

**WATER USAGE
DATA SHARING
AND SECURITY
AGREEMENT**

THIS WATER USAGE DATA SHARING AND SECURITY AGREEMENT, (this “Agreement”) is made as of this ___ day _____, 2019 between SUEZ Water Westchester Inc. a corporation of the State of New York, with its principal office at 2525 Palmer Avenue, New Rochelle, New York 10801 (hereinafter called “SWWC”) and City of Rye (“Municipality”) with offices at 1051 Boston Post Rd, Rye, NY 10580 and together with SWWC the (“Parties” and each, individually, a “Party”).

RECITALS

WHEREAS, upon request by a municipality and pursuant to subsection 6 of the Section 89-b of the Public Service Law, a water works corporation shall provide property water usage data by property address (the “Data” as defined more fully below) to such municipality where:

- (a) such municipality is within the service territory of such water works corporation;
- (b) such Data shall only be used for municipal purposes related to the financing of clean, storm or drinking water infrastructure projects and service; and
- (c) the provision of such Data shall be pursuant to a written agreement between the water works corporation and the municipality which adequately provides for customer privacy safeguards and is approved by the New York State Public Service Commission (the “Commission”); and

WHEREAS, Municipality has requested that SWWC, a water works corporation, provide the Data for SWWC customers residing in the Municipality; and

WHEREAS, Municipality is within the service territory of SWWC; and

WHEREAS, Municipality shall use the Data solely for the calculation of assessments or bills for municipal services for which water usage is a relevant indicator of the cost of such municipal services, such as those related to the financing of clean, storm or drinking water infrastructure projects and operation; and

WHEREAS, Municipality agrees that the Data shall not be sold or shared with any other person or corporation, except as set forth herein; and

WHEREAS, the Parties desire to enter into this Agreement to establish, among other things, the full scope of the Parties’ obligations relating to the provision of the Data and of confidentiality with respect to the Data.

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Customer Data Transfer

1. SWWC shall designate by address each water service customer that is also a sanitary sewer service customer of Ardsley, Bronxville, Dobbs Ferry, Eastchester, Greenburgh, Hastings on Hudson, New Rochelle, Pelham, Pelham Manor, Tuckahoe, Port Chester, Rye and Rye Brook.
2. SWWC shall provide to Municipality or such designated third party contractor or subcontractor, by the 20th of each month the following data for each customer identified in paragraph A(1) herein if available to SWWC:

- a. Meter reading and meter number for current month,
UW Bill Cycle
City
Account Number
Account Holder Phone 1
Service Address Mailing Address
Premise ID
Badge Number
Register Read
Consumption Days
Revenue Class Code
Service Quantity
UOM
Block Lot
Rate Code
Actual/Estimate
Start Date
End Date
Service Type

This list is not meant to be exhaustive and may be changed from time to time by written consent of all parties.

- b. For purposes of this Agreement, the information to be provided pursuant to Sections A(1)-(2) herein is referred to as the "Data".

3. SWWC shall provide the data for free to the Municipality as long as the data is submitted in the format used by SWWC in its billing system as of the execution of this agreement. The parties to this Agreement hereby agree that the intention is for SWWC to provide the data for all of its water service customers that are also sewer service customers of the following municipalities: Ardsley, Bronxville, Dobbs Ferry, Eastchester, Greenburgh, Hastings on Hudson, New Rochelle, Pelham, Pelham Manor, Tuckahoe, Port Chester,

Rye and Rye Brook. To the extent SWWC is required to parse out and provide the data for the Municipality individually, a cost will be associated with that service. SWWC shall bill the Municipality on a monthly basis for the services provided at a reasonable rate to be agreed upon by the Parties.

4. Such water usage Data shall be provided by SWWC to the Municipality or their designated third party contractor or subcontractor(s) in a manner that is easily readable and compatible with Microsoft Excel or such other mutually agreed upon commercially available billing software. The Municipality agrees to take all reasonable precaution to protect the Data during transmission and at rest. Municipality ensures that it has in place adequate safeguards for the protection of the Data.
5. Use of any contractor or subcontractor(s) by Municipality shall be awarded through a request for proposals (RFP). The RFP shall include terms providing equivalent protections in relation to the Data as those set out in this Agreement and shall abide by all applicable state procurement laws. Additionally, the municipality shall notify Suez of the winning bid. The Wining bidder must be in good standing with NYS regulators if any apply.

B. Confidentiality.

1. Consistent with the provisions of Public Service Law Section 89(b)(6) Municipality shall:
(a) hold all Data in the strictest confidence; except as otherwise expressly permitted by paragraph C herein; (b) not disclose Data to any other person or entity unless such persons or entities agree, in writing, to protect and secure Data in at least as protective a manner as set forth herein and only to achieve the same purposes authorized by this Agreement; (c) not use the Data other than for the services defined in the Recitals as authorized by this Agreement; (d) otherwise use at least the same degree of care to avoid publication or dissemination of the Data as the Party employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care.
2. Use of the Data for any purpose other than as allowed by this Agreement by Municipality or any of its agents or employees shall require SWWC's prior written consent. Municipality shall not disclose the Data to any person, except it may disclose to its employees, agents and sewer service customers who require access to such information consistent with the purposes of Public Service Law Section 89(b)(6) and this Paragraph B. Before disclosing Data to its employees or agents, Municipality must inform employees or agents of the confidential nature thereof and Municipality's obligations under this Agreement. Municipality shall be responsible for the use or disclosure of Data by any of its employees or agents and shall indemnify SWWC with respect to all losses, claims and damages asserted by any SWWC customer as a result of a disclosure of Data made by Municipality or any of its employees or agents that is contrary to the terms of this Agreement.

