

**BYPRODUCT REMOVAL  
AND OPERATIONS AGREEMENT**

**THIS AGREEMENT** is made as of \_\_\_\_\_, 2014

**BETWEEN:**

**OSTARA USA, LLC**, a Delaware limited liability company with an address at Suite 690 – 1199 West Pender Street, Vancouver, BC, V6E 2R1, Canada, which will be licensed to do business in the State of Nevada as of the Effective Date (“**Ostara**”);

**AND**

**CITY OF RENO**, a municipal corporation and **CITY OF SPARKS**, a municipal corporation, (the owners of the Truckee Meadows Water Reclamation Facility located 8500 Clean Water Way, Reno, Nevada 89502) (“**Owners**”)

Ostara and the Owners are referred to in this Agreement as the “**Parties**”.

**WHEREAS:**

- A. Ostara develops and commercialises proprietary technologies that recover nutrients from wastewater and recycle them into environmentally-friendly slow release fertilizers.
- B. Owners entered into the Performance-Based Contract and the Ongoing Performance Service Agreement with Ameresco, Inc. (the “**System Agreement**”) wherein Ameresco, Inc. is to construct the Nutrient Recovery System at the Site and supply the Nutrient Recovery System equipment.
- C. Subject to completion of the Performance-Based Contract Agreement and installation and acceptance of the Performance-Based Contract and the Performance Service Agreement with Ameresco, Inc., Owners will own the Nutrient Recovery System equipment and the Nutrient Recovery System building at the Site.
- D. The Fertilizer produced by the Nutrient Recovery System shall be purchased by Ostara from Owners pursuant to this Agreement. Ostara will be responsible for marketing and selling the Fertilizer produced by the Nutrient Recovery System. Ostara shall purchase the produced Fertilizer until such time this is contract is terminated by any Party.

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**NOW THEREFORE**, in consideration of the above recitals and the representations, warranties, covenants and agreements set forth below in this Agreement, the sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

### 1. INTERPRETATION

1.1 Defined Terms. In this Agreement, the following words will have the following meanings:

- (a) “**Affiliate**” means, in respect of a Party or person, an Entity with which that Party or person is affiliated when: (i) one Entity is affiliated with another Entity, if one of them is the subsidiary of the other or both are subsidiaries of the same Entity or each of them is controlled by the same person, and (ii) if any Entities are affiliated with the same Entity at the same time, they are deemed to be affiliated with each other;
- (b) “**Bag**” means a flexible intermediate bulk container supplied by Ostara to Owners used for storing and transporting Fertilizer;
- (c) “**Confidential Information**” means (i) pursuant and subject to Chapter 239 of the Nevada Revised Statutes, Public Records Act, any information disclosed to Owners by Ostara that has been created, discovered, or developed by or for Ostara, or that has been made known to Ostara by a third party and that is not generally known by other than Ostara’s employees;
- (d) “**Delivery**” means the Fertilizer has been weighed, bagged by Owners according to the official Handling Guidelines for Flexible Intermediate Bulk Containers published by FIBCA and loaded by Owners on Ostara’s trucks (without damage to the Bag);
- (e) “**Dispute**” has the meaning set forth in section 11.1;
- (f) “**Effective Date**” means the date upon which the Nutrient Recovery System has been accepted by Ameresco, Inc. under the agreement entered into between Ameresco, Inc. and Ostara for the supply and construction of the Nutrient Recovery System;
- (g) “**Entity**” means a corporation, partnership, limited partnership, limited liability partnership, limited liability company, trust, joint venture or other business or governmental authority;
- (h) “**Fertilizer**” means the struvite by-product produced by the Nutrient Recovery System;

