



AGREEMENT

BETWEEN TOWN OF ANDES

ANDES, NEW YORK

**AND DELAWARE OPERATIONS, INC.
(DBA: CEDARWOOD ENVIRONMENTAL SERVICES)**

FOR SERVICES AS A CONTRACT OPERATOR

THIS AGREEMENT made the 6th day of September, 2019, by and between TOWN OF ANDES located at Andes, New York (herein referred to as the THE OWNER) and CEDARWOOD ENVIRONMENTAL SERVICES, having a place of business at 8-12 Dietz Street, Suite 302, Oneonta, New York 13820, (herein referred to as THE OPERATOR).

WITNESSETH:

WHEREAS, THE OWNER is desirous to contract for operation of their Wastewater Treatment Plant located in Andes, New York, and to maintain the professional administration of that facility [i.e., refers to management of the daily scheduled operation of the facility],

AND WHEREAS, THE OWNER is desirous of entering into an agreement for the purchase of services for THE OPERATOR to complete the agreed upon tasks as they relate to the operation of the Wastewater Treatment Facility,

AND WHEREAS, THE OWNER now desires to enter into an agreement for a period of five (5) years commencing January 1, 2020 and ending December 31, 2024 and thereafter on a basis of mutual agreement by the parties,

THEREFORE, THE OWNER and THE OPERATOR do mutually agree as follows:

- (1) THE OPERATOR shall provide the following services to THE OWNER.
 - a. All personnel services for the operation of the facility. Staff provided by THE OPERATOR for the Wastewater Treatment Facility will meet all NYSDEC certification requirements throughout the contract duration. Staffing scheduling will be adequate to maintain and operate the facility throughout the contract duration.
 - b. All routine maintenance and usual repairs.

- c. Administration including:
1. Planning
 2. State and City operational reports
 3. State and City inspections
 4. Monthly reports to THE OWNER as needed
 5. SPDES permit application when applicable
 6. Coordinating the preventative maintenance program
 7. Attend meeting at required
- d. Engineering support [by non-operations personnel] associated with normal plant operations. Additional engineering support services [i.e., beyond the scope of this contract] would include, in general, work which results from unanticipated events/occurrences that occur through no fault of THE OPERATOR [e.g., unplanned releases or upsets which result in SPDES violations or non-typical regulatory coordination/interaction, work associated with Consent Order, etc.]
- e. Sampling and analysis including:
- Collecting samples for on-site and contract laboratory analysis for SPDES
 - Completing chain-of-custody forms and packaging samples, for subsequent shipment by THE OWNER to the contract laboratory
 - Performance of on-site analyses for SPDES and operations control utilizing equipment provided at the facility
- (2) THE OWNER agrees to provide the following in conjunction with the operation of the facility:
- a. Snow removal
 - b. Utilities
 - Electric
 - Fuel oil, propane, and/or natural gas
 - c. Equipment, Materials, and Supplies
 - d. Outside Analyses Shipping and Contract Costs
 - e. Sludge Disposal and Hauling Costs including Tipping Fees, if applicable
 - f. Specialized Maintenance Contracts
 - g. Lawn Care Equipment (THE OPERATOR will provide manpower, [above contract costs at the current prevailing wage rate] to operate the lawn care equipment and provide lawn mowing services at the facility)
 - h. Water
 - i. Chemicals associated with the operation of the wastewater facility
 - j. Nutrient supplement associated with the operation of the wastewater facility
 - k. SPDES Permit Fee
 - l. Plant Insurance

- m. Capital Improvement
 - n. All Excavation work
- (3) **BUDGETING:** THE OPERATOR shall provide O&M Budget preparation and reconciliation for NYCDEP in conjunction with THE OWNER, at the owner's request. This work will be considered a separate function and invoiced separately as O&M Engineering Overview.
- (4) **ADDITIONAL SERVICE.** In the event THE OWNER desires additional services to be rendered by THE OPERATOR in connection with the operation of the Plant, beyond the scope of the services described in this Agreement, THE OPERATOR agrees to perform said additional services, if ordered in writing, on a mutually acceptable basis. THE OPERATOR without prior approval of THE OWNER shall undertake no additional work. THE OPERATOR will accept no financial liability including fine and/or penalties resulting from THE OWNER's failure to approve requested work.
- (5) **CONFLICT OF INTEREST.** THE OPERATOR stipulates that, upon information and belief, no member of the governing body of THE OWNER, or officer or employee of THE OWNER, forbidden by Law, is interested in, will derive benefit from, or is a party of to this Agreement.
- (6) **PROVISIONS OF LAW.** All provisions of law required to be made a part of this Agreement are hereby deemed incorporated herein. Performance under the terms and conditions of this Agreement shall be subject to and in conformance with all applicable laws.
- (7) **RESPONSIBILITY.** Under this Contract, THE OPERATOR shall manage the Wastewater Treatment Facility in a professional manner at all times. THE OPERATOR shall be responsible for operating the treatment processes in the best possible way to meet all SPDES Permit parameters, including effluent quality, submission of reports, and solids handling. THE OPERATOR shall be responsible to establish and follow a Preventative Maintenance Program and the overall maintenance for the equipment at the facility, with the understanding that THE OPERATOR will obtain authorization for any corrective maintenance from the THE OWNER's designated representative before proceeding and such cost will be negotiated in addition to the terms of this agreement. THE OPERATOR will accept no financial liability including fines and/or penalties resulting from THE OWNER's failure to approve requested work. THE OPERATOR will administer all emergency repairs on a dollar for dollar reimbursement from THE OWNER. The expenditure for emergency repairs shall not exceed \$500 per emergency without approval from the THE OWNER's representative. THE OPERATOR shall clean the interior of the buildings regularly.

(8) **TERMINATION.**

- (a) This agreement may be terminated in whole or in part in writing by the THE OWNER and/or THE OPERATOR for its convenience, provided that the other party is given (1) not less than sixty (60) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- (b) If termination for default is effected by THE OWNER, an equitable adjustment in the price provided for in this sub-agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to THE OPERATOR at the time of termination may be adjusted to cover any additional costs to the recipient because of THE OPERATOR's default.
- (c) If termination for default is effected by THE OPERATOR, or if termination for convenience is effected by THE OWNER, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to THE OPERATOR for services rendered and expenses incurred prior to the termination.
- (d) Upon Notice of Termination by either THE OWNER or THE OPERATOR, THE OPERATOR shall be obliged to continue to operate the Treatment Facility for a period not to exceed two (2) months from the date of the Notice if so desired by the THE OWNER. During this period, THE OPERATOR shall work with THE OWNER's designated representative, contractor, and/or employee to familiarize them with the treatment processes. During this period, THE OPERATOR shall oversee the operation of the facility, with THE OWNER's designated representative, contractor, and/or employee in a trainee position. THE OPERATOR will remain responsible for the efficient operation of the processes. THE OPERATOR will not be responsible for any unauthorized changes in the treatment processes by THE OWNER's designated representative, contractor, and/or employee.

- (9) **REMEDIES.** Except as may be otherwise provided in this agreement, all claims, counter-claims, disputes, and other matters in question between THE OWNER and THE OPERATOR arising out of or relating to this agreement or the breach thereof will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which THE OWNER is located. The parties agree that Delaware County will be the proper venue for any such litigation or arbitration.

- (10) **INSURANCE.** THE OPERATOR shall obtain and maintain during the life of this contract, at its own expense, such Worker's Compensation, Public Liability and Professional Liability insurance as will adequately protect THE OPERATOR from claims which may arise or result from THE OPERATOR's performance or by



anyone employed by him. Upon request from the THE OWNER, THE OPERATOR shall provide a Certificate of Insurance attesting to the requisite coverage and limits.

- (11) THE OWNER agrees to indemnify and hold harmless THE OPERATOR, its officers, employees, or agents, for any liability for damages or claims for personal injury including death, property damage caused by blockage, ruptures, effluent discharges, release or escape of materials to air, land, or water, which are beyond control of or were not caused by the sole negligence of THE OPERATOR, its officers, employees, or agents.
- (12) THE OPERATOR acknowledges that it is an independent contractor and not THE OWNER's employee in connection with the work undertaken by THE OPERATOR in the agreement. THE OPERATOR alone is responsible for any loss or damage caused by its subcontractors, agents, or employees, and will fully defend, indemnify, protect, and save harmless THE OWNER against any and all loss, damage, expense, penalties and/or fines resulting from any and all claims and liabilities arising from the operation of the wastewater treatment facility by THE OPERATOR and its subcontractors, agents, or employees, during the performance of this Agreement or any Agreement between THE OWNER and THE OPERATOR for extra work. THE OPERATOR will accept no financial liability including fine and/or penalties resulting from THE OWNER's failure to approve requested work
- (13) THE OWNER shall pay to THE OPERATOR, for the above-described services, a yearly sum for the next five (5) years follows:

TOTAL PERSONNEL SERVICES:

- \$282,856.17 – Year one (2.5% increase) January 1, 2020 – December 31, 2020
- \$289,927.57 – Year two (2.5% increase) January 1, 2021 – December 31, 2021
- \$297,175.60 – Year three (2.5% increase) January 1, 2022 – December 31, 2022
- \$304,604.99 – Year four (2.5% increase) January 1, 2023 – December 31, 2023
- \$312,220.11 – Year five (2.5% increase) January 1, 2024 – December 31, 2024

- (14) Should THE OPERATOR be required to provide services beyond the above-mentioned services those services shall be provided only with prior authorization from THE OWNER and shall be billed at the following rates;

Engineering (not related to Operations)	\$130.00 per hour
Corporate Management	\$120.00 per hour
Operations	\$90.00 per hour
Mechanic	\$80.00 per hour
Laborer	\$70.00 per hour



BILLING FOR OPERATION SERVICES WILL BE ONE-TWELFTH (1/12) OF THE ANNUAL TOTAL SERVICE CHARGE ON A MONTHLY BASIS. PAYMENTS ARE DUE TO THE OPERATOR WITHIN 30 DAYS OF THE INVOICE DATE.

IN WITNESS WHEREOF, THE OWNER and THE OPERATOR have hereunto set their hands the day and year first above-mentioned in this Agreement.

TOWN OF ANDES

By: [Signature]
Wayland Gladstone
Town Supervisor

Attest: [Signature]

CEDARWOOD ENVIRONMENTAL

By: [Signature]
Thomas Suozzo
President

Attest: [Signature]