C. Exceptions Allowing Disclosure of the Data

1. Consistent with the provisions of Public Service Law Section 89(b)(6) and notwithstanding the provisions of paragraph B(1) the Parties may disclose Data to contractors or subcontractors who have a legitimate need to know or use such Data for the sole and limited purposes of providing services and/or carrying out the obligations set forth under this Agreement, provided that the contractor or subcontractor:
 - a. is advised by the disclosing Party of the confidential nature of the Data; and
 - b. agrees in writing to protect and secure Data in accordance with this Agreement. A copy of such written agreement with the contractor or subcontractor shall be made available to the Parties upon request. Notwithstanding the foregoing, each Party shall be liable for any act or omission of their respective contractors and/or subcontractors, that would constitute a breach of this Agreement if committed by the respective Party; and
 - c. warrants that it has appropriate technical and organizational processes and procedures in place to safeguard all Data against any accidental or unlawful loss, alteration, destruction or damage or any unauthorized access, use or disclosure, and will ensure that it has taken steps to ensure the reliability of those of its employees who are used to process such Data.
2. Disclosure if Legally Compelled. Notwithstanding anything herein, in the event that a Municipality receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose Data (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), the Municipality shall, except to the extent prohibited by law, within 72 hours notify SWWC, orally and in writing, of the pending or threatened compulsion and consult with SWWC on the advisability of taking steps to resist or narrow such request. To the extent lawfully allowable, SWWC shall have the right, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Data that must be disclosed. SWWC shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Data that must be disclosed. In any event, the Parties shall disclose only such Data which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by SWWC) and the Municipality and its representatives shall use all reasonable efforts to ensure that all Data that is so disclosed will be accorded confidential treatment.

D. Disclosure pursuant to Article 6 of the Public Officers Law. The Parties recognize that the Municipality is required to abide by the applicable provisions of the Freedom of Information Law (FOIL) under Article 6 of the Public Officers Law. Municipality agrees to notify SUEZ of any FOIL requests relating to information covered by this agreement within 24 hours of receipt of such request. Notice shall be provided to SWWC manager at the address located in paragraph G of this agreement.

E. Additional Obligations

1. The Municipality will be responsible for generating and mailing out all bills related to sewer services.

1. The Parties shall have in place appropriate and reasonable processes and systems, including as applicable, an information security program to protect the security of the Data. Such process and systems in place for the protection of the Data should be consistent with the National Institute of Standards and Technology Cybersecurity Framework.

2. The Parties shall safely secure or encrypt all Data during transmission.

3. The Parties shall establish policies and procedures to provide reasonable and prompt assistance to each other in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Data Processed by the Parties to the extent such request, complaint or other communication relates to the Parties' Processing of such individual's Data.

F. Limitation of Liability IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, EXEMPLARY, PUNATIVE OR LIQUIDATED DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING A PARTY'S NEGLIGENCE) OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM DELAY, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, LOST PROFITS (ACTUAL OR ANTICIPATED), OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL AMOUNT OF DAMAGES RECOVERABLE FROM A PARTY UNDER THIS AGREEMENT IS LIMITED TO PROVEN DIRECT DAMAGES. Provided however, nothing in here shall preclude either party from recovering direct damages for any intentional or willful misconduct that either party had actual knowledge or reasonably should have had knowledge thereof.

G. Notices. With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion

shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:

If to Municipality, to:

City of Rye City Hall
1051 Boston Post Rd
Rye, NY 10580
Attn: Village Manager

Phone:

If to Utility:

SUEZ Water Westchester Inc.
2525 Palmer Avenue
New Rochelle, NY 10801
Attention: General Manager

with a copy to:

SUEZ Water Westchester Inc.
461 From Road
Suite 400
Paramus, NJ 07652
Attn: Legal Department

A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.

- H. Term.** This Agreement shall be effective as of the date first set forth above and shall remain in effect until terminated by any Party upon not less than 180 days' prior written notice specifying the effective date of termination; provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. This Agreement may only be deemed terminated in the event of: a change in chapter 261 of the laws of 2018 that would no longer require SUEZ to provide the Municipalities with this information; or an order by the Commission; or if SUEZ sells its rights to supply water to the applicable municipalities.
- I. Consent to Jurisdiction; Selection of Forum; Governing Law.** The Parties irrevocably submit to the jurisdiction of the courts located within the State of New

York with regard to any dispute or controversy arising out of or relating to this Agreement. This Agreement shall be interpreted, and the rights and obligations of the Parties determined, in accordance with the laws of the State of New York, without recourse to such state's choice of law rules.

- J. Breach.** The Parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.
- K. Survival.** The nondisclosure obligations of the Parties under this Agreement shall continue for so long as the Parties continue to have access to, are in possession of, or acquire Data and/or confidential third party information even if all agreements between the Parties have expired or been terminated.
- L. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.
- M. Amendments; Waivers.** This Agreement may not be amended or modified except if set forth in writing signed by the Parties.
- N. Assignment.** This Agreement may not be assigned without the prior written consent of the Parties, and any purported assignment without such consent shall be void.
- O. Severability.** Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
- P. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or
- Q. Force Majeure.** No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) which prevents such Party

from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence.

R. Relationship of the Parties. SWWC and Municipality expressly agree they are acting independently and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.

S. Construction. This Agreement shall be construed as to its fair meaning and not strictly for or against any Party.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

Name:

SUEZ WATER WESTCHESTER INC.

By:	By:
Name: Title:	Name: Title: