

OPERATION AND MAINTENANCE AGREEMENT

SMALL FLOW TREATMENT FACILITY FOR TAX PARCEL ID NO. _____ SUMMIT TOWNSHIP, ERIE COUNTY, PENNSYLVANIA

THIS OPERATION AND MAINTENANCE AGREEMENT (the “Agreement”) is made this ____ day of _____, 20____ by and between **SUMMIT TOWNSHIP, ERIE COUNTY, PENNSYLVANIA** (the “Township”); and **PROPERTY OWNER(S)**, their heirs, successors and assigns, **ERIE COUNTY, PENNSYLVANIA** (collectively the “Owner”).

BACKGROUND

A. The Owner is the legal owner in fee simple of a certain tract of land located at Full Address, in Summit Township, Erie County, Pennsylvania, identified as Erie County Tax Parcel ID No. _____, (the “Property”).

B. The word “Owner” shall mean each successive owner of the Property and each Property owner shall be bound by the terms and provisions of this Agreement.

C. The word “Owner” as used in this Agreement shall be construed to mean “Owners” in all cases where there is more than one owner (and in such case the liability of such owners shall be joint and several), and the necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

D. The Owner proposes that the sewage disposal and treatment needs for Property be met by small flow treatment system (the “System”).

E. Applicable Pennsylvania, Erie County and Summit Township law, rules and regulations, including but not limited to technical guidance documents promulgated by any of the foregoing (collectively the “Codes”) authorize and require that municipalities, prior to the issuance of a permit for the System by the Erie County Department of Health (the “ECDH”), take action to ensure compliance with the operation and management requirements for the System prescribed by the Pennsylvania Department of Environmental Protection (the “DEP”), for the operation and maintenance for the life of the System.

F. **Owner has requested the Township to amend its Act 537 Plan to permit the use of a small flow treatment system to be installed and operated upon the Property to provide sewage treatment.**

G. The Township is willing to allow the installation of the System upon the Property provided that the Owner agrees to install, operate and maintain the System upon certain terms and conditions more particularly set forth in this Agreement.

H. This Agreement is entered into by and between the Owner and the Township for the purpose of assuring the long-term operation and maintenance of the System proposed by the Owner.

I. The Owner agrees to install, operate and maintain the System proposed for the Property upon the terms and conditions more particularly set forth in this Agreement.

J. This Agreement is to be binding upon the Owner, his/her heirs, administrators, executors, successors, and assigns, including the Owner's successor in title, it being the express understanding of the parties that any and all duties and obligations of the Owner with respect to the operation of the System set forth in this Agreement also "run with the land" and remain that obligation of the Owner's successors in title of the Property.

NOW THEREFORE, for and in consideration of the covenants and conditions contained herein, the Owner and the Township agree as follows:

A. ESCROW

1. Prior to recording the record Plans, the Owner shall deposit with the Township IN ESCROW in cash or certified funds only, the total amount of one thousand dollars (\$1,000.00), to be used to secure the performance of the obligations contained in the Codes and as set forth in this Agreement.

2. The escrow funds shall be deposited by the Township in an interest-bearing escrow account and the interest thereon shall be paid to the Township to offset the costs of administering this Agreement.

3. The Township shall have the right to apply the respective escrow principal, together with any interest accruing thereon, to pay inspection, engineering, or consulting fees or any costs to repair the System or the cost of hauling any waste, incurred by the Township in the case of default by the Owner on any of the provisions of this Agreement.

4. The escrow funds shall be held and maintained by the Township for the life of the System. At such time as the System no longer services the Property and the System has been shut down in accordance with the regulations of DEP, the Township shall refund the balance of escrow funds held on deposit to the record owner of the Property. However, if the System is shut down because the Property it services is being connected to a public sewer system, the balance in the escrow account shall be applied to the connection fees for connecting the Property to the public sewer system with the balance, if any, thereafter returned to the then owner of the Property at that time.

5. In the event that the specific escrow balance for the System on the Property falls below one thousand dollars (\$1,000.00), the Owner agrees, upon written request by the Township, to replenish the escrow account to the full amount of one thousand dollars (\$1,000.00) within thirty (30) calendar days of such request.

B. SYSTEM DESIGN, CONSTRUCTION AND INSTALLATION.

1. The plans, reports, design and modules for the National Pollution Discharge Elimination System (“NPDES”), Water Quality Management Permit (Clean Streams Law permit), and operation and maintenance manual shall be reviewed by the Township Engineer and shall be transmitted to DEP within thirty (30) days of receipt of plans. The submission shall include but are not limited to the following information:

- a. All information previously provided in Act 537 plan.
- b. Elevations of all tanks and piping in System.
- c. Hydraulic profile of System from house to discharge point.
- d. Calculations of head curves for all pumps used in System.
- e. Maintenance forms to be used by homeowner or contractor servicing System.
- f. Installation and component specifications and requirements.
- g. An Operation and Maintenance Manual (the “Manual”) for the System together with a pamphlet or other document in form satisfactory to the Township summarizing the operation and maintenance requirements of the System and including the estimated annual cost of operating and maintaining same.
- h. Any other item(s) that DEP deems necessary now or in the future to obtain an NPDES permit for a System.

2. Township may require additional design and construction specifications, including without limitation outside monitoring and/or controls, that are consistent with the Codes and any interim or permanent rules and regulations established by DEP, ECDH, ECCD and/or the Township.
3. No improvements, construction or installation to the System may commence until the Municipality and DEP has issued the permits for the system.
4. The Owner shall obtain all necessary erosion control permit(s) or waiver from same from Erie County Conservation District (“ECCD”) prior to any construction relating to the System on the Property.
5. The System shall be designed, installed, operated and maintained by the Owner of the Property, in accordance with the manufacturer’s specifications, Codes and any interim or permanent rules and regulations established by the DEP, the ECDH, the ECCD and/or the Township.
6. The Owner shall retain an installation contractor trained and authorized by the System manufacturer to install and service the System (the “Contractor”).
7. The Owner agrees to provide to the Township a complete set of “As-Built” System plans as finally approved by the DEP.
8. Before the initial start-up of the System, the Owner and maintenance contractor shall meet with the Contractor and review the operation and maintenance of the System. The Contractor shall provide the Owner with the following:
 - a. Verbal and detailed written operation and maintenance instructions.
 - b. Detailed “As-Built” drawings showing the location, size, material type, and depth of all components of the System per the design engineer’s and manufacturer’s drawings.
 - c. A complete review of the System indicating the location of all buried components of the System including provision of a caution notice regarding the disturbance near and within the system area that would cause damage to the System, such as excavation for trees or fencing.
 - d. A complete explanation of the System’s automatic alarm system, a contact name, and telephone number to contact during an active alarm.

9. Contractor installing System shall certify to DEP and the Township that all components installed are as specified in Act 537 and Water Quality Permit or provide shop drawings of substituted products which were approved by DEP prior to installation of same. Contractor and/or Owner shall further notify Township, DEP and ECHD of completion of work and schedule a start up inspection of System. Any deficiencies found affecting the quality of effluent shall be corrected prior to startup.

C. OWNER'S CONTINUING OBLIGATIONS.

1. Inspections, testing and repairs

a. The Owner agrees to provide access to the Property to the Township, DEP and/or ECDH to inspect the System and ensure the System and all components are working properly.

b. Owner agrees to operate and maintain System under the general parameters for the System within this agreement and the specific parameters provided in the Manual and Exhibit "A" (Design Drawing), specific to the components of the System placed on the Property which is attached hereto and made a part of this agreement by reference herein.

c. The Owner shall annually renew, for the life of the System, and shall annually provide to the Township a copy of a System maintenance contract with an authorized Maintenance Contractor (herein after the "Maintenance Contractor"). The Maintenance Contractor shall be a private independent contractor who has been given special training by the original equipment manufacturer and is authorized by the manufacturer to service the equipment, and is approved by the Township to provide such services with the borders of the Township. At no time shall the Owner allow the system to be without a Maintenance Contractor. Prior to changing the Maintenance Contractor, the Owner shall notify the Township and provide the name and contact information of the new maintenance contractor.

d. During the first year of operation of the System, there will be made an inspection at least quarterly by an authorized factory representative or registered professional engineer (hereinafter "Engineer"), retained by the Owner. The inspection shall include the testing of the discharge effluent to confirm that said discharge meets or exceeds the required levels of treatment of such systems by the DEP. **Testing shall**

occur at either one of the stream discharge point, Municipal Separate Storm Sewer System (MS4) discharge point, discharge point onto the surface of the ground, or a sampling port that is provided at an approved point along the discharge pipe and shall include testing for Fecal Coliform, Chlorine Residual for those systems using Chlorine for disinfection, Carbonaceous Biochemical Oxygen Demand (CBOD), Total Suspended Solids, Ammonia, Detergents, and Phenols. It is understood and agreed that sampling and testing of the effluent shall be conducted by an EPA approved lab. The first year shall begin at startup inspection or at occupancy of residence whichever occurs last. The first testing shall occur on or about two (2) months after above date and then every three (3) months for a total of four (4) samplings and testings.

e. The Owner shall also be required to have the chlorine residual tested monthly and recorded for any system that uses Chlorine for disinfection. Any test of chlorine residual of zero (0) shall be retaken the following day. Owner is responsible to maintain a chlorine residual in the effluent at all times.

f. The Township shall have the right to inspect the System on an annual basis or other times as deemed reasonable to assure a pollution free System operation. After the first year of operation, the Owner shall have the Maintenance Contractor inspect the System and have the Maintenance Contractor provide the Owner, ECHD and Township with copies of a report signed by the Maintenance Contractor certifying that the System is operating in accordance with the permit. The inspection and maintenance program will include at a minimum the manufacturers' recommended services and inspections for each separate component of the System. The Maintenance Contractor's report shall include the average daily flow from water meter readings, if available. The report shall also indicate resolution of any deficiencies noted in the Maintenance Contractor's inspection or in any service or alarm call during the past year. If a repair, revision, or modification to the System is required, the Owner shall obtain a permit from the DEP before the Maintenance Contractor performs said repairs, revisions, or modifications. Copies of the permit and amended and revised drawings detailing any revision or modification shall be retained by the Owner and provided to the Township and ECHD.

g. The System inspections shall include testing and follow these established criteria and maintenance requirements:

1. For systems that use Chlorine for disinfection, tests shall be completed on a monthly basis for Chlorine Residual.

2. Biannual (twice a year) inspections and tests shall be completed for Fecal Coliform, CBOD, Total Suspended Solids, Ammonia, Detergents, and Phenols plus any other testing that ECHD or DEP shall impose now or in the future.

3. For systems that utilize Ultraviolet Light for disinfection, the Ultraviolet bulb shall be replaced annually during one of the biannual system inspections.

4. These inspection, maintenance, and testing criteria shall remain in effect for as long as system is in use.

h. It is also recommended that a water meter be installed on house water supply and that such meter be read on a daily basis for the first year and then monthly thereafter. The recording of daily water usage along with the effluent test results will allow engineer or factory representative to determine plant efficiency and possibly adjust plant for maximum efficiency saving homeowner a portion of his/her operating cost.

i. The Township and ECHD are to receive a copy of all maintenance and test reports.

j. If any inspection indicates a repair, revision, or modification of any component part or all of the System is required to bring the System into compliance with DEP regulations, any and all repairs and/or replacements shall be made within thirty (30) days of the date of the inspection evidencing a need for the repairs and/or replacements. The Owner further agrees to pay all costs of such repair, replacement and/or additional maintenance. Copies of the invoices, reports or other documents of the repairs and/or replacements and amended or revised drawings detailing any revision or modification and a certification that the repairs and/or replacements have been made in accordance with DEP regulations shall be retained by the Owner and filed with the Township and the ECDH within thirty (30) days of any and all repairs and/or replacements.

k. If the Owner fails to comply with the recommendations of its Contractor, the Township, ECDH and DEP with respect to any repair, revision, or modification of any component part or all of the System, the Township may enter upon the Property, conduct an inspection and/or testing, and/or perform any repair, revision, or modification with respect to the System, all of which shall be made at the cost and expense of the Owner. So long as an emergency situation does not exist, prior to entering upon the Property and conducting its own inspection or performing any testing repair, revision, or modification, the Township shall provide the Owner ten (10) calendar days advance written notice of its inspection to enter upon the Property for any of these purposes. The Owner shall have the right to comply with the terms of this Agreement within that ten (10) day period.

2. Owner's Responsibility.

a. Following installation, absent express prior approval from Township and ECDH, unless otherwise permitted by this Agreement, the System and all areas appurtenant thereto shall be one hundred percent (100%) protected against any alteration, grading, regrading, disturbance or modifications. Further, the grazing of livestock is prohibited on the System and the areas appurtenant thereto.

b. The Owner shall provide an adequate supply of electrical power with the proper phase, frequency, and voltage as recommended by the equipment manufacturers of the various components of the System.

c. The Owner agrees not to plant trees or shrubs in the area of the System or to otherwise excavate or damage the components of the System. The Owner also agrees to protect all System components from vehicle traffic and to protect all System components from stormwater runoff from roof gutters and downspouts, driveways, swales, and sump pump discharges.

d. The Owner agrees not to build any structures, including swimming pools and sprinkler systems, on or within 10 feet of any component of the System.

e. The Owner agrees to use water conservation devices (such as low flow toilets, showerheads, dishwashers, and clothes washers) and to promptly repair any leaking plumbing fixtures.

f. The Owner agrees not to introduce into the System harmful chemicals (including without limitation oils and grease, gasoline, antifreeze, pesticides, paints and thinners, industrial soaps and detergents, harsh drain and toilet bowl cleaners) and clogging bulky items (including without limitation sanitary napkins, diapers, paper towels, cigarette filters, cat litter, plastics, egg shells, bones, coffee grounds.) The Owner shall not connect a garbage disposal or any similar device to the System.

g. Owner agrees to make the components of the system accessible to Township or its agent to perform inspections in accordance with this Agreement.

3. Owner's Responsibility at Change of Ownership.

a. In the event of change of ownership of the Property, the Owner shall:

1. Before settlement, review the operation and maintenance of the System located on the Property with the prospective owner

2. Provide the prospective owner with a complete copy of this Agreement, the Operation and Maintenance Manual, maintenance contract, all inspection reports, and all maintenance and monitoring requirements regarding the System

3. Provide the prospective owner with DEP Permit Transfer Applications at settlement

4. Procure the prospective owner's written acknowledgement of receipt of the above at settlement.

b. In the event of change of ownership of the Property, the Owner shall, within thirty (30) calendar days of the change of ownership, notify the Township by letter of the name and address of the new owner and include a copy of the new owner's acknowledgement of receipt of the items listed in the above section. Upon receipt of such letter by the Township, Owner shall be released from any further obligations arising under this Agreement, except as to any violations which occurred during Owner's ownership of the Property.

D. INOPERABILITY OR NONCOMPLIANCE OF SYSTEM.

1. During any period of time when the System is inoperable and/or incapable of treating the discharged effluent so as to meet and/or exceed DEP and/or ECDH standards, the

Owner shall make arrangements to remove the effluent and arrange for its appropriate disposition at a properly certified and licensed sewage disposal facility.

2. The Owner shall, upon request of the Township, provide an agreement with a hauler providing for the removal of effluent. The Owner agrees to continue hauling effluent until such time as the Township Engineer or ECDH has properly certified the System as being operable.

3. In the event the Owner shall fail to make the necessary arrangements for the removal of the effluent, the Township and/or ECDH shall have the right, within 72 hours following the deposit of written notice to the Owner into first-class mail or delivering or posting written notice to or on the Property, to enter upon the Property and cause the effluent to be removed.

E. AGREEMENT AND RECORDING FEES. The Owner agrees to reimburse the Township for legal costs incurred by the Township in preparing this Agreement and recording this Agreement in the Office of the Recorder of Deeds of Erie County.

F. FINANCIAL RESPONSIBILITY. It is understood and agreed that in the event the Owner shall fail to pay fines as provided in this Agreement or any costs incurred by the Township, or its designee, for inspections, repairs, and/or replacement of the System or its component parts or in the removal of effluents in accordance with the terms of this Agreement, those monies shall be recoverable by the Township from the Owner. In the event the Owner fails to pay the Township for such costs or expense, then the Township shall have the right to: (a) sue the Owner in a civil action for reimbursement of its costs; and/or (b) cause a municipal claim and/or lien to be placed on the Property in the manner provided by law in the amount of the expense or both, and to collect such claim/lien as provided by law.

G. PUBLIC SEWER CONNECTION. If, after the approval of coverage under this Agreement, DEP approves a municipal sewage facilities plan or an amendment to an official plan under the Pennsylvania Sewage Facilities Act, in which sewage from the System will be treated and disposed of at other planned facilities, the Owner shall, upon notification from the Township or DEP, provide for the conveyance of its sewage to the planned facilities, abandon use and decommission the herein approved System, including the proper disposal of solids, and notify DEP accordingly. The Owner shall adhere to schedules in the approved official plan, amendments to the plan, or other agreements between the Owner and the Township. The

approval under this Agreement for the System shall then, upon notice from DEP, terminate and become null and void.

H. ENFORCEMENT.

1. The Township shall have the right to enforce this Agreement and to bring an action to abate any measure resulting from the operation of the System and to exercise such other powers reasonably available to the Township. It is expected that the ECDH will oversee and enforce regulations concerning sewage discharges that are nuisances and health hazards.

2. The Owner agrees to reimburse the Township for all reasonable costs incurred in the enforcement of this Agreement including court costs, engineering and legal fees.

3. In the event that the Owner fails to abide by or violates any of the terms of this agreement and upon receipt of a notice of violation from the Township, the Owner agrees to pay the Township a fine in the amount of \$500.00 per day, per violation until the violation(s) are sufficiently remedied.

I. RECORDING OF AGREEMENT AND OBLIGATIONS OF SUCCESSORS.

1. This Agreement shall be recorded by the Township in the Office of the Recorder of Deeds in the County of Erie, Pennsylvania.

2. This Agreement shall be binding upon the Owner, his/her heirs, administrators, executors, successors, and assigns, including the Owner's successor in title, it being the express understanding of the parties that any and all duties and obligations of the Owner with respect to the operation of the System set forth in this Agreement also "run with the land" and remain that obligation of the Owner's successors in title as to the System that is located on the Property.

J. NOTICE. Any notice required by the terms of this Agreement shall be sufficient if sent to the Owner's last known address by first-class mail. The Owner has the obligation to forward Township any and all address and/or ownership changes; and Township shall not be responsible for failure to give notice should Owner not provide Township with the appropriate address information.

K. INDEMNITY; DUTY TO DEFEND.

1. Owner shall at all times defend and hold the Township, or its designee, harmless from any claims, suits, legal expenses or judgments which may arise from, or are in any way connected with, the operation, maintenance or repair of the System described herein including, but not limited to, claims related to the failure of the System to properly function, the

performance of any inspections by the Township, or its designee, the determination of any work required to be performed to maintain, repair or replace components of the System, and/or the adequacy of any repair or maintenance of the System. The indemnification provided for herein shall extend to claims by Owner as well as claims by third parties. The indemnification is such that the Owner shall have no cause of actions against the Township, or its designee, or against officials and employees of same arising out of the obligations set forth herein or any claim that the Township, or its designee, has failed to properly perform obligations set forth herein.

2. As to claims by third parties, the aforesaid indemnification shall be conditioned upon notification of the Owner by the Township or its designee, within thirty (30) days of receipt of a claim and/or suit. The Owner shall have the duty to defend the Township and its designee, its officials and employees against any claim or suit made by any third party which alleges any claim arising from or in any way connected with, the approval, inspection, operation, maintenance and/or repair of the System.

3. In the event the Owner fails to undertake the defense of the Township, and/or its designee, as the case may be, as to any such claim and any such entity or person is required to enter upon its own defense, the Owner shall reimburse such person or entity for any expenses it or they may incur, including legal fees, engineering fees and other expert witness fees and shall pay any judgment rendered against the Township, or its designee, its officials and employees as a result of such suit. As to damages alleged to have been caused to any third party by reason of approval of the inspection, operation, maintenance or repair of the System, the Owner shall have the right and option to join the Township and/or its designee in the defense and/or compromise of such claim. In the event the Owner fails to pay the costs, legal fees, other expenses or damages as herein provided and the Township and/or its designee, is required to pay same, such entity shall have the right to recover the monies it has expended: (a) by withdrawing the amount of said costs from the Escrow provided in section I hereof; (b) by suing the Owner in assumpsit, and/or (c) by causing a municipal claim and/or lien to be placed on the Property in the manner provided by law in an amount equal to the sums required to be expended.

L. MISCELLANEOUS.

1. **Other Ordinances.** It is expressly understood and agreed that nothing contained herein shall be construed to waive or affect or alter any requirements of the Zoning, Building, Land Development or Subdivision Ordinances or other Ordinances of the Township and nothing

contained herein empowers any Township officer or employee to waive any requirements of such Ordinances.

2. **Captions.** The captions in this Agreement are intended solely to facilitate the reading of, and reference to, the sections and provisions of this Agreement; such captions shall not affect the meaning or interpretation of this Agreement.

3. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania.

4. **Jurisdiction.** Owner agrees to submit to the jurisdiction of the Court of Common Pleas of Erie County in the event Township institutes a suit and Owner agrees not to contest jurisdiction of the Court of Common Pleas of Erie County for any reason.

5. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and Owner and Township may become a party hereto by executing a counterpart of this Agreement.

6. **Interpretation.** Owner agrees that this Agreement is the result of negotiations between Township and Owner and that if an ambiguity or ambiguities should be claimed by either Owner or Township or a Court of competent jurisdiction should determine that an ambiguity or ambiguities exist, such ambiguity or ambiguities shall be resolved without resorting to the principle of construing any ambiguity or ambiguities against the party who prepared the Agreement.

7. **Entire Agreement; Amendment.** This document contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior or contemporaneous agreements, understandings, representations and warranties between the parties, and may not be amended except by written instrument executed by the duly authorized officers of the parties hereto.

8. **Severability.** In the event any term, provision or clause of this Agreement is determined by a court of competent jurisdiction to be unenforceable, the remainder of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first above written.

ATTEST: **SUMMIT TOWNSHIP**

Jack F. Lee Jr., Supervisor

By: _____
Mark A. Welka, Chairperson

Anthony W. Davis, Supervisor

COMMONWEALTH OF PENNSYLVANIA:

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COUNTY OF ERIE:

On this, the _____ day of _____, _____, before me, a Notary Public, the undersigned officer, personally appeared **Mark A. Welka**, Chairperson of the Summit Township Board of Supervisors, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

ATTEST:

OWNER 1

By: _____
Name 1

COMMONWEALTH OF PENNSYLVANIA:

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COUNTY OF ERIE:

On this, the _____ day of _____, _____, before me, a Notary Public, the undersigned officer, personally appeared Name, known to me (or satisfactorily proven) to be the Owner of Address of Subject property and that they, as such, being authorized to do so, executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

ATTEST:

OWNER 2

By: _____
Name 2

COMMONWEALTH OF PENNSYLVANIA:

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COUNTY OF ERIE:

On this, the _____ day of _____, _____, before me, a Notary Public, the undersigned officer, personally appeared Name, known to me (or satisfactorily proven) to be the Owner of Address of Subject property and that they, as such, being authorized to do so, executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

