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OFFICE OF THE SUPERVISOR

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Town of Somers

WESTCHESTER COUNTY, N.Y.

MARY BETH MURPHY
SUPERVISOR



Somers Heating Oil Program (SHOP)

Questionnaire

October, 2009

Name of Company _____

Address _____

Name of Contact Person _____

Office Phone _____

Office Fax _____

E-Mail _____

Web Site _____

Do you offer service contracts? _____

Do you offer Bio Fuel? _____

What is special about your company? _____

SOMERS HEATING OIL PLAN

MEMORANDUM OF UNDERSTANDING

The Town of SOMERS (hereinafter the "Town") is sponsoring the SOMERS Heating Oil Plan (hereinafter the "SHOP") to refer residents of SOMERS to oil companies (hereinafter "Vendor(s)") who have agreed to deliver home heating oil, at the guaranteed lowest price available from the Vendor, to SOMERS residents participating in the SHOP (hereinafter "Members").

- I. This Memorandum of Understanding (hereinafter "Agreement") is intended to reflect the agreement and spirit of cooperation between the Town and the Vendors who have agreed to participate in the SHOP.
- II. Vendors agree to adhere to the terms and conditions of the SHOP, attached hereto as "Schedule A". The Town agrees to notify SOMERS residents of the SHOP by posting it on the Town web site and by sending e-mails to town residents and by "word of mouth." Residents of SOMERS will not be required to enroll nor pay a fee to join and will merely identify themselves as residents of SOMERS in order to avail themselves of SHOP. It shall be the Member's sole responsibility to choose and contact a Vendor in order to initiate service under the SHOP.
- III. By entering into this Agreement, the undersigned agree to cooperate and to follow the terms and conditions of the SHOP. Should a Vendor be unable to abide by, or fail to abide by, the terms of the SHOP or this Agreement, including Schedule A, attached hereto, the Town reserves the right to remove the Vendor from the SHOP, without notice, and at the sole discretion of the Town. The Town shall notify Members of the SHOP of the removal of any Vendor from the SHOP by posting this on the town web site.
- IV. The Town reserves the right to remove any Vendor, without notice, from the SHOP, with or without cause, at the sole discretion of the Town. The Town further reserves the right to terminate the SHOP, at any time, and at the sole discretion of the Town. If the Town does terminate the SHOP, nothing contained herein shall have any affect on any agreement entered into by any Vendor with any Member prior to the date of termination.
- V. The Town and its employees, officers and agents, shall not be responsible, or held liable, in their official or personal capacity, for the delivery of oil to Members, or for payment to Vendors for oil delivered or any service rendered to Members under the SHOP. Furthermore, the Town and its employees, officers and agents, shall not be responsible, or

held liable to Members, for any service provided by, offered by, performed by, or otherwise associated with a Vendor, including Vendor's employees, officers and agents, pursuant to this SHOP, including but not limited to, maintenance of equipment and repairs.

- VI. The Town, including its employees, officers and agents, shall not be responsible for or held liable to any Party to the SHOP for any disputes between any Member and any Vendor arising from or relating to the SHOP, nor shall the Town, including its employees, officers and agents, be responsible for or liable to any Party to the SHOP for the resolution of any such dispute between the Parties.
- VII. Should the Town receive any complaint(s) from any Member(s) with respect to a Vendor, and in relation to the SHOP, the Town may notify the Vendor and, upon notification, the Vendor shall resolve the complaint with the Member within fifteen (15) days of receipt of notice of the complaint. The Vendor shall retain the right to advise the Town of its position regarding any such complaint within fifteen (15) days of receipt of notice of said complaint. Nothing contained herein shall create or impose upon the Town, its employees, officers and/or agents, any duty or obligation to mediate or resolve any dispute between a Member and a Vendor.
- VIII. Vendor guarantees that Members of the SHOP shall receive home heating oil at a rate which shall be the same or lower than that paid by non-residents of SOMERS for as long as a Member remains in the SHOP.
- IX. The Town's determination as to a Vendor's participation in the SHOP is final.
- X. Nothing contained herein, including Schedule A attached hereto, or in any subsequent Amendments to this Agreement, shall make the Town, and its employees, officers or agents, a Party to any agreement between a Vendor and a Member, nor shall the Town, and its employees, officers or agents be responsible for, or held liable to, any Vendor or Member for any act, omission or negligence by or attributable to any Member or Vendor, including Vendor's employees, officers, and agents, arising from, or relating to, service and/or payment pursuant to the SHOP.
- XI. Vendor agrees to indemnify the Town, including its employees, officers and agents, for any legal action arising from and/or relating to service and/or payment pursuant to the SHOP. "Legal action" includes, but is not limited to, civil, criminal, and administrative matters under Federal and State law, statutes, rules and regulations.
- XII. This Agreement may be executed in counterparts.

- XIII. The terms of this Agreement may be amended in writing, by the undersigned, at any time.
- XIV. Choice of Law; Choice of Venue. The Parties agree to arbitrate and/or litigate any disputes which may arise from or relate to this Agreement and/or the SHOP pursuant to the Laws of the State of New York. The Parties further agree to venue any and all legal proceedings in the State of New York.
- XV. Severability. Insofar as any paragraph, clause, and/or part thereof contained in this Agreement and/or the SHOP are determined to be void, invalid, unlawful or otherwise unenforceable under any Federal, State or local law, statute, rule, regulation, or code, such determination shall not affect the validity and/or enforceability of the remainder of this Agreement and/or the SHOP. Any such paragraph, clause, and/or portion thereof shall be stricken from the Agreement and/or SHOP and those terms not so struck shall remain binding on the Parties.
- XVI. Any questions or issues with respect to this Agreement shall be directed to the SOMERS Supervisor's Office at 914-277 3637.

WHEREAS, the Parties agree to the terms contained herein, including Schedule A, attached hereto, as evidenced by their signatures, this Agreement shall be effective as of the date below.

TOWN OF SOMERS

Dated:

BY: _____
Mary Beth Murphy, SUPERVISOR

VENDOR

BY: _____

SCHEDULE A

PLAN REQUIREMENTS

SOMERS HEATING OIL PLAN (SHOP)

1. Residents of the Town of Somers shall all be considered enrolled in the SHOP.
2. The SHOP is open to residential customers only, and only applies to deliveries within the Town of Somers. Commercial customers may not participate in the Plan.
3. The Somers Supervisor's office shall coordinate the Plan.
4. The Town shall provide Members with a copy of the Plan and a list of participating home heating oil companies (hereinafter "Vendors") by posting this on the Town's web site. It is the Member's responsibility to contact participating Vendors directly for the purchase and delivery of oil, and any and all other services. Under no circumstances shall the Town assist any Member in scheduling, obtaining and/or purchasing home heating oil.
5. Vendors agree to provide oil to Members at approximately 40 cents over the daily wholesale price. Vendors further agree to guarantee that the Members' reduced cost shall be lower than the Vendors' available daily retail rate. Due to daily fluctuations in the price of home heating oil, Members should contact all Vendors to determine their daily rate. Members should also verify with Vendors, prior to delivery, the cost per gallon to be paid on the date of delivery.
6. Members are encouraged to visit the Town's website, www.somersny.com, which shall provide regularly updated Plan information, including an updated list of participating Vendors. The Town shall not provide the wholesale price to Members directly. Anyone who contacts the Town regarding the daily cost will be directed to contact participating Vendors. The Town shall not provide any pricing information regarding the Plan other than the information provided on the Town website.
7. Calls for delivery and all arrangements for payment shall be the responsibility of the Vendor and Member. At no time shall the Town be responsible for or be held liable to any Member or Vendor regarding service and/or payment pursuant to the Plan. The Town will not appropriate any public funds for the payment of oil.
8. There shall be a minimum delivery requirement of 150 gallons per delivery per residence. Member agrees to pay a \$25 surcharge for any delivery not totaling a

minimum of 150 gallons. Members must pay on a COD basis. Member agrees to pay an additional fee for payment by credit card at the Vendor's discretion, however, said rate shall not exceed 10 cents per gallon in addition to the daily Member rate. All deliveries must be paid in full by Member at the time of delivery.

9. The Vendor shall use its best efforts to deliver oil to Members and/or render service to Members, when Vendor has agreed to provide service to a Member, within 24 hours of any call.

10. While not required under the Plan, any Vendor which chooses to offer Members a Service Agreement, shall provide such services at a reduced rate, to be determined by the Vendor. Additionally, each Vendor shall (if such service is provided to Vendor's other customers) provide Members simple energy audits or NYSERTA-sponsored energy audits when requested by Members at a nominal fee.