

Resolution #262 – Open and Adjourn to Executive Session

A meeting of the Town Board was opened by Supervisor Fleming at 6:00 p.m.

On a motion by Supervisor Fleming, Seconded by Councilwoman McGlasson, the Town Board moved into immediately Executive Session to discuss the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.

Resolution #263 - Adjourn Executive Session

On a motion by Supervisor Fleming

Seconded by Councilwoman McGlasson

Resolved: Executive Session adjourned at 7:05 p.m. no votes were taken

Motion carried unanimously

The Town of Kent regularly scheduled meeting was held on Tuesday, July 21, 2020 at 7:00 p.m. at the Kent Town Hall, 25 Sybil's Crossing, Town of Kent, New York. To see the full meeting visit the Town of Kent's website at www.townofkentny.gov under Video's on Demand.

Present: Supervisor Fleming, Councilpersons, McGlasson, Huestis and Ruthven.

Not Present: Councilman Denbaum

Also Present: Town Clerk Cappelli, Town Counsel Tagliaferro, Chief Owens, Co-Chair of Recycling Kotzur, Lake Carmel Park District Advisory Board Members Recher, Ulich and several residents.

PLEDGE OF ALLEGIANCE

At 7:09 p.m. the meeting began with the Salute to the Flag.

Resolution #264 - Set Public Hearing for a Local Law Extending Mining Moratorium

Supervisor Fleming explained Covid 19 imposed the board's ability to move this forward; it impacted the board's ability to meet with members of the public. It was discussed it might be necessary to go over the six months which expires September 3rd.

On a motion by Councilman Ruthven

Seconded by Councilwoman McGlasson

BE IT RESOLVED, that an amendment to the Kent Town Code Extending a Temporary Land Use Moratorium Prohibiting Mining is hereby introduced by Councilman Ruthven, as Introductory Local Law #___ of the year 2020 before the Town Board of the Town of Kent in the County of Putnam and State of New York, and

BE IT FURTHER RESOLVED, that copies of the aforesaid proposed Amendment, which is attached hereto, be laid upon the desk of each member of the Board, and

BE IT FURTHER RESOLVED, that the Town Board will hold a public hearing on said proposed Amendment at the Town Hall, in the Town of Kent, New York at 7:00 o'clock P.M. on September 1, 2020, and

BE IT FURTHER RESOLVED, that the Town Clerk publish or cause to be published a public notice in the official newspaper of the Town of Kent of said public hearing at least ten (10) days prior thereto. Motion carried unanimously

LAKE CARMEL PARK DISTRICT

Supervisor Fleming stated it came in late today but Crew Chief Sabatini would like to hire another part timer for the summer. The board decided to hold this over.

Supervisor Fleming said quotes were sought for fencing at the Lake Carmel Community Center, she thought new bids should be sought for the entire fence rather than that part. Councilman Ruthven suggested the basketball courts as well. The board discussed the present fence, the length and location of the new fencing with Lake Carmel Park District board members Recher and Ulich.

RESOLUTION #265 - ACCEPTING EROSION CONTROL SURETY BOND AND ESCROW FOR INSPECTION FEE

Michael Lento, a resident said he lives next door to the Tiger Trail property and sent a letter to the Town Clerk appealing the decision of the Planning Board. He did not believe it was within their authority to approve it the way it is. He explained the lot is less than 40,000 sq. ft in an R-40 zone> He said without

a permit they dropped 650 cubic yards of dirt and raised the yard 15' high. He said it is within 70' of his property line. They want to raise the rest 4' right up to the property line. He said the mining spoken about before was in Chapter 77, but split up. He said Chapter 63 which has a moratorium says there should be no excavation or removal within 100' of a property line. He said this is a non-conforming lot that they are going to tear down the 2,600 sq foot home and build a 4,931 sq. feet. He said Article 77 says you are not to extend, alter a non-conforming lot, everything is grandfathered. He said NYS using 750 cubic yard as criteria when you need a mining permit, in the Kent Town Code it is excavation also, 63, 66, and 67. He said the Planning Board is ignoring the other articles. He said as long as it meets the setbacks it doesn't matter what it looks like. He doesn't understand why they are allowing this. He is worried about the water that comes onto his property from NYCDEP, he said all the properties are sloped. He said he is an investor who is not going to live there. He said his property is over his fence line, he is 15' higher, equal with his house. He argues they should not be bringing any more in, the moratorium limits. How high can he make his property? Councilman Ruthven asked has he been before the planning board. He replied it has taken a year to have the soil tested; it came back over in Mercury and PBE but below the criteria for NYS. They said because it is a residential subdivision it does not need a variance. He explained the code does not say anything about approved subdivisions, if that's the case nothing would be non-conforming; everyone has a house on their property. They have not come out for a visit, their looking at a schematic. He said some consultants have been there, they give the facts to the board. Councilman Ruthven replied everything gets conforming before it goes to the board for approval, they will not let it go through the board unless it has met what needs to be done. Mr. Lento said there is no limit after a 100 yards you need a soil and erosion plan. Councilman Ruthven said there is a minimum amount but not a maximum. Mr. Lento agreed, he believes in Chapter 77 you are not suppose to be messing with non-conforming lots and it should be zero. He thinks there should be modifications. Councilman Huestis asked if he is appealing the decision. Mr. Lento said a letter was sent to the Clerk. Town Clerk replied it was received and circulated to the board, counsel and planning board. Town Counsel said she responded to the email, the provision of the code that you referred to does not apply to appeals from decisions of the Planning Board that was for appealing determinations by a Code Enforcement Officer. She explained the only way to appeal a determination of the Planning Board is by Article 78, the Town Board does not have any purview or control over what the Planning Board does. Mr. Lento said the Planning Board should not be involved in a non-conforming lot, it is 35,000 sq. ft in an R-40 Zone, should not be an Article 66 issue, actually they violated Chapter 63, excavated within 100' of a property line. He said the Building Inspector issued a steep slope violation, it was a mountain. Town Counsel explained the Town Board cannot do anything about it. Mr. Lento asked is it a Planning Board issue that it does not need a variance. Town Counsel said that would be an appeal to the Supreme Court. He suggested the Town Board recommend to the Planning Board that they will not bring any more soil there. Mr. Lento said there was no Zoning Board when the dirt was dropped. Town Counsel repeated the Town Board cannot do anything about the determinations made by the Planning Board. He asked how the board changed the determination for the truck stop. Town Counsel replied no. Supervisor Fleming said there would be no benefit to not accept the bond. Town Counsel said it is the approved; it is the amount of the erosion control bond before you.

On a motion by Councilwoman McGlasson

Seconded by Councilman Ruthven

WHEREAS, the Planning Board, by Resolution #3 of the Year 2020, dated July 9, 2020, has recommended that the Town Board accept: (i) an Erosion Control Bond in the amount of \$5,300; (ii) a Landscaping Maintenance Bond in the amount of \$3,300; and (iii) an escrow for the Final Inspection Fee in the amount of \$1,000 from the owner of the property located at 49 Tiger Trail, identified as Tax Map No. 21.8-1-39; and

WHEREAS, the Planning Board, by Resolution # 6 of the Year 2020, dated July 13, 2020, has recommended that the Town Board accept: (i) an Erosion Control Bond in the amount of \$12,798; (ii) a Landscaping Maintenance Bond in the amount of \$2,700; and (iii) an escrow for the Final Inspection Fee in the amount of \$1,000 from the owner of the property located at Kentview Drive, identified as Tax Map No. 10.20-1-71; and

WHEREAS, the Town Board of the Town of Kent wishes to follow the recommendations of the Planning Board;

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Kent hereby accepts the recommendation of the Planning Board and approves the posting of the above referenced bonds and escrow for inspection fees.

Motion carried unanimously

RESOLUTION #266 - AUTHORIZING TOWN CLERK TO ADVERTISE FOR ALTERNATE APPLICANTS FOR

TOWN OF KENT LOCAL LAW NO. ____ of 2020
A LOCAL LAW EXTENDING A TEMPORARY LAND USE MORATORIUM
PROHIBITING MINING WITHIN THE TOWN OF KENT

BE IT ENACTED by the Town Board of the Town of Kent, Putnam County, New York, as follows:

Section 1. Legislative Intent.

This local law is intended to extend the temporary prohibition on the issuance of permits for the excavation of sand, gravel, topsoil, rock or other natural material within the Town of Kent, for an additional period of up to six (6) months, pending the further development and adoption of local laws and/or ordinances prepared to regulate and govern such excavation.

By resolution dated March 3, 2020 the Town Board adopted Local Law #1 of 2020 temporarily prohibiting the issuance of permits for the excavation of sand, gravel, topsoil and rock or other natural material within the Town of Kent for a period of six (6) months from the effective date of said Local Law #1 of 2020.

On March 7, 2020, Governor Andrew Cuomo issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York due to the COVID-19 pandemic. The COVID-19 Pandemic is an outbreak declared a "public health emergency" for the entire United States by the United State Health and Human Services Secretary on or about January 31, 2020. Further, by Executive Order effective as of March 22, 2020, Governor Cuomo instituted "NY PAUSE" which closed all non-essential businesses and prohibited non-essential gatherings of individuals of any size for any reason, with such operations being reopened in phases. Although Town government was deemed an essential business, the pandemic itself and NY PAUSE presented numerous other, more pressing, challenges for the Town Board.

Due to the mandatory restrictions instituted by NY PAUSE and for the health and safety of residents, guests, and employees of the Town, it is deemed necessary to enact this ~~six (6) month extension of the moratorium~~ in order to permit the Town Board adequate time in which to draft suitable legislation to allow for proper and authorized regulation of mining within the Town of Kent. During the term of the extended moratorium, the Town of Kent shall work to prepare and eventually adopt additional land use provisions and regulatory processes to provide for the benefit, health and general welfare of the residents of the Town of Kent.

The objective of this moratorium is to allow the Town of Kent to assess and address its Code to promote community planning values by properly regulating such excavation. During the pendency of the moratorium, the Town Board will consider how best to permit excavation in certain areas so as to harmoniously integrate such with the existing community and landscape. Moratoria are useful in controlling or temporarily inhibiting development until satisfactory final regulations are adopted.

For these reasons, the Town Board finds that an extension of the temporary moratorium legislation is both advisable and necessary for a reasonable and defined period of time in order to further develop and adopt necessary zoning and land use changes to the Kent Town Code, thus protecting and furthering the public interest, health and safety.

Section 2. Scope of Moratorium.

There is hereby adopted in the Town of Kent a moratorium on the consideration, receipt or grant of temporary permits, pursuant to Chapter 63 of the Town of Kent Town Code entitled "Soil Removal", for the excavation of sand, gravel, topsoil, rock or other natural materials for an additional six (6) month period commencing on the effective date hereof.

During the term of the moratorium, the Town Board intends to develop, consider and adopt changes to its land use local laws so as to regulate Soil Removal and ensure that any mining conducted within the Town is consistent with the terms and goals of the Town's Comprehensive Plan.

While the moratorium is in effect, no applications pursuant to Chapter 63 shall be accepted and no temporary permits issued or approvals given by the Town Board except as authorized pursuant to Section 3, below.

Section 3. Exemptions, Variances and Appeals.

This moratorium does not apply to residential activities requiring permits on residential properties.

Applications for land use otherwise subject to this moratorium may be exempted from the provisions of this Local Law following a noticed public hearing before the Town Board. It is specifically intended that this moratorium shall supersede New York State law which would otherwise confer variance applications exclusively to the zoning board of appeals.

Following a written request for hardship variance relief, within sixty (60) days of receipt of such request, a noticed public hearing shall be held, at which hearing the Town Board may, but is not limited to consider:

A. The proximity of applicant's premises or the subject of applicant's request for relief to natural resources, including but not limited to prime agricultural soils, wetland areas, conservation districts and other areas of environmental concern.

B. The impact of the proposed application on the applicant's premises and upon the surrounding area.

C. Compatibility of the proposed application with the existing land use and character of

the area in general proximity to the subject of the application, and its effect upon aesthetic resources of the community.

D. Compatibility of the proposed application with the recommendations of any administrative body charged with such review by the Town of Kent.

E. The written opinion of the Town of Kent Planning Board and the Town of Kent Code Enforcement Officer that such application may be jeopardized or made impractical by waiting until the moratorium is expired.

F. Evidence specifying in detail the nature and level of any alleged hardship imposed on the property owner(s) as a result of this moratorium.

G. Such other considerations and issues as may be raised by the Town Board.

In making a determination concerning a proposed exemption or grant of relief from application of the moratorium, the Town Board may obtain and consider reports and information from any source it deems to be helpful with review of said application. A grant of relief from application of the moratorium shall include a determination of unreasonable hardship upon the property owner (or if there are multiple property owners, a determination that each such owner shall suffer an unreasonable hardship) which is unique to the property owner(s), a finding that there are sufficient existing regulations to adequately govern the application for which a hardship waiver is being requested, and a finding that the grant of an exemption will be in harmony with, and will be consistent with the existing Town of Kent Zoning Ordinance and the recommendations of the Comprehensive Plan as such may exist.

An application for relief from the prohibitions of the moratorium shall be accompanied by a fee as set forth by resolution of the Town Board, together with the applicant's written undertaking, in a form to be approved by the Attorney for the Town, to pay all of the expenses of the Town Board and any agent or consultant retained by the Town Board to evaluate and consider the merits of such application, including but not limited to any fees incurred by the Town for services provided by the Attorney for the Town.

Section 4. Penalties.

A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Dollars (\$1,000) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Dollars (\$2,000) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A, each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. Compliance with this Local Law may also be compelled and violations restrained by

order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.

C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all costs incurred by the Town relative thereto, including but not limited to attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

Section 5. Application.

The provisions of this local law shall apply to all real property within the Town of Kent, and all applications for the excavation of sand, gravel, topsoil, rock or other natural materials pursuant to Chapter 63 of the Town Code.

Section 6. Conflicts with State Statutes and Local Laws and Authority to Supersede.

To the extent that any provisions of this local law are in conflict with or are construed as inconsistent with the provisions of the New York State Town Law or any local ordinance, law, or regulation, this local law supersedes, amends, and takes precedence over the Town Law and such local ordinances, laws or regulations, pursuant to the Town's municipal home rule powers pursuant to Municipal Home Rule Law § 10 and § 22 to supersede any inconsistent authority. Pursuant to the same powers, and without limiting the generality of the foregoing, this local law supersedes the provisions contained in (a) Article 8 of the Environmental Conservation Law (known as the State Environmental Quality Review Act) and the regulations thereunder to the extent that such provisions require that an agency determine the environmental significance of an application within certain specified timeframes; and (b) Town Law § 267 and § 267-a through c, pertaining to the variance authority of the board of zoning and appeals.

Section 7. Validity and Severability.

If any part or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstance, and the Town Board of the Town of Kent hereby declares that it would have passed this local law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 8. SEQRA Review.

The adoption of a moratorium constitutes a Type II action under 6 NYCRR Part 617, and

therefore requires no further review under the State Environmental Quality Review Act (SEQRA).

Section 8. Effective Date.

This local law shall take effect immediately upon filing in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and shall remain in force for a consecutive period of six (6) months from its effective date, unless extended by local law adopted after public hearing upon no less than five (5) days public notice.

Dated: _____, 2020

BY THE ORDER OF THE TOWN BOARD OF

THE TOWN OF KENT

THE PLANNING BOARD

On a motion by Councilman Ruthven
Seconded by Councilwoman McGlasson

WHEREAS, by email dated July 16, 2020, Vera Patterson, Planning Board Secretary, informed the Town Board of the Planning Board's request for the Town to advertise for alternate members of the Planning Board for those times when Planning Board members are unavailable; and

WHEREAS, the Town Board of the Town of Kent wishes to advertise for alternate applicants for the Planning Board; and

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Kent hereby authorizes its Town Clerk, Yolanda D. Cappelli, to advertise for alternate applicants to the Town of Kent Planning Board.

Motion carried unanimously

RESOLUTION #267 - AUTHORIZING RENEWAL TUB GRINDER RENTAL FOR LANDFILL

Supervisor Fleming said we have been doing this for a couple of years and have made progress, hopefully we will not have this expense every year. Councilman Ruthven wanted to address some accusations that other people not homeowners are dumping there, he said we need to worry about securing the dump site better, making sure we know who is going in and out at all times. He has spoken to the Highway Superintendent on the matter. We need to be sure it is locked and the lock changed on a regular basis.

On a motion by Councilman Ruthven
Seconded by Councilwoman McGlasson

WHEREAS, by Resolution dated June 18, 2019, the Town Board awarded the bid for rental of a Tub Grinder in the amount of \$4,000 a day; and

WHEREAS, according to the Highway Superintendent, the continued rental of the Tub Grinder is necessary to comply with the agreement with the Department of Environmental Conservation regarding maintenance of the Town landfill, and the rental of the Tub Grinder qualifies as a sole source contract; and

WHEREAS, the Town wishes to authorize the Highway Department to continue to rent the Tub Grinder for a cost not to exceed \$11,000;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Kent hereby authorizes the Town Highway Department to rent the Tub Grinder and approves the expenditure for a sum not to exceed \$11,000.

Motion carried unanimously

RESOLUTION #268 - AUTHORIZING THE TOWN CLERK TO ADVERTISE REQUEST FOR PROPOSALS FOR STRUCTURAL ASSESSMENT OF TOWN BUILDINGS

Councilman Huestis explained we went out to bid a few months ago and received one expensive reply. Through cooperation with Putnam County we are going to ask for proposals either individual or for all three, the old Town Hall, Lake Carmel Community Center and the Historical Society Building. He said there is a tremendous need for storage for the historical artifacts. Councilman Ruthven asked why we are limiting it to three structures and not open ended for any town structure similar to what the County does. Town Counsel looked at their RFP that is exactly what they do up to certain money limit and then will go out to bid for individual projects. Councilman Ruthven said they may get 20 different firms submits to that with a menu list of what they do, they accept them all and when needed they can pick and choose.

On a motion by Councilwoman McGlasson
Seconded by Councilman Ruthven

WHEREAS, that the Town Board wishes to advertise that it is seeking Proposals for Structural Assessments to study certain Town owned facilities determined by the Town Board in need of improvements;

NOW THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Kent hereby authorizes its Town Clerk, Yolanda D. Cappelli, to advertise for Requests for Proposals for a Structural Assessment to study Town owned facilities and recommend improvements.

Motion carried unanimously

TOWN BOARD MEETING JULY 21, 2020

Resolution #269 - Authorizing the Acceptance of the East of Hudson Community Wastewater Planning Assistance Grant Program Award

Supervisor Fleming said we were advised that the Town of Kent was eligible for a grant for Palmer Lake improvements. The eligibility was determined by NEIWPCC. She said we received notification that up to \$375,000 was awarded to study Palmer Lake.

On a motion by Councilman Ruthven

Seconded by Councilwoman McGlasson

WHEREAS, the Town Board previously authorized a partnership with the Town of Carmel to submit an application for the East of Hudson Community Wastewater Planning Assistance Grant Program (the "Grant") to the New England Interstate Water Pollution Control Commission (NEIWPCC); and

WHEREAS, by email dated July 15, 2020, the Town Supervisor was informed that the Town of Kent has been approved for the full amount of the Grant of up to \$375,000 to study Palmer Lake; and

WHEREAS, in connection with the Grant, the Town is in receipt of a certain Program Participation Agreement between NEIWPCC and the Town of Kent, a copy of which is annexed hereto and hereby incorporated herein; and

WHEREAS, the Town of Kent will accept the award from NEIWPCC for the 2020 – 2021 East of Hudson Community Wastewater Planning Assistance Grant Program to use funding to finance an engineering study that will evaluate wastewater solutions for Palmer Lake and authorize the Supervisor to sign the Participation Agreement; and

WHEREAS, the Town of Kent will partner with the Town of Carmel for the proposed project, but be designated as the lead municipality and will produce the required engineering report for Palmer Lake; and

NOW, THEREFORE, BE IT RESOLVED that the Town Board for the Town of Kent does hereby approve and endorse the award for \$375,000 from NEIWPCC to finance an engineering study that will evaluate wastewater solutions for Palmer Lake, and authorizes the Town of Kent Supervisor to oversee all awarded funds, and to enter into and execute a grant agreement with NEIWPCC.

BE IT FURTHER RESOLVED that the Town Board of the Town of Kent hereby authorizes the Town Supervisor to take such action and execute such documentation required in connection with the acceptance of the Grant, including, without limitation, the Program Participation Agreement.
Motion carried unanimously

ACCEPTANCE OF PROPOSAL OF FAUGHNAN APPRAISAL, LLC. FOR PROFESSIONAL APPRAISAL SERVICES
Tabled**RESOLUTION #270 - ADD TO THE AGENDA**

On a motion by Councilman Ruthven

Seconded by Supervisor Fleming

Resolved: Appoint member to the Zoning Board of Appeals was added to the agenda.

Motion carried unanimously

RESOLUTION #271 - APPOINTING MEMBER TO ZONING BOARD OF APPEALS

On a motion by Councilwoman McGlasson

Seconded by Supervisor Fleming

WHEREAS, the Town of Kent Zoning Board of Appeals (the "ZBA") currently has a vacancy, and Travis Hunt has submitted an application to fill said vacancy; and;

WHEREAS, the Town of Kent wishes to appoint Travis Hunt to fill the vacant position on the ZBA;

NOW, THEREFORE, BE IT RESOLVED, that Travis Hunt is hereby appointed to fill the vacant position on the ZBA for a term terminating on December 31, 2021.
Motion carried unanimously

07.13.20

CRO-597

East of Hudson Comm Wastewater Planning

NEIWPCC Job Code: 0100-329

Project Code: 2020-013

PROGRAM PARTICIPATION AGREEMENT
between
NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION
(NEIWPCC)
and
TOWN OF KENT

This Agreement is made and entered into by and between the New England Interstate Water Pollution Control Commission ("NEIWPCC"), represented by NEIWPCC's Executive Director as the Contracting Officer, and having its usual place of business at Wannalancit Mills, 650 Suffolk Street, Suite 410, Lowell, MA 01854 (Tel: 978-323-7929; Fax: 978-323-7919), and the Town of Kent, (the "Program Participant"), Putnam, New York, and political subdivision of the State of New York, having its principal office at 25 Sybil's Crossing, Kent Lakes, NY 10512; (Tel: 845-225-3943; Email: mflaming@townofkentny.com); Contact: Maureen Fleming (NEIWPCC and the Program Participant collectively, the "Parties").

WHEREAS, NEIWPCC provides various services relating to water management, protection, and compliance issues to the State of New York, and

WHEREAS, the City of New York ("City"), acting by and through the Commissioner of the Department of Environmental Protection ("DEP") is charged with the duty of protecting the high quality of waters from which the City's water supply is drawn and preserving it from degradation for the purpose of protecting the health and general welfare of the consumers of this supply; and

WHEREAS, pursuant to Section 4.9 of the 2017 Filtration Avoidance Determination ("2017 FAD"), issued by the New York State Department of Health, the City entered into an agreement with NEIWPCC, dated November 1, 2019 ("NEIWPCC-City Contract"), whereby the City agreed to fund, and NEIWPCC agreed to develop and administer a program that provides grants to identified municipalities of certain "Eligible Study Areas" (as defined in the NEIWPCC-City Contract) in the East of Hudson portion of the New York City water supply watershed, to be used to fund engineering reports that evaluate viable wastewater solutions in their areas (the "Program"); and

WHEREAS, the Program Participant is an "Eligible Municipality";

WHEREAS, the Program Participant has submitted an application for funding of an engineering study ("Project") of an area located wholly in Croton Reservoir System, Palmer Lake, Town of Kent, New York ("Project Area"), and NEIWPCC has approved such application in accordance with the terms of the NEIWPCC-City Contract.

NOW THEREFORE, in consideration of the promises and respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I. DESCRIPTION OF THE WORK

- A. The Program Participant is responsible for performing all the "Work" (as defined below) in accordance with the terms and conditions set forth herein. The "Work" consists of procuring all of the engineering, surveying, scientific and other professional services and tasks that are necessary for the completion of an engineering study of the Project Area in form attached hereto as Appendix A ("Engineering Report"). The purpose of the Engineering Report is for use by the Program Participant in subsequently seeking from a funding source other than the City, such as a State or federal funding source, the necessary financing of the design and construction of the recommended wastewater treatment solution identified in the Engineering Report. In no event shall the Work include the design or construction of a wastewater treatment solution for the Project Area.
- B. The following tasks ("Tasks") and deliverables ("Deliverables") shall be completed or caused to be completed by the Program Participant as part of the Work on or before the milestone deadlines set forth below. Failure to meet the milestones will give NEIWPCC the option to declare an event of default under this Agreement.

Tasks:

- (i) By September 30, 2020, distribute approved request for qualifications/request for proposals ("RFP") for proposal of engineering services in accordance with the form attached hereto as Appendix B.
- (ii) By December 1, 2020, if required, submit selected engineer for DEP approval of business integrity in accordance with the procedures sets forth below.
- (iii) By December 30, 2020, upon applicable approval of business integrity, enter into contract with approved engineer.
- (iv) By January 15, 2021, submit QAPP per the requirements outlined in Appendix C, or as otherwise approved by NEIWPCC's Oversight Project Manager. The draft QAPP will have been reviewed as to the appropriate form by NEIWPCC's Oversight Project Manager prior to submission. NEIWPCC's Quality Assurance Program Manager or his designee shall review and provide required changes or approval to the draft QAPP by February 5, 2021.
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- (v) Submission of Quarterly Reports by the 10th of January, April, July, and October for the preceding quarter throughout the term of this Agreement.
- (vi) Submit draft Engineering Report by August 15, 2021.
- (vii) Submit final Engineering Report by December 1, 2021.

Deliverables:

- (i) QAPP: The Program Participant shall prepare and submit a "Quality Assurance Project Plan" ("QAPP"), per the requirements outlined in Appendix C, or otherwise in form approved by NEIWPCC's Oversight Project Officer (defined below). The QAPP must support the quality of the data for environmental data operations in accordance with NEIWPCC's standards. The term "environmental data operations" refers to activities involving the collection, generation, compilations, analysis, evaluation, and use of environmental data. Approval of the QAPP by NEIWPCC is required prior to any environmental data operations.
 - (ii) Quarterly Reports: Brief (1-2 page) quarterly written or electronic reports which shall describe work progress to date; completed outputs; problems encountered and anticipated, including but not limited to the means of responding to those problems; a statement of activity anticipated during the next reporting period; and a comparison of the percentage of the Work completed to the milestone schedule. Electronic submission is encouraged.
 - (iii) Draft Engineering Report: The Draft Engineering Report shall be submitted to NEIWPCC no later than August 15, 2021. It shall specify, at a minimum, all applicable information outlined in the template, attached as Appendix A. The draft Engineering Report shall meet and comply with all standards for grants that fund construction of wastewater treatment infrastructure in the Project Area heretofore or hereafter promulgated by the NYS DEC or such other State or federal agency or agencies, as shall have jurisdiction over the Project Area. The Program Participant assumes full responsibility for having familiarized himself or herself with such standards, and with the requirements of this Program Participation Agreement, local conditions, and all other applicable rules and regulations, including SEQRA and local permitting and approval requirements necessary for completion of the Work in accordance with the terms of this Agreement. NEIWPCC will review the draft Engineering Report in consultation with DEP, and will submit to the Program Participant any comments that must be incorporated into the final Engineering Report in a timely manner.
 - (iv) The Final Engineering Report shall be submitted to NEIWPCC no later than December 1, 2021. The final Engineering Report must resolve all comments and concerns that were transmitted to the Program Participant by NEIWPCC subsequent to submittal of the draft Engineering Report. The final Engineering Report must be delivered to NEIWPCC in Adobe PDF format and in bound hard copy format. A minimum of six (6) bound hard copies must be provided. Any data files assembled as part of the Work must be delivered in a standard digital database format. Acceptable formats include formats readable by Microsoft Excel and/or Microsoft Access and/or ESRI ArcView.
- C. Any GIS data produced under this contract shall be in accordance with the following specifications unless approved in writing by NEIWPCC: The data format of any vector data will be in ArcGIS version 10 or higher File Geodatabase Polygon, Point, or Line "Feature Class". Any raster/grid data will be in ArcGIS version 10 or higher File Geodatabase "Raster Dataset" Page 4

of 7 format. All GIS data must use the UTM Zone 18 North NAD83 meters projection. Detailed metadata accompanying each "Feature Class" or "Raster Dataset" must be developed describing the dataset's purpose, source information, methodology of development, identity of developer, accuracy, scale or spatial resolution, list of attributes and their meaning, any caveats to the data or limitations in its use/interpretation, and date of creation.

- D. The Program Participant shall submit all Invoices and Deliverables to NEIWPCC's Oversight Project Officer ("Oversight Project Officer") for review and approval. Electronic submission is encouraged, in accordance with the terms and procedures set forth herein, at the following:

Drew Youngs
NEIWPCC
650 Suffolk Street, Suite 410
Lowell, MA 01854
978-349-2512
978-323-7919
dyoungs@neiwppcc.org

- E. NEIWPCC's or DEP's review and/or approval of Work shall not in any way relieve the Program Participant of responsibility for the technical adequacy of his/her Work. Neither NEIWPCC's nor DEP's review, approval, acceptance, or payment for any of the Work shall be construed as a waiver of any rights under this Agreement.

ARTICLE II. DURATION OF THIS AGREEMENT

- A. The Program Participant will start the Work on the date on which this Agreement is executed and delivered and insurance has been submitted in accordance with the terms hereof. No Work shall be eligible for reimbursement with Program Funds (as defined below) prior to the date on which the Work is to start.
- B. The period of this Agreement shall commence to run on the date when the Work is to start as provided in Paragraph A of this Article.
- C. The term of this Agreement shall expire the earlier of the date all Work and services to be completed hereunder have been performed; or July 1, 2022, unless sooner terminated by NEIWPCC in accordance with the terms hereof.

ARTICLE III. ELIGIBLE COSTS AND PAYMENT PROCEDURES

- A. NEIWPCC agrees to reimburse the Program Participant with Program funds ("Program Funds") for the actual, reasonable and necessary costs incurred by the Program Participant in performing the Work, up to an aggregate total amount not to exceed **Three Hundred Seventy-Five Thousand Dollars (\$375,000)** (the "Contract Price"). Payment is contingent upon NEIWPCC's receipt of Program Funds from the City, and the Program Participant's compliance with the terms, conditions and provisions of this Agreement.

- B. Requests for Payments for the Work performed may be submitted no more than monthly and shall require approved original invoices in form provided in this paragraph and documenting the specific task performed, back up materials, and other documents requested by NEIWPCC, including invoices from subcontractors and a cover letter from the Program Participant verifying that all costs are reasonable and fair and were authorized in good faith and in accordance with all applicable laws, pending receipt of one W-9 Form and all insurance certificates required hereunder. Invoices must include (1) the name and address of the Program Participant, (ii) the invoice date, (iii) the contract identification number, if any, (iv) the time period of work invoiced, (v) a description of the Work performed, (vi) the address where payment is to be sent, (vii) the person to be notified in the event of a disputed invoice, and shall (1) provide itemized documentation of costs related to work performed, (2) be accompanied by a brief narrative of work completed, and (3) be supported by such supplemental information as NEIWPCC may reasonably require.
- C. Any costs for the Work incurred by the Program Participant in excess of the Contract Price shall be the responsibility of the Program Participant.
- D. NEIWPCC will pay invoices by check in the proper amount made payable to the Program Participant, within thirty (30) days of receipt of a request for payment by the Oversight Project Officer as required hereunder.
- E. The Program Participant shall ensure that all funds advanced or released to it shall be used exclusively for eligible costs incurred in connection with Work as set forth herein.
- F. All receipts and disbursements of funds pursuant to this Agreement are subject to audit by the City or the State, and the Program Participant agrees to cooperate with any such audit of this Agreement. NEIWPCC or the City may dispute the whole or any part of any payment that is determined by pre or post-audit to be ineligible costs in accordance with the provisions set forth in subsection J below.
- G. Upon satisfactory completion of the Work performed in accordance with the terms and provisions of this Agreement, including the approved QAPP, and NEIWPCC's approval of the final Engineering Report, the Program Participant shall label the final payment request as "final invoice," and, acceptance of such payment, shall operate as a release from all claims of and liability against NEIWPCC, the City and the Water Board of the City of New York, and their ~~officials and employees for anything heretofore done or furnished by the Program Participant~~ relating to or arising out of any work done pursuant to this Agreement, and for any prior act, neglect or default on the part of NEIWPCC and the City or any of its officials, agents or employees, excepting only a claim against NEIWPCC or the City, its officials and employees, for the amounts deducted or retained in accordance with the terms and provisions of this Agreement or law. Final payment under this Agreement shall not constitute a waiver of NEIWPCC's or the City's claims against the Program Participant under this Agreement.
- H. Any billings incurred for Work must be received by the Oversight Project Officer in NEIWPCC's office in Lowell, MA, as per Article II, no later than February 1, 2022. Any billing invoices received after February 1, 2022 will not be processed and payment due will be lost. NEIWPCC may extend these deadlines at the request of the Town upon written agreement by the Parties.

- I. NEIWPCC's payment of the final invoice is contingent on NEIWPCC's receipt of the final Engineering Report in accordance with the terms and conditions of this Agreement.
- J. Rejecting Ineligible Costs. NEIWPCC may disapprove or reject an invoice for proposed Work that does not conform to the requirements of this Agreement. Prompt notice of all disputes shall be given to the Program Participant. Any disputes that may arise regarding payments under this Agreement shall be governed by and construed in accordance with the laws of the State of New York. There is no alternate dispute resolution of payment or other disputes provided for by this Agreement. Thus, unless otherwise specifically agreed to in writing by the parties hereto, any dispute that cannot be resolved amicably between the parties must be resolved by litigation filed in the Supreme Court of the State of New York, with venue in appropriate jurisdiction, in the federal District Court, with venue in the Northern District of New York.

ARTICLE IV. SUBCONTRACTING AND SELECTION OF ENGINEER

- A. The Program Participant shall, in soliciting or procuring subcontracts for any of the Work ("Project Subcontract"), comply with all public procurement requirements that are applicable to the Program Participant by State or local law, or that would be applicable to the Program Participant under State or local law or any regulations thereunder if the Program Participant were funding such Work itself. The Program Participant shall use the "RFP" in form attached hereto as Appendix B, or in form otherwise approved by NEIWPCC and DEP, as the sole basis for its solicitation of an engineer proposal from at least 3, unless otherwise waived in writing by NEIWPCC for good cause shown, qualified professional engineers licensed to practice in the State of New York preliminarily selected by the Program Participant in connection with the Work.
- B. Business Integrity for Certain Subcontracts. The Program Participant agrees and covenants to hire only responsible consultants and contractors ("Project Consultant") with respect to any Work to be performed under this Agreement. A responsible person or firm is one who or which, in DEP's opinion, has the capability in all respects to fully perform the contract requirements, including appropriate licenses where applicable, sufficient financial capabilities, equipment and personnel, and the business integrity to justify the award of public tax dollars. A Project Consultant shall be deemed to lack the requisite business integrity if any of the following criteria set forth in Subsection B(i)-(vii) are met within or during the period commencing ten (10) years prior to and continuing through the date of DEP's determination made in accordance with the procedures in Section C below.

 - (i) Criminal conduct in connection with government contracts or the conduct of business activities involving: a) the infliction, attempted infliction, or threat of death, intentional personal injury, or intentional property damage, in connection with involvement in a pattern of racketeering, labor racketeering, extortion, obstruction of justice, or other comparable crimes; b) bribery, fraud, bid rigging, embezzlement, theft, perjury, forgery, or other comparable crimes; c) serious moral turpitude, fundamental lack of integrity, or a pattern or practice of a knowing disregard for the law so as to call into question the integrity of the proposed Project Consultant; or (d) conspiracy to do any of the above acts. Evidence of such conduct shall consist of (A) (1) a judgment of conviction, (2) a pending criminal indictment, or (3) a formal grant of immunity in connection with a criminal prosecution, in each case of a proposed Project Consultant, any director or officer, any principal, and any

employee primarily responsible for contracting procedures, or any holder of five (5) percent or more of the shares or equity of the proposed Project Consultant, or any affiliate or subsidiary of the proposed Project Consultant; or (B) any ongoing criminal investigation by a law enforcement agency in which the proposed Project Consultant, any director or officer, any principal, employee primarily responsible for contracting procedures, or any holder of five (5) percent or more of the shares or equity of the proposed Project Consultant, or any affiliate of the proposed Project Consultant is a target.

- (ii) An actual determination by a person or entity which has jurisdiction of a willful noncompliance with the prevailing wage requirements of Section 220 of the Labor Law by the proposed Project Consultant or any affiliate thereof.
 - (iii) An actual determination by a person or entity which has jurisdiction of a significant willful violation of the Workers' Compensation Law including, but not limited to, the failure to maintain required workers' compensation or disability coverage.
 - (iv) An actual determination by a person or entity which has jurisdiction of a submission by the proposed Project Consultant to a government agency of a false or misleading statement on a uniform questionnaire or other form in connection with a bid or proposal for, or award of, a contract or request for approval of a subcontractor.
 - (v) A conviction or judgment of civil liability against the proposed Project Consultant for fraud in connection with a bid or proposal for, or award of, a contract or request for approval of a subcontract.
 - (vi) Debarment or current suspension of the proposed Project Consultant (i) for reasons of business integrity, or (ii) from consideration for the award of contracts with a government, governmental entity or public authority pursuant to any procedure enacted by statute or adopted by regulation providing for notice and hearing.
 - (vii) Arrears for more than one year on income, sales or payroll taxes.
- C. Before any Project Subcontract is awarded to a Project Consultant for work, materials, equipment or services paid for in whole or in part with Program Funds, Program Participant shall require the proposed Project Consultant to complete and email the form attached as Appendix D to:

Vincent Giorgio, Project Manager
New York City Department of Environmental Protection
vgiorgio@dep.nyc.gov

Within ten (10) business days of receiving a written request for a determination, the City may provide NEIWPCC and the Program Participant with a report indicating whether any of the criteria of Subsection (B)(i)-(vii) above are met, including an explanation of the non-confidential evidence that such criteria are met. If the report states in fact that such criteria are met, the Project Consultant will be deemed to be not responsible.

Even if the Project Consultant does not meet the criteria set forth in Subsection (B)(i)-(vii), the City may provide NEIWPCC and the Program Participant with information within the ten (10) business day period following the submission of Appendix D which may be relevant to the question of whether a proposed Project Consultant has a satisfactory record of business integrity. Before awarding the Project Subcontract, Program Participant shall receive and consider such information provided by the City. If no report and no information, each as referred to in Subsection (B) above is received from the City within the ten (10) business day period following the submission of Appendix D, the DEP determination shall be deemed to be that the proposed consultant or contractor is a responsible Project Consultant for purposes of this Section.

- D. Required Subcontractor Provisions. A subcontract to perform work to be paid with Program Funds provided by NEIWPCC pursuant to this Agreement shall include the following provisions:
- (i) A requirement that the Project Consultant perform all work in accordance with the terms of this Agreement.
 - (ii) A requirement that prior to commencement of work on the Project, the Project Consultant maintain liability insurance in full force and effect during the entire period of performance of the Project in sufficient amount and scope to protect the interests of NEIWPCC and the City as provided in Appendix E.
 - (iii) The Project Consultant shall name NEIWPCC and the City of New York, their officials and employees, as additional insured with respect to the General Liability policy.
 - (iv) The Project Consultant shall require all subconsultants to performing any work on the Project to procure and maintain insurance in the types and amounts set forth in Appendix E during the entire period of the performance of the Project.
 - (v) The Program Participant shall require the Project Consultant and all contractors and subcontractors to submit to NEIWPCC all Certificates of Insurance for the coverage required in this Agreement upon request.
 - (vi) A statement and requirement that nothing contained in the Project Contract shall create any contractual relationship between the subcontractor, and NEIWPCC or the City.
 - (vii) A statement and a requirement that the Project Consultant agrees to indemnify NEIWPCC, ~~the Water Board of the City of New York, and the City and their officials and employees,~~ and assume liability for injuries where such injury, sickness or disease including death, or damage is the result of the Program Participant Subcontractor's or its subcontractors' negligence or willful tort arising from any activities related to this Agreement.
 - (viii) A statement that nothing contained in the Project Subcontract shall impair the rights of the City.
 - (ix) A requirement that NEIWPCC and the City be granted a license to use all written or electronic materials developed by Project Consultant or its subcontractors in connection with the Project, for any purpose.

- (x) A requirement that all requests for payments for eligible costs be made by itemized voucher. Such vouchers shall include documentation demonstrating that the services for which payment is sought have actually been performed, and that the vouchers cover an eligible cost as defined in this Agreement. Where appropriate, the documentation supporting the voucher may include items such as purchase orders, canceled checks, certified payroll records and machinery use records.
- (xi) All press releases, QAPPs, and draft/final engineering reports developed by the Project Consultant under this agreement must include the NEIWPCC logo and contain the following statement "This project has been funded wholly or in part by the City of New York under a contract administered by NEIWPCC."

ARTICLE V. INDEMNIFICATION

The Program Participant shall indemnify and hold harmless NEIWPCC, the City of New York, and the Water Board of the City of New York, and each of its members, officials, and employees, from and against all claims, damages, demands, payments, suits, actions, recoveries, judgments, losses, and expenses, including reasonable attorneys' fees, arising out of this Agreement, provided that any such claim, damage, loss, or expense is the result of the intentional tortious act or negligence of the Program Participant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Program Participant or any subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. The obligations set forth herein shall survive the expiration or termination of this Agreement.

ARTICLE VI. INSURANCE

The Program Participant shall comply with the liability insurance requirements in sufficient amount and scope to protect the interests of the City and NEIWPCC, its officials and employees, as set forth in Appendix E attached hereto for the entire time this Agreement remains effective.

ARTICLE VII. ACCESS TO INFORMATION AND PRESS RELEASES

- A. ~~The Program Participant grants to NEIWPCC and the City a royalty-free, non-exclusive,~~ perpetual and irrevocable license to use any data, information, and/or products generated or gathered or prepared pursuant to this Agreement for any purpose deemed appropriate and to reproduce, publish, distribute, copy or otherwise use, and to authorize others to use, any data, information, and/or products gathered or prepared pursuant to this Agreement for any purpose it deems appropriate.
- B. The Program Participant agrees to notify the NEIWPCC five (5) days in advance of any press events, public kick-off meetings, ribbon cuttings, tours, or debut events associated with this Project. Notification should be provided to the Oversight Project Officer by email. NEIWPCC and the City shall review and approve in writing, any written press releases in advance.

ARTICLE VIII. REMEDIES FOR DEFAULT AND TERMINATION OF AGREEMENT

- A. NEIWPCC may terminate this Agreement by giving written notice to the Program Participant specifying the effective date, such date to be at least fourteen (14) calendar days from the date of notice, if the Program Participant has failed to meet, or in NEIWPCC's opinion, the Program Participant is likely to fail to meet one of the milestones or budget set forth in this Agreement; or NEIWPCC determines that there has been a material default under any provision hereof and the Program Participant has not cured such default within ten (10) business days after receipt of the notice from NEIWPCC specifying the failure.
- B. Upon receipt of a termination notice, the Program Participant shall (1) promptly discontinue all Work (unless the notice directs otherwise) and (2) deliver or otherwise make available to NEIWPCC all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Program Participant in performing this Agreement, whether completed or in process.
- C. In the event of termination due to the Program Participant's default, payment of Program Funds shall be adjusted because of the Program Participant's default.
- D. Force Majeure. The performance of this Agreement is subject to acts of god, war, government regulations, disaster (including, but not limited to, fire, flood, severe weather, or earthquake), strikes, civil disorder, acts of terrorism, epidemic, curtailment of transportation facilities or any other emergency beyond the Program Participant or NEIWPCC's reasonable control making it commercially impracticable, illegal or impossible for the Party to perform their obligations under this Agreement in which case this Agreement may be terminated by the affected Party for any one of the above reasons, without liability, upon written notification to the other Party and the City.
- E. The rights and remedies afforded to either Party pursuant to any part or provision of this Agreement are in addition to any other rights and remedies afforded by law or otherwise.

ARTICLE IX. NOTICE

Unless otherwise expressly provided in this Agreement, any notice from one Party to the other ~~required or permitted to be given hereunder~~ shall be in writing and delivered by hand to the following addresses:

If to NEIWPCC:
Wannalancit Mills
650 Suffolk Street, Suite 410
Lowell, MA 01854
Tel: 978-323-7929
Fax: 978-323-7919
Attention: NEIWPCC's Executive Director

If to Program Participant:
Town of Kent
25 Sybil's Crossing
Kent Lakes, NY 10512
Tel: 845-225-3943
Email: mfleming@townofkentny.com

ARTICLE X. WARRANTIES

- A. Status and Authority of the Program Participant. The Program Participant warrants and represents that it has all requisite power and authority to execute, deliver and perform this Agreement.
- (i) This Agreement shall be accompanied by a resolution passed by the appropriate governing body authorizing the Program Participant Supervisor or other authorized representative to enter into contract. If a separate agency is entering into contract on behalf of a municipality, such contract application shall be accompanied by a resolution passed by the appropriate governing body authorizing the agency to act on behalf of the municipality.
 - (ii) This Agreement has been duly authorized by all necessary action on the part of the Program Participant and has been duly executed and delivered by the Program Participant and, assuming due execution and delivery by NEIWPCC, constitutes a legal, valid and enforceable obligation of the Program Participant.
 - (iii) The execution and delivery of this Agreement by the Program Participant and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any provision of applicable law, ordinance or regulation or, to the extent of the Program Participant's knowledge, or any material agreement, judgment, injunction, order, decree or other instrument binding upon the Program Participant. In the case of joint applications, this Agreement shall be accompanied by a resolution passed by the appropriate governing bodies of all participating Eligible Municipalities designating one of the involved Eligible Municipalities as a project lead and authorizing the Town Supervisor of lead Eligible Municipality or other authorized representative to enter into a contract on behalf of that Eligible Municipality.
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- B. Conflict of Interest. The Program Participant and NEIWPCC represent and warrant that neither the Program Participant, nor NEIWPCC, nor any of their officers or employees have any interest, nor shall they acquire any interest, directly or indirectly, in any contracts or subcontracts, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Program Participant and NEIWPCC further represent and warrant that in the performance of this Agreement, no person having such interest or possible interest in any contracts or subcontracts which would or may conflict in any manner or degree with the performance or rendering of the services herein provided shall be employed by them or receive any of the funds to be paid by NEIWPCC or the Town.

- C. No Employment. The Program Participant acknowledges and agrees that he/she and its consultants and subconsultants, is not an employee of NEIWPCC or the City of New York and is an independent contractor. Accordingly, none of the Program Participant or any of its consultants or employees or agents performing Work in connection with this Agreement will hold themselves out as, or claim to be, officers or employees of NEIWPCC or the City of New York or any department, agency or unit of the City, by reason of this Agreement, or make any claim, demand or application for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, disability benefits coverage, unemployment insurance benefits, Social Security coverage or employee retirement membership or credit.
- D. Equal Employment Opportunity. In connection with the performance of the Work, the Program Participant shall abide by all applicable Federal, State and local laws regarding equal employment.
- E. Access to and Retention of Records for Audit Purposes. The Program Participant shall prepare and maintain books and records and supporting documentation and justification in support of expenditures under the Agreement (including but not limited to cancelled checks, paid bills, payrolls, time and attendance records), in accordance with generally accepted accounting principles and practices consistently applied and shall allow access and make such documentation available to NEIWPCC and the City. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the State, including the State Comptroller, and the City, including the City Comptroller, pursuant to the powers and responsibilities as conferred by State and/or City law, including Section 93 of the Charter of the City of New York. The Program Participant agrees to cooperate with any audit undertaken in connection with this Agreement. Retention of all such items is required for the longer of five years after the date Program Participant submits the final Engineering Report to NEIWPCC; or seven years after generation of the record.

ARTICLE XI. MISCELLANEOUS

- A. Changes to this Agreement. No amendment or modification of this Agreement shall be binding upon either Party unless it is set forth in a written instrument signed by authorized representatives of the Parties.
- B. Waiver and Severability. The failure or delay of either party to insist on performance of any provision of this Agreement, or to exercise any right or remedy available under this Agreement, shall not be construed as a waiver of that provision, right, or remedy in any later instance. Further, if any provision of this Agreement becomes void or unenforceable by operation of law the remaining provisions be valid and enforceable.
- C. Choice of Law. This Agreement shall be governed by the laws of the State of New York.
- D. Integration and Merger. This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, understandings, and communications related to the subject matter of this Agreement.

- E. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The parties hereto agree that the use of scanned or facsimile signatures for the execution of this Agreement shall be legal and binding and shall have the same full force and effect as if originally signed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of date last written below.

NEW ENGLAND INTERSTATE WATER
POLLUTION CONTROL COMMISSION

TOWN OF KENT

Susan J. Sullivan
Executive Director

Date _____

Maureen Fleming
Town Supervisor

Date _____

APPENDIX

Appendices A-E are attached below

RESOLUTION #272 - VOUCHERS & CLAIMS

On a motion by Councilman Huestis

Seconded by Supervisor Fleming

Resolved: All Vouchers # - # and claims submitted by:

1. Chemung Supply Corp.	\$8,617.00	Guardrails
2. City Carting	\$10,372.15	Lake Carmel Garbage
	\$10,804.13	
3. Jim Liebler, Inc.	\$9,500.00	Beach 3 Dock/Retaining Wall
	\$2,050.00	Installed Office Glass
4. Magna5	\$6,651.65	Telephone Service
5. Mahopac Railroad Tie Corp.	\$10,864.58	Beach 3 Dock Material
6. Managed Technologies of NY, Inc.	\$2,462.67	Police Dept IT
7. NYCOMCO	\$2,846.00	Police 2 Way Radios
8. NYS Dept. of Civil Service	\$205,618.54	Health Insurance July
9. Purchase Power	\$2,000.00	Postage
10. Stroker Trucking	\$2,030.75	Baseball Clay

In the amount of \$ may be paid

Motion carried unanimously

ANNOUNCEMENTS

Supervisor Fleming said the NY Riders left a jar in the lobby of Town Hall which is unavailable to many, if you can donate to this good cause contact them to see how you can contribute.

There will be a Free Rabies Clinic at Veterans Memorial Park this Saturday July 25, proof of residency is required.

PUBLIC COMMENT – There was none.

RESOLUTION #273 - ADJOURNMENT

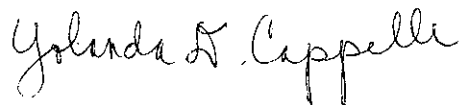
On a motion by Councilman Huestis

Seconded by Supervisor Fleming

Resolved: The Town Board meeting of July 21 adjourned at 8:10 p.m.

Motion carried unanimously

Respectfully submitted,



Yolanda D. Cappelli
Town Clerk