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- (i) “**Intellectual Property**” means inventions, trade secrets, know-how, technology, trade marks, trade mark applications, patents, patent applications, copyright, copyright registrations and copyright applications, including the Software;
  - (j) “**Non-Conforming Fertilizer**” has the meaning set forth in section 2.4;
  - (k) “**Nutrient Recovery System**” means the nutrient recovery system (and associated plant process enhancements, if any) constructed on the Site pursuant to the Performance-Based Contract between Owners and Ameresco, Inc.;
  - (l) “**Operations Manual**” means Ostara’s Facility Operations and Maintenance Manual in the format that has been previously reviewed and approved by Owners, as amended by mutual agreement of the Parties from time to time in writing;
  - (m) “**Price**” has the meaning set forth in section 6.1;
  - (n) “**Site**” means TMWRF located at 8500 Clean Water Way, Sparks, Nevada.
  - (o) “**Software**” means the process control software developed by Ostara for the monitoring and control of the Nutrient Recovery System and licensed to the Owners hereunder;
  - (p) “**Specifications**” has the meaning set forth in section 2.2;
  - (q) “**Term**” has the meaning set forth in section 12.1; and
  - (r) “**Ton**” means a U.S. short ton equal to 2,000 lbs.
- 1.2 Schedules. The following are the Schedules attached hereto, incorporated herein by this reference and deemed to be a part hereof:
- (a) Schedule “A” – Fertilizer Specifications.
- 1.3 Headings. Headings have been inserted in these provisions for convenience of reference only and will not affect their meaning or construction.
- 1.4 References. Unless the context requires otherwise, any references in this Agreement to the singular will include the plural, plural the singular, and references to recitals, articles, sections and schedules will be references to this Agreement.
- 1.5 Inclusiveness. Words and phrases denoting inclusiveness (such as “including” or “includes”), whether or not stated as being without limitation, are not limited by their context or the words or phrases which precede or succeed them.

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**2. FERTILIZER OUTPUT AND SALE**

- 2.1 Output and Sale. Ostara agrees to purchase from Owners and Owners agree to sell to Ostara (or such Affiliate of Ostara as may be designated by Ostara from time to time) all Fertilizer produced by the Nutrient Recovery System during the Term. Except as expressly permitted by Ostara pursuant to section 2.7, Owners may not sell Fertilizer to any other person.
- 2.2 Fertilizer Specifications. The specifications for Fertilizer to be purchased and sold under this Agreement are contained in Schedule “A” (the “**Specifications**”). The Fertilizer will conform to the Specifications, as may be adjusted by mutual agreement of the parties from time to time in writing. Owners will monitor the Fertilizer produced by the Nutrient Recovery System and take prompt action to address any observed deviations from the Specifications, in accordance with the procedures set forth in the Operations Manual and as agreed with Ostara from time to time.
- 2.3 Sampling. Owners will sample each Bag of Fertilizer according to the sampling protocol set forth in the Operations Manual. Owners will promptly notify Ostara of any visibly defective Fertilizer. On the first to occur of the following, Owners will deliver all samples collected pursuant to this section 2.3 to a location designated by Ostara from time to time:
- (a) One (1) month has passed since Owners’ previous delivery of samples to Ostara; and
  - (b) 20 Bags of Fertilizer have been sampled since Owners’ previous delivery of samples to Ostara.
- 2.4 Non-Conforming Fertilizer. Any Fertilizer not meeting the Specifications as set forth in Schedule A will be deemed to be non-conforming Fertilizer (the “**Non-Conforming Fertilizer**”). Ostara reserves the right to reject Non-Conforming Fertilizer in accordance with the terms of this Agreement.
- 2.5 Notification of Non-Conforming Fertilizer. If Ostara reasonably determines through testing as set forth in this Agreement, that all or a portion of a delivery of Fertilizer from Owners is Non-Conforming Fertilizer, Ostara will give Owners notice of its rejection of such Non-Conforming Fertilizer, and the reasons for the rejection (including testing results) within the latter to occur of forty-five (45) days after (a) Delivery of the Fertilizer to Ostara and (b) Ostara’s receipt of the applicable sample in respect of such Fertilizer pursuant to section 2.3.
- 2.6 Acceptance or Rejection. If Ostara gives notice to Owners of Non-Conforming Fertilizer then Ostara, in its sole discretion, may:
- (a) accept the Non-Conforming Fertilizer for an adjusted Price as agreed upon by parties in writing; or

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- (b) reject the Non-Conforming Fertilizer by notice to Owners. As soon as practicable, but in no event later than seventy-two (72) hours after Ostara's notice of rejection, Owners will instruct Ostara to either: (i) return the Non-Conforming Fertilizer to Owners; (ii) divert the Non-Conforming Fertilizer to Owners' designee or (iii) otherwise store or transport the Non-Conforming Fertilizer.

2.7 Costs and Use of Non-Conforming Fertilizer. Subject to section 4.4, the costs associated with the delivery, return or diversion of the Non-Conforming Fertilizer will be borne solely by Owners. Owners may dispose or sell rejected Non-Conforming Fertilizer as Owners see fit provided that Owners must not sell such Non-Conforming Fertilizer as Crystal Green<sup>®</sup> without the express written approval of Ostara.

### **3. OPERATIONS**

3.1 Owners Operational Requirements. Owners will perform the day to day operation and maintenance of the Nutrient Recovery System in accordance with the Operations Manual, including:

- (a) providing, at its cost, such utilities and services as may be required by the Nutrient Recovery System, including any required electricity, natural gas, drainage, water (potable and non-potable), and air handling;
- (b) an internet link to the Nutrient Recovery System control system, the specifications therefor to be agreed between the Owners and Ostara from time to time; and
- (c) making such adjustments to the Nutrient Recovery System as may be prescribed by Ostara from time to time.

3.2 Monitoring and Production Support. Ostara will monitor the Nutrient Recovery System remotely on a regular basis. Ostara will additionally, from time to time, provide process guidance and technical support to Owners. Such monitoring and production support will include:

- (a) monitoring of key daily performance metrics;
- (b) remote weekly update meetings with site personnel; and
- (c) such other remote monitoring as may be appropriate and agreed between the Parties from time to time.

In addition, Ostara personnel will from time to time visit the Site in person, on a schedule agreed in advance between the Parties.

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3.3 Monitoring. Without limiting the generality of section 3.2, Ostara shall monitor the system and will work with Owners to keep the System running as prescribed in the Operations Manual to minimize the production of non-conforming Fertilizer.

3.4 Chemicals.

- (a) While this Agreement is in effect, Ostara will provide and pay for all deliveries of bulk liquid magnesium chloride required to operate the Nutrient Recovery System. Owners will provide all services and equipment necessary to schedule and receive magnesium chloride deliveries from Ostara and to load the product into the designated storage tanks.
- (b) Owners will procure all sodium hydroxide required to operate the Nutrient Recovery System, and will provide all services and equipment necessary to schedule and receive deliveries.

3.5 Liquids Sampling and Analysis. Owners will collect samples and undertake chemical analyses in accordance with an agreed methodology to facilitate process monitoring and control of the Nutrient Recovery System as defined in the Operations Manual. The following table identifies the anticipated sampling frequency and analytical requirements:

	<b>Sol PO<sub>4</sub>-P</b>	<b>NH<sub>3</sub>-N</b>	<b>Sol Mg</b>
<b>Dewatering concentrate</b>	3 per week	3 per week	3 per week
<b>Reactor effluent</b>	3 per week	3 per week	3 per week
<b>Magnesium bulk storage tank</b>			1 per chemical delivery

3.6 Qualified Personnel. Each Party's personnel performing its obligations hereunder will be appropriately trained, certified and equipped by such Party.

3.7 Access. Owners hereby grant full access to the Site to Ostara and its Affiliates or designees as required for Ostara to perform its obligations under this Agreement. Upon advance request and reasonable prior notice to Owners, Ostara will have Access to the Nutrient Recovery System during normal business hours for inspection, public or private tours, or any other purpose. Owners may provide public or private tours of the Nutrient Recovery System and may publicize the process and equipment for Owners' public relations efforts subject to any agreed restrictions.

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### **4. DELIVERIES AND STORAGE**

- 4.1 Packaging. Owners will harvest, dry, screen based on size, and bag the Fertilizer in Bags for Delivery. The Owners will ensure that a label with product size and content information accompanies each Bag following the procedures therefor set forth in the Operations Manual.
- 4.2 Loading. Owners will ensure the availability of a suitable berth at the Site for Ostara's trucks. Owners are responsible for loading the Fertilizer at the Site during normal business hours in accordance with Ostara's loading instructions and without damage to the Bag. Ostara is responsible for all costs of transporting the Fertilizer from the Site after the Fertilizer has been loaded on Ostara's trucks.
- 4.3 Notice of Collection and Delays. Ostara will provide Owners with no less than five (5) days' notice of the day a truck will arrive at the Site to collect a Fertilizer Delivery. If Owner anticipates a need to delay such Delivery and, as long as a truck has not already been chartered by Ostara, Owners may immediately notify Ostara of the resulting delay in the date of such Delivery, however, such delay may not extend beyond ten (10) days.
- 4.4 Storage of Fertilizer. Owners will store up to 40 Bags of Fertilizer in a mutually agreed dry location at the Site, or another similar dry location designated by Ostara. If there are more than 40 Bags of Fertilizer at the Site, then:
- (a) Owners, in their sole discretion, may elect to store such excess Fertilizer at the Site at no additional cost or expense to Ostara; or
  - (b) Owners may require Ostara to have such excess Fertilizer removed from the Site at Ostara's expense. When and if that excess Fertilizer is placed in storage at the off-site facility, it will be deemed to be a Delivery of Fertilizer in the same manner as a Delivery occurs upon loading of the Fertilizer on Ostara's trucks pursuant to section 1.1(d).
- 4.5 Title and Risk. Until Delivered to Ostara under the terms of this Agreement, Owners will be responsible for any loss, damage or injury to the Fertilizer that was not caused directly or indirectly by the negligence or wilful misconduct of Ostara. Following such Delivery, the ownership of and the risk of loss in the Fertilizer will shift to Ostara.

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### **5. WEIGHTS AND RECORDS**

- 5.1 Weighing of Fertilizer. Prior to Delivery, the Fertilizer will be weighed by Owners on scale(s) provided by Ostara at the Site. All costs associated with weighing the Fertilizer at the Site will be borne by Owners. A net weight will be determined and reported by Owners to Ostara each time Fertilizer is Delivered to Ostara. The aggregate net weight determined during any monthly period will be accepted as the quantity of Fertilizer Delivered.
- 5.2 Owners Records. Owners will keep accurate and satisfactory records of the weight of Fertilizer Delivered and will provide Ostara with copies of such records upon request.
- 5.3 Representative Present. Ostara will have the right, at its cost, to have a representative present at any and all times to observe the determination of weights. If Ostara questions the accuracy of the weights, Ostara will so advise Owners and Owners will permit Ostara's representative to test the scales and weighing methods.
- 5.4 Weighing Methods. If the scale(s) or weighing methods are determined to be in error, Owners will investigate the error and advise Ostara of the amount and the estimated duration of the error. Owners will make adjustments to the affected records and:
- (a) if the adjustments indicate that money is owed to Owners, Ostara will include the amount due with any subsequent payment to be made to Owners the following month; or
  - (b) if the adjustments indicate that money is owed to Ostara, Ostara will deduct the amount due from any subsequent payment to be made to Owners until the amount owed to Ostara is repaid in full.

If Owners cannot establish the amount and duration of the error, the parties will attempt to reach an agreed resolution regarding the number of Tons of Fertilizer Delivered during the last half of the period since the most recent calibration of the weighing device. Should the parties be unable to agree on this determination, the parties may elect to resolve the Dispute in accordance with the Dispute resolution procedures set forth in article 11. In any such Dispute, the parties will, unless there is substantial evidence to the contrary, assume that the error was in effect for no longer than the last half of the period since the most recent calibration of the applicable weighing device and any award, order or decision will be in accordance with the same.

### **6. INVOICING AND PAYMENT**

- 6.1 Price. Ostara will pay Owners TWO HUNDRED FIFTY DOLLARS \$250.00 for each Ton of Fertilizer Delivered ("**Price**"). The Price is in United States of America dollars.



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- 6.2 Invoices Submitted by Owners. Owners will submit invoices to Ostara on a monthly basis specifying the Fertilizer Delivered by Owners during the previous month.
- 6.3 Payment of Invoices. Subject to section 6.4, Ostara will pay Owners for the Fertilizer Delivered at the Price stated herein within 30 days of receipt of each undisputed invoice by Ostara.
- 6.4 Withholding. Ostara will have the right to withhold payment of the portion of any invoice which Ostara, in its good faith judgment, disputes. If Ostara elects to exercise its rights under this section 6.4, Ostara will give no less than 10 days' notice to Owners of the amount it will withhold and the reasons for such withholding, as soon as possible after making such election but not later than the due date of the payment. Thereafter, the parties will engage in good faith negotiations in an effort to resolve the Dispute. If the parties are unable to reach an agreement within 30 days from the date payment was originally due, the Dispute will be resolved in accordance with the Dispute resolution procedures set forth in article 11.
- 6.5 Records. Ostara and Owners will keep accurate and satisfactory records relevant to determining the weight, quality and Price calculations of the Fertilizer Delivered under this Agreement and will provide the other Party with copies of such records upon request. Owners will retain records in accordance with Owners' record retention policies and in no event less than five (5) years after the date of the creation of those records.

### **7. AUDIT**

- 7.1 Audit. Any Party may at any time, but not more than once per year, and at its own expense, and with not less than 30 days' advance notice to another Party, conduct a confidential audit of the weight of Fertilizer Delivered to Ostara, related sales records and financial records of such other Party for the sole purpose of verifying the correct calculation and payment of amounts owing pursuant to this Agreement. Any person conducting an audit under this clause must be bound by the terms of the confidentiality obligations set forth in section 8.1 or agree to be bound by terms no less protective of the audited Party's confidential information than those contained in section 8.1.

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### **8. CONFIDENTIALITY**

8.1 Confidentiality. Pursuant and subject to Chapter 239 of the Nevada Revised Statutes, Public Records Act, Owners warrants that they will hold in confidence and trust, and not disclose, directly or indirectly, any Confidential Information to any non-employees, including Owners' consultants, without the prior written consent of Ostara unless otherwise required by law. Owners will use the Confidential Information only to perform their obligations under this Agreement and not in a manner which would inhibit Ostara from independently pursuing its intended business.

### **9. INTELLECTUAL PROPERTY AND LICENSING**

9.1 Ownership. Owners acknowledge that Ostara or its third party licensors will retain exclusive ownership of all right, title and interest in and to any Intellectual Property in the Nutrient Recovery System, and any improvements made to such Nutrient Recovery System by Ostara, by Owners or by any third party on behalf of Ostara or Owners, and no such rights are conveyed to Owners by virtue of this Agreement. Neither Owners nor any of their agents or employees will (a) assign or otherwise transfer, modify, enhance, supplement, adapt, translate, reverse engineer, reverse assemble, decrypt, decompile, disassemble, create derivative works, or make improvements to the Nutrient Recovery System without Ostara's written permission; (b) copy the Software except for one copy for back-up purposes only; provided such copy contain all proprietary notices and other markings appearing on the Software, (c) merge Software into any other program unless necessary for operational use by Owners, or (d) use all or any portion of the Software for the purpose of deriving its source code.

9.2 Intellectual Property License. Ostara grants to Owners, during the Term, a non-exclusive, non-transferable, royalty-free, non-sublicensable license to operate the Nutrient Recovery System and use the Software solely as is required for Owners to perform their obligations under this Agreement.

9.3 No Other Rights. Except as expressly permitted otherwise pursuant to this article 9, no license or right in or to the Nutrient Recovery System, any trademark, trade name, service mark, logo, insignia, design or other intellectual property of Ostara, its subsidiaries, affiliates, licensors, manufacturers or suppliers or any other Intellectual Property ("**Excluded Rights**") is granted by this Agreement, and Owners will not make use of any Excluded Rights without the express prior written consent of Ostara.

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9.4 Intellectual Property Indemnity. To the fullest extent permitted by law, Ostara shall defend, protect, hold harmless, and indemnify Owners and the Owners' related parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, alleging that the Nutrient Recovery System or any element thereof infringes any United States patent right, copyright, or other intellectual property right. If Ostara has reason to believe the use of a required design, process or product is an infringement of a patent, Ostara shall be responsible for such loss unless such information is promptly given to Owners. This indemnity does not extend to any suit based upon an infringement or alleged infringement of any patent, copyright, or other intellectual property right in respect of the use of the Nutrient Recovery System in combination with other technology or software not provided by Ostara or a modification or enhancement to the Nutrient Recovery System not made by Ostara, if such claim would not have occurred but for such combination, modification or enhancement; or any infringement based upon third party software except as to any modifications or enhancements to such software made by Ostara and delivered to Owners. The foregoing states the entire liability of Ostara for patent, copyright, or other intellectual property rights infringement. Any indemnity provided pursuant to this section will be subject to the indemnification procedure set forth in section 10.3. This indemnity covenant shall survive the termination of this Agreement.

**10. WARRANTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION**

10.1 Disclaimer of Warranty. NEITHER PARTY MAKES ANY WARRANTIES TO THE OTHER HEREUNDER, AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY ARE SPECIFICALLY DISCLAIMED, INCLUDING ANY WARRANTY THAT GOODS CORRESPOND WITH A PARTICULAR DESCRIPTION, ARE OF MERCHANTABILITY QUALITY, ARE FIT FOR A PARTICULAR PURPOSE, WILL BE DURABLE FOR A REASONABLE PERIOD OF TIME OR THAT THE GOODS DO NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10.2 Indemnity. Each Party agrees to defend, indemnify and hold harmless the other parties from and against any and all claims of third parties for personal injuries, fatalities or property loss to the extent such claims arise from such Party's negligent acts or omissions or willful misconduct in its performance of its obligations under this Agreement.

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- 10.3 Indemnification Procedure. A Party claiming indemnification under section 9.4 or this article 10 (the “**Indemnified Party**”) will give prompt notice in writing to the Party providing such indemnification (the “**Indemnifying Party**”) of any action, proceeding, claim, or potential claim (each, a “**Claim**”) which could give rise to a right to indemnification hereunder, describing the Claim in reasonable detail, along with copies of any correspondence, court papers, or other writings setting forth the Claim. The Indemnified Party will have the right, at its option, to take over responsibility for the defense or settlement of the Claim, at its own expense and by counsel of its own selection. The Indemnified Party will reasonably cooperate with the Indemnifying Party and its counsel in the defense and/or settlement of any such Claim. The Indemnified Party will not enter into any settlement with respect to such Claim without the Indemnifying Party's prior written consent.
- 10.4 LIMITATION OF LIABILITY. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL THE LIABILITY, IF ANY, OF OSTARA, ITS CORPORATE AFFILIATES, LICENSORS, MANUFACTURERS OR SUPPLIERS FOR DAMAGES ARISING OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT EXCEED THE LESSER OF (A) ONE (1) MILLION US DOLLARS AND (B) THE CUMULATIVE PRICE OWED BY OSTARA TO OWNERS FOR FERTILIZER DELIVERED HEREUNDER. IN NO EVENT WILL ANY PARTY BE LIABLE TO THE OTHERS FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, REVENUES, PROFITS OR SAVINGS, FOR ANY MATTER WHATSOEVER, EVEN IF CAUSED BY NEGLIGENCE, WILFUL MISCONDUCT OR BREACH OF CONTRACT AND EVEN IF THAT PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.
- 10.5 ESSENTIAL PART OF BARGAIN. THE PROVISIONS OF THIS ARTICLE 10 CONSITUTE AN ESSENTIAL PART OF THE BARGAIN BETWEEN THE PARTIES AND HAVE BEEN REFLECTED IN THE CONSIDERATION FLOWING BETWEEN THE PARTIES.
- 11. DISPUTE RESOLUTION**
- 11.1 Dispute Resolution Process. The Parties will, to the extent permitted by applicable law, attempt to settle every dispute arising out of or in connection with this Agreement (“**Dispute**”) by following the dispute resolution process set forth in this article 11.

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- 11.2 Mutual Discussions. If any Dispute arises between the Parties in connection with, or arising out of, this Agreement, the Parties within 30 days will attempt to settle such Dispute in the first instance by mutual discussions between Ostara and the Owners.
- 11.3 Non-Binding Mediation. If the Parties are unable to resolve the Dispute pursuant to section 11.2, then the Parties agree that they will endeavor to settle the Dispute by mediation administered by the Commercial Arbitration and Mediation Center for the Americas under its rules before resorting to litigation or any other dispute resolution procedure. The requirement of filing a notice of claim with respect to the Dispute submitted to mediation will be suspended until the conclusion of the mediation process. Recourse to this Dispute resolution procedure will be binding on the Parties as to the submission to mediation but not as to its outcome and accordingly all negotiations are to be conducted in strict confidence and without prejudice to the rights of the parties in future legal hearings. Except for the right to seek interlocutory relief, no Party may commence proceedings until seven (7) days after the Parties have failed to reach a binding settlement by mediation.

### **12. TERM AND TERMINATION**

- 12.1 Term. This Agreement will come into effect on the Effective Date and, subject to earlier termination in accordance with section 12.2, will continue in force until the date which is ten (10) years from the Effective Date (the “**Term**”).
- 12.2 Termination for Cause. Notwithstanding any other provision of this Agreement, any Party may give notice in writing to the other parties terminating this Agreement with immediate effect if:
- (a) a Party commits or permits a breach of its material covenants or obligations under this Agreement and such Party fails to remedy or to undertake steps to remedy the breach to the reasonable satisfaction of the Party not in breach within thirty (30) calendar days after the Party in breach’s receipt of notice of such breach from the Party not in breach;
  - (b) bankruptcy or insolvency proceedings are instituted, on good grounds only, by or against the other Party, or the other Party is adjudicated a bankrupt, becomes insolvent, makes an assignment for the benefit of creditors or proposes or makes any arrangements for the liquidation of its debts or a receiver or receiver and manager is appointed with respect to all or any part of the assets of the other Party;
  - (c) the other Party ceases, or threatens to cease, to carry on business;

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- 12.3 Termination if Sufficient Funds not Made Available. If sufficient funds for the then-current fiscal year are not appropriated, budgeted and otherwise made available to Owners in respect of the continued operation of the Nutrient Recovery Facility, the Owners may terminate this Agreement effective immediately upon notice in writing to Ostara, and Ostara waives any and all claims against Owners for damages arising out of the termination of this Agreement under this section.
- 12.4 Effect of Termination for Cause by Owners. If Owners terminate this Agreement for cause pursuant to section 12.2, then this Agreement will expire immediately upon the giving of such notice of termination to Ostara by Owners and upon such termination the Parties will promptly enter into a license agreement substantially in the form described in section 12.5. Any such termination will not affect any rights or remedies of Owners against Ostara then existing or which may thereafter accrue.
- 12.5 License Terms Upon Termination for Cause. Any license agreement entered into between the Parties pursuant to section 12.4 will include, at a minimum, the following terms:
- (a) Ostara will grant to the Owners a perpetual, non-exclusive, non-transferable, non-sublicensable license to operate the Nutrient Recovery System solely as required to remove excess phosphorous from the Site and to produce Fertilizer;
  - (b) Owners will, for clarity, be solely responsible for the operation and maintenance of the Nutrient Recovery System and for the provision of any required chemical or other inputs; and
  - (c) any Fertilizer produced by the Nutrient Recovery System will remain the sole property of Owners and Owners may dispose of such Fertilizer as Owners see fit, except that Owners may not sell or offer to sell such Fertilizer to any party as CRYSTAL GREEN<sup>®</sup> and no license to the CRYSTAL GREEN mark or any other trade mark of Ostara or any of its Affiliates will be granted to Owners.
- 12.6 Survival. Termination of this Agreement for any reason will not affect provisions which are expressed to outlast the termination of this Agreement and/or provisions relating to payment, indemnification, warranties, liability, confidentiality, and the ownership (but not licensing) of intellectual property rights, which provisions will remain in full force and effect.
- 12.7 No Liability for Termination. The termination of this Agreement will not of itself give rise to any liability on the part of either Party to pay any indemnity, or, in particular, any compensation to the other Party for loss of profits or goodwill.

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**13. GENERAL PROVISIONS**

- 13.1 Applicable Law/Jurisdiction. This Agreement will be governed exclusively by and construed in accordance with the laws of the State of Nevada and the federal laws of the United States applicable therein. The courts of the state of Nevada will have non-exclusive jurisdiction to hear any matters arising in connection with this Agreement. The *United Nations Convention on the International Sale of Goods* will not apply to this Agreement.
- 13.2 Successors/Assignment. Neither Party will assign this agreement or any rights or obligations hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns and all persons or corporations succeeding to or acquiring the business carried on by either of the parties.
- 13.3 Force Majeure. Dates or times by which either Party is required to perform under this Agreement will be postponed automatically to the extent that any Party is prevented from meeting them by causes beyond its reasonable control.
- 13.4 Severability. It is the intention and agreement of the parties that if any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, under present or future laws, such provision be curtailed to the extent required for its validity under the applicable law and, as so curtailed, enforceable. Alternatively, the parties agree to substitute for such provision another provision that is legal, valid and enforceable and that achieves the same or similar objectives. If this is not possible, the parties agree that should any provision of this Agreement be held to be illegal, invalid or unenforceable, such provision will be ineffective to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 13.5 No Partnership. Nothing in this Agreement will be construed or deemed to create any form of partnership, joint venture, principal-agent relationship or employment relationship between the parties. Neither Party will make commitments affecting the other Party without that Party's prior written consent.

**BYPRODUCT REMOVAL  
AND OPERATIONS AGREEMENT**

- 13.6 Notice. All notices and demands required to be given to any Party under this Agreement must be in writing and may be given by hand delivery or by nationally recognized overnight delivery service. Notices delivered personally will be deemed effective upon delivery (provided a signed receipt is obtained). Notices sent by a nationally recognized overnight delivery service will be deemed delivered effective upon the date of receipt or rejection by the addressee. Notices required under this Agreement shall be deemed effective only if sent as required by this section and only if sent to the address of the other Party as first set forth above (as may be amended by notice from time to time).
- 13.7 No Waiver. The failure of either Party to insist upon strict performance of any of the terms and conditions herein will not be deemed a waiver of any rights or remedies that either Party will have and will not be deemed a waiver of any subsequent default of the terms and conditions hereof.
- 13.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof, and supersedes any prior agreements. There are no terms, obligations, covenants, representations, statements or conditions, whether oral or written, express or implied, other than those contained herein. No variation or modification of this Agreement, nor waiver of any of the terms and provisions hereof, will be deemed valid unless it is in writing and signed by the parties.
- 13.9 Further Assurances. Each Party will at any time and from time to time, upon each request by the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.
- 13.10 Counterparts and Scanned Signatures. This Agreement may be executed in counterpart, each of which, when so executed, will be deemed to be an original copy hereof, and all such counterparts together will constitute but one single agreement. The parties are authorized to provide and agree to accept from the other Party electronically scanned (portable document format) signatures on a counterpart to this Agreement, and such portable document format file will be deemed to be an original counterpart signature page to this Agreement.

**<SIGNATURE PAGE FOLLOWS>**



**BYPRODUCT REMOVAL  
AND OPERATIONS AGREEMENT**

IN WITNESS WHEREOF, the Parties hereto have, through duly authorized officials, executed this Agreement effective as of the Effective Date.

**OSTARA USA, LLC**

**CITY OF RENO**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**CITY OF SPARKS**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**BYPRODUCT REMOVAL  
AND OPERATIONS AGREEMENT**

**Schedule "A"  
Fertilizer Specifications**

The Fertilizer Delivered hereunder will conform to the following Specifications:

Size Specifications

Fertilizer will be as determined by screens provided under the System Agreement per tolerance criteria applicable to the screens and the screening system.

**Density**

<b>Element</b>	<b>Unit</b>	<b>Range</b>	<b>Method</b>
Bulk Density	Lbs/cuft	No less than 45 lbs/cuft	100 ml grad. cyl
Aspect Ratio	N/A	Average > 0.45 and minimum of 80% of measurements > 0.4	Calipers, minimum 10 granules, calculated by dividing granule height (thickest point) by width (widest point)
Hardness/Crushing Strength	Lbs of force per granule	For product categorized as SGN 240 or greater, average crush strength of no less than 5.5	Digital force gauge, minimum 10 granules

**BYPRODUCT REMOVAL  
AND OPERATIONS AGREEMENT**

**Guaranteed Analysis of Constituents**

<b>Element</b>	<b>Unit</b>	<b>Range</b>	<b>Method</b>
Magnesium	% as Mg	Minimum 9.5%	Per Operations Manual
Phosphorus	% as P <sub>2</sub> O <sub>5</sub>	Minimum 27.5%	Per Operations Manual
Ammonium	% as N	Minimum 5.0%	Per Operations Manual

**Pathogens**

<b>Element</b>	<b>Unit</b>	<b>Level</b>	<b>Method</b>
Total Coliform	MPN/1g	< 2	Per Operations Manual
Fecal Coliform	MPN/1g	< 2	Per Operations Manual
Salmonella	4 gram sample size	Negative	Per Operations Manual

**Limits of Non Nutritive Constituents**

For each percent of P<sub>2</sub>O<sub>5</sub> guaranteed, the maximum allowed level of a metal expressed in parts per million (ppm), must not exceed the limits as specified in the following table.

<b>Metals</b>	<b>ppm per 1% P<sub>2</sub>O<sub>5</sub></b>	<b>Method</b>
<b>Arsenic (As)</b>	9.0	Per Operations Manual
<b>Cadmium (Cd)</b>	7.5	Per Operations Manual
<b>Cobalt (Co)</b>	136.0	Per Operations Manual
<b>Lead (Pb)</b>	43.0	Per Operations Manual
<b>Mercury (Hg)</b>	0.7	Per Operations Manual
<b>Molybdenum (Mo)</b>	42.0	Per Operations Manual
<b>Nickel (Ni)</b>	175.0	Per Operations Manual
<b>Selenium (Se)</b>	26.0	Per Operations Manual
<b>Zinc (Zn)</b>	420.0	Per Operations Manual