

**INTERMUNICIPAL
CAPACITY PURCHASE AND SEWER CONNECTION CONTRACT
VILLAGE OF RICHMONDVILLE, NEW YORK
WITH
THE TOWN OF RICHMONDVILLE, NEW YORK**

THIS INTERMUNICIPAL CAPACITY PURCHASE AND SEWER CONNECTION CONTRACT dated as of September 7, 2022 (the “Contract”) is made by and between the MUNICIPALITY OF THE VILLAGE OF RICHMONDVILLE, a municipal corporation and political subdivision organized and existing under the laws of the State of New York (the “Village”), and the MUNICIPALITY OF THE TOWN OF RICHMONDVILLE (including the Richmondville Sewer District No. 1), a municipal corporation and political subdivision organized and existing under the laws of the State of New York (the “Town”).

WITNESSETH:

1. **WHEREAS**, the Town is in the process of creating a sewer district for a portion of the real property located within the Town, said district known as the Richmondville Sewer District No. 1;
2. **WHEREAS**, the Town has requested the Village provide sewage treatment services from the Village by providing a connection from the Village’s existing sewage treatment system to the Richmondville Sewer District No. 1, so that properties located within the Richmondville Sewer District No. 1 be furnished with municipal sewage disposal and sewer services; and
3. **WHEREAS**, the Village’s sewer collection system and wastewater treatment plant (“WWTP”) possess sufficient capacity and in accordance with and pursuant to the terms, covenants and conditions of this agreement, to provide the services set forth herein; and

4. **WHEREAS**, this intermunicipal agreement will allow the Town to meet the immediate needs of the community for the protection of the health and safety of the residents, people and environment, and to allow the Town to create some capacity for future development and service requests with the Richmondville Sewer District No. 1; and
5. **WHEREAS**, the Town is willing to pay the Village a one-time lump sum to purchase needed capacity in its existing sewage treatment system in consideration for the Village supplying services to the Richmondville Sewer District No. 1; and
6. **WHEREAS**, the Town seeks 35,000 gallons per day (“gpd”) capacity at the Village WWTP to service the Richmondville Sewer District No. 1; and
7. **WHEREAS**, the Village is willing to provide the needed capacity at its WWTP and to provide wastewater treatment service to the Richmondville Sewer District No. 1 so long as the Town shall pay the costs to construct, install and connect the Richmondville Sewer District No. 1 to the existing Village sewer system in accordance with plans, drawings and specifications approved by the Town and the Village; and
8. **WHEREAS**, such connection costs include improvements to the Village’s existing sewer system (hereinafter “Connection Improvements”) including but not necessarily limