to point of sale devices (collectively, "Additional Terms"). Such Additional Terms are hereby incorporated by reference and you agree and accept that you are subject to and bound by those Additional Terms, including without limitation, Stripe's Terminal Device Software License Agreement and Stripe Terminal Services Terms (the "Stripe Agreements") and BUYER agrees to use the Products in a manner that is consistent with the terms of the Stripe Agreements.

(c) Additionally, BUYER must not and must not enable or permit any third party to:

- use a Product in any country other than the country to which SELLER shipped that product;

- represent, or use any technical measures in an attempt to represent, that the location of a Product is a location different from its actual physical location;

- use a Product to enable any party (including BUYER) to benefit from any activities SELLER has identified as a restricted business or activity. Restricted businesses include use of the Products in or for the benefit of a country, organization, entity, or person embargoed, blocked or on a sanctions list identified by any government, government body or supranational body; or

- (i) copy, reproduce, republish, upload, post, transmit, resell, or distribute in any way, any data, content, or any part of a Product Documentation, except as expressly permitted by applicable law; (ii) transfer any rights granted to BUYER under these Terms unless otherwise agreed between BUYER and SELLER in writing; (iii) work around any of the technical limitations implemented in a Product or enable functionality that is disabled or prohibited; (iv) reverse engineer or attempt to reverse engineer a Product except as expressly permitted by applicable law; (v) perform or attempt to perform any actions that would interfere with the normal operation of a Product or impact the use of the Products by other users; or (vi) impose an unreasonable or disproportionately large load on the SELLER Services.

(d) If SELLER suspects or knows that BUYER is using or have used Products for unauthorized, fraudulent, or illegal purposes, or in a manner that exposes BUYER, SELLER, or others to risks unacceptable to SELLER, SELLER may limit or disable the functionality of BUYER's Products, until such time as BUYER demonstrates to SELLER's reasonable satisfaction that SELLER's suspicion was unfounded, or BUYER provides SELLER with sufficient assurances that the unacceptable use has been appropriately mitigated and will not recur. Use of the Products in conjunction with any other products, such as hardware accessories, may lead to incompatibilities which may cause the Products to not function correctly. As a consequence, all such use is at BUYER's own risk. These Terms do not grant any rights or licenses in the Products other than as expressly stated in these Terms and the Terminal Device EULA.

## 8. LIMITED WARRANTY

SELLER will provide a one-time immediate Product replacement on any Product supplied by SELLER which failed during normal use. BUYER shall not be responsible for the cost of the replacement Product. At SELLER's option, BUYER may be responsible for the cost of shipping and other out of pocket expenses made by SELLER.

Additionally, the Product manufacturer provides a one-year limited warranty against defective materials and faulty workmanship in the Products. The warranty period starts on the date of BUYER's original purchase of the Product from SELLER and/or receipt of a Product replacement, as applicable, and ends one year after that date. If BUYER submits an additional claim during this warranty period that is within the scope of the manufacturer limited warranty, and BUYER follows SELLER's instructions for returning the Product, SELLER will at its option, to the extent permitted by applicable law, either repair the Product, replace the Product, or refund to BUYER all or part of the purchase price of the Product. This limited warranty applies only to unaltered Products that are used in accordance with these Terms and not subject to accident, misuse, or neglect. This provision does not cover damage resulting from acts of God, flood, lightning, malicious software, BUYER'S negligence, alterations, mishandling, BUYER'S improper installation, or BUYER'S failure to protect such Product.

This limited warranty gives BUYER specific rights and is personal to BUYER. BUYER may not transfer this warranty to any other person. BUYER may have additional rights under applicable law, and this limited warranty does not affect those rights. To make a warranty claim, please contact us at [support@dockwa.com](mailto:support@dockwa.com). SELLER will provide BUYER with information about how to return Products and obtain a replacement Product.

BUYER ACKNOWLEDGES THAT BUYER'S SELECTION OF ANY PARTICULAR PRODUCT IS BASED ON BUYER'S OWN EVALUATION OF THE REQUIREMENTS OF BUYER'S BUSINESS AND BUYER'S EVALUATION OF THE FUNCTIONS, CAPACITIES AND SPECIFICATIONS OF THE PRODUCTS SELECTED. SELLER DOES NOT WARRANT THAT THE PRODUCTS WILL MEET ALL OR ANY OF BUYER'S REQUIREMENTS OR ANY REQUIREMENTS IMPOSED BY BUYER.

## 9. DISCLAIMER

THE PRODUCTS ARE PROVIDED AS-IS AND WITH ALL FAULTS, EXCEPT AS EXPRESSLY STATED IN THESE TERMS. SELLER, ITS AFFILIATES, AND THE RESPECTIVE SUPPLIERS, LICENSORS AND SERVICE PROVIDERS OF SELLER AND EACH SELLER AFFILIATE (EACH A "SELLER PARTY" AND TOGETHER THE "SELLER PARTIES") PROVIDE NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, AND SELLER DISCLAIMS AND EXCLUDES ANY IMPLIED TERMS, REPRESENTATIONS, WARRANTIES, AND CONDITIONS WITH RESPECT TO THE PRODUCTS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, SATISFACTORY QUALITY AND NON-INFRINGEMENT, AS WELL AS ANY OTHER IMPLIED WARRANTIES, SUCH AS WARRANTIES REGARDING DATA LOSS, AVAILABILITY, ACCURACY, FUNCTIONALITY AND LACK OF VIRUSES. THESE DISCLAIMERS WILL APPLY EXCEPT TO THE EXTENT APPLICABLE LAW DOES NOT PERMIT THEM. ANY WARRANTIES, GUARANTEES, OR CONDITIONS THAT CANNOT BE DISCLAIMED AS A MATTER OF LAW, BUT WHICH MAY BE LIMITED IN DURATION, LAST FOR ONE YEAR FROM THE DATE ON WHICH BUYER RECEIVES A PRODUCT.





## 10. LIMITATION OF LIABILITY

(a) UNDER NO CIRCUMSTANCES WILL ANY SELLER PARTY BE RESPONSIBLE OR LIABLE WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER STATUTE OR OTHERWISE TO BUYER FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES RESULTING FROM BUYER'S USE OR INABILITY TO USE THE PRODUCTS OR FOR THE UNAVAILABILITY OF THE PRODUCTS, FOR LOST PROFITS, PERSONAL INJURY TO THE EXTENT ALLOWED BY APPLICABLE LAW, OR PROPERTY DAMAGE, OR FOR ANY OTHER DAMAGES ARISING OUT OF, IN CONNECTION WITH, OR RELATING TO THESE TERMS OR BUYER'S USE OF THE PRODUCTS, EVEN IF THOSE DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT BUYER OR THE SELLER PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THE SELLER PARTIES ARE NOT LIABLE WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) UNDER STATUTE OR OTHERWISE AND FURTHER DENY RESPONSIBILITY FOR ANY DAMAGES, HARM, OR LOSSES TO BUYER ARISING FROM OR RELATING TO HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE PRODUCTS. THE SELLER PARTIES ARE NOT LIABLE, AND FURTHER DENY RESPONSIBILITY FOR ALL LIABILITY AND DAMAGES TO BUYER OR OTHERS WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER STATUTE OR OTHERWISE CAUSED BY (I) BUYER'S OR BUYER'S EMPLOYEES', AGENTS', CONTRACTORS', END USERS', AND OTHER PERSONNEL'S ACCESS OR USE OF THE PRODUCTS INCONSISTENT WITH THE DOCUMENTATION; (II) ANY UNAUTHORIZED ACCESS OF SERVERS, INFRASTRUCTURE, OR DATA USED IN CONNECTION WITH THE PRODUCTS; (III) INTERRUPTIONS TO OR CESSATION OF THE PRODUCTS; (IV) ANY BUGS, VIRUSES, OR OTHER HARMFUL CODE THAT MAY BE TRANSMITTED TO OR THROUGH THE PRODUCTS; (V) ANY ERRORS, INACCURACIES, OMISSIONS, OR LOSSES IN OR TO ANY DATA PROVIDED TO US; (VI) THIRD-PARTY CONTENT PROVIDED BY BUYER OR BUYER'S EMPLOYEES, AGENTS, CONTRACTORS, END USERS, AND OTHER PERSONNEL, OR (VII) THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF OTHERS. The foregoing limitations will not apply to the extent prohibited by applicable law.

(b) Except to the extent prohibited by applicable law, BUYER agrees to limit any additional liability whether in contract, tort (including negligence), under statute or otherwise not disclaimed or denied by the SELLER Parties under these Terms to BUYER's direct and documented damages; and BUYER further agrees that under no circumstances will any such liability exceed in the aggregate the amount paid by BUYER to SELLER for the Products.

(c) Nothing in these Terms operates to exclude or limit liability for (i) death or bodily injury; or (ii) fraud or willful misconduct, to the extent that doing so would contravene applicable law.

## 11. MISCELLANEOUS

(a) BUYER may not assign any of the rights, interests, or obligations under these Terms without the prior written consent of SELLER. BUYER consents to receiving electronic notifications, which may be provided via a Web browser or e-mail application connected to the Internet. In addition, Internet connectivity requires access services from an Internet access provider. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

(b) These Terms will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, USA, without regard to conflict-of-laws principles. Any action or proceeding seeking to enforce any provision of these Terms or based on any right arising out of these Terms must be brought against any of the parties in the state and federal courts in Massachusetts, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to

such venue. If SELLER has to retain an attorney to interpret or enforce the provisions of these Terms, to rescind these Terms, or otherwise with respect to the subject matter of these Terms, even if an arbitration, suit, or action is not instituted, the SELLER will be entitled to recover from BUYER with respect to such issue, in addition to costs, reasonable attorney fees incurred in the consultation, preparation, prosecution or defense of such issue.

(c) These Terms, together with the Order Form (and including the documents and instruments referred to in these Terms) and any modifications as set forth below constitute the complete and exclusive agreement and understanding of the parties with respect to the subject matter of these Terms and supersede all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter. These Terms may not be explained or supplemented by any prior course of dealings or trade by custom or usage. SELLER reserves the right to make changes to these Terms at any time. Any use of the products or services by BUYER after 30 days shall be deemed to constitute acceptance by BUYER of such modifications if any provision contained in these Terms is or becomes invalid, illegal or unenforceable in whole or in part, such invalidity, illegality, or unenforceability shall not affect the remaining provisions and portions of these Terms; and the invalid, illegal, or unenforceable provision shall be deemed modified so as to have the most similar result that is valid and enforceable under Massachusetts law. Provisions in these Terms which by their nature are intended to survive termination (including indemnification obligations and limitations of liability) will survive termination of these Terms.



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# DOCKWA PAYMENT AUTHORIZATION FORM

## BILLING INFORMATION -

FIRST NAME

LAST NAME

BI FIRM / ORGAN

Mitchell Park Marina

PHONE / FAX NUMBER

BUSINESS ADDRESS

CITY

STATE

ZIP

## PAYMENT METHOD -

Electronic Funds Transfer

## CREDIT CARD INFORMATION -

CARD NUMBER

CARD EXPIRATION DATE

CITY

## ELECTRONIC FUND TRANSFER INFORMATION -

NAME ON ACCOUNT \*

TYPE OF ACCOUNT

Checking

Savings

ACH ROUTING NUMBER

ACCOUNT NUMBER





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**SIGNATURE -**

I, the undersigned, hereby certify that the "dockwa" information above is correct and true to the best of my knowledge and belief, and that I am duly authorized to execute this document on behalf of the undersigned.

Signature of Authorized Employee: **Stephen Gaffga**

Job Title / Position:

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED EMPLOYEE

\_\_\_\_\_  
DATE

SANITARY SEWAGE AGREEMENT

This AGREEMENT, made this            day of            2023 by and between the Village of Greenport, a municipal corporation having its offices at 236 Third Street, Greenport, New York 11944 (the “Village”) and 160 Route 25 Medical LLC, with an office and principal place of business at 160 Route 25, Greenport, New York 11944, (the “Owner”);

WITNESSETH

WHEREAS, the Owner owns the property 160 Route 25, Greenport, and is desirous of developing the currently vacant property owned by the Owner and located at 160 Route 25, Greenport (the “Property”) and which is more particularly described in Schedule A hereto, into a mixed use site with three separate buildings, each of which will have a mixed use of first floor of medical offices and second floor of residential units, in accordance with the attached site plan and with an associated accessory parking field, and which uses are otherwise described as follows:

- A. Thirty (30) single family residential units; with twenty (15) units below four hundred and fifty (450) square feet in area and twenty (15) units between four hundred and fifty (450) and six hundred (600) square feet in area; and
- B. Medical office spaces with a total area of four thousand eight hundred and forty-seven (4,847) square feet of medical space in each of the three buildings; and

WHEREAS an application for approval of the development by the Southold Town Planning Board is presently before the Southold Town Planning Board for consideration and



approved in advance by the Village. The System shall include, but shall not be limited to, sewage mains and lift stations using two inch (2") diameter ductile iron pipe for proper connection to the Village System and for the proper collection of sewage from the Project as outlined in the plans and specifications to be prepared for and by the Owner and submitted to the Village for the Village's approval, which approved plans and specifications shall be signed by the Village and the Owner and are or will be attached as Exhibit "B" to this Agreement and made part hereof.

SECOND: All engineering and construction necessary for the installation of the System, as well as from the connection at the Owner's property, and any other private or public property, to the Village's existing sewage main, located in Greenport, New York, shall be at the sole cost and expense of the Owner and it shall be the responsibility of the Owner to perform and construct same. The foregoing shall be referred to as the "Work", which shall be designed and constructed by the Owner and/or the Owner's engineers and/or subcontractors upon the prior approval of the Village. The Work shall be in accordance with the plans and specifications prepared by the Owner's engineers, to be approved by the Village's engineers in writing before the Owner commences the Work.

THIRD: The Property shall be developed in accordance with the description of units, use and area set forth above in this Agreement. There shall be three water meter connections, one to each of the three buildings, and a separate additional connection to any future building or buildings that may be constructed. A separate commercial sewer account shall be established for each of the three buildings and any future building or buildings. The sewer billing for each account and billing shall be based on the water consumption of the building, including a minimum sewer charge, and any future, and the minimum charge and sewer

possible action for the development of the Property as described in this Agreement and as set forth on the Site Plan annexed hereto; and

WHEREAS, said Owner represents that the Suffolk County Water Authority has agreed to furnish all of the water supply needs for the aforesaid Project; and

WHEREAS, said Owner, at its sole cost and expense, shall construct on its premises a complete sanitary sewage system (the "System"), including sewage mains, and sewage collection lift stations on portions of the property to be shown on an engineering report prepared for the Owner and furnished to the Village for approval by its engineer, provided that the Force Main will be made of a two inch (2") diameter ductile iron pipe, for which plans and specifications may, with the prior approval of the Village, be amended from time to time during the course of construction; and

WHEREAS, Owner shall construct and install the complete System, which, with the approval of the Village, and at the cost of the Owner, shall be connected to the Greenport Village Municipal Sewer System ("Village System"); and

WHEREAS, Owner will secure final approval for said project from the Southold Town Planning Board and the Town of Southold; and

WHEREAS, no final approval has yet been secured from the Suffolk County Department of Health for a sewage collection system, however the Village will assist in securing such approval upon the terms and conditions hereinafter stated.

NOW, THERFORE, in consideration of the mutual covenants herein it is mutually agreed as follows:

FIRST: The Owner agrees to install the System, at its own cost and expense, on the property described in Schedule "A" in a manner and with equipment and materials that are



billings for each account shall be the at the outside of Village commercial sewer rate in existence in the Village for the period that is billed.

FOURTH:

A. The Connection Fee to be paid by the Owner to the Village to permit the Project to connect to the Village System and the Village Sewage Treatment Plant shall be in the amount of two hundred and eighty-five thousand dollars (\$285,000) which amount shall specifically cover connection of the three buildings indicated on the annexed site plan to the Village System and the Village Sewage Treatment Plant for wastewater collection and treatment service for a development comprised of three mixed-use buildings as set forth above, and no other improvements. In the event that any other addition, improvement, unit or building is added to the Property or any portion thereof, or the use of any of the aforementioned planned buildings should change from that which is indicated in this Agreement, the Connection Fee shall be amended in accordance with the formula used to calculate the Connection Fee charged in this Agreement, including the square footage and the SCDOH calculated gallons per day rate for that change and use, prior to the construction or connection of any other addition, improvement, unit or building.

B. The Connection Fee shall be paid by Owner to the Village of Greenport as follows:

i. Twenty five thousand dollars (\$25,000) deposit at signing, refundable if project is denied by the Town of Southold.

ii. One hundred and fifty thousand dollars (\$150,000) nonrefundable deposit at upon approval of the project by the Town of Southold.

iii. One hundred and thirty five thousand (\$110,000) final payment prior to final connection of the Property and project to the Greenport wastewater sewer system.

C. Upon the Village's receipt of final payment, Owner shall be entitled to connect project and Property to the Village System.

FIFTH: The Village shall simultaneously herewith deliver a "will-serve" letter for sewer collection and treatment services in the form heretofore approved by the Suffolk County Department of Health.

SIXTH: The Village reserves the right to expand its sewer collection system via the installation of gravity mains at the termination of the force main installed by the Owner. The gravity mains, if installed by the Village, would be at the sole cost and expense of the Village.

SEVENTH: The Owner shall, at the Owner's expense, perform a video inspection of the Village gravity main from the point of connection of the System to the Village System to the pump station located at the end of Manor Place, and the Owner must confirm that the pump station is capable of handling the additional flow contemplated in this Agreement.

EIGHTH: All Work shall be inspected by the Village or the Village's designee, with full power of inspection hereunder. The Owner agrees to, and shall grant access, for purposes of inspection to the Work and all parts of the premises related to the Work. The Village shall have an authorized inspector at the site at such times as it reasonably deems necessary. No backfilling shall be done until the pipe and the Work in the trenches have been approved and tested, or prior permission has been obtained from the inspector. The Owner agrees to pay the Village's costs related to the inspection, which shall be based on a reasonable hourly charge to be submitted to the Owner periodically in advance of the inspections.

NINTH: The Owner shall retain ownership of the System and the Owner shall be responsible for the operation, maintenance, repair and replacement, at the Owner's sole cost and



expense, of the entire System servicing the Project, and for the operation and maintenance of the pump station and the force mains downstream to the connection point of the Village's system.

TENTH: This Agreement contains the complete understanding and agreement of the parties for the construction and maintenance by the Owner of the System for the Project and for the connection of the System to the Village System and the Village Sanitary Sewage Treatment Plant. The Owner agrees that it will not make any claims against the Village on account of the installation and or connection of the System.

ELEVENTH: This Agreement shall be recorded in the Office of the Suffolk County Clerk at the expense of the Owner and shall run with the land, inuring to the benefit of the Parties, their successors and/or assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement in four (4) counterparts, all of which shall constitute originals, the day and year first above written.

VILLAGE OF GREENPORT

By: \_\_\_\_\_  
Hon. George W. Hubbard, Jr.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Name and Title: \_\_\_\_\_

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF SUFFOLK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he is the Mayor of the Village of Greenport, the municipal corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal so affixed by order of the board of trustees of said corporation, and that he signed his name thereto by like order.

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

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that s/he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal so affixed by order of the board of that corporation, and that s/he signed his name thereto by like order.

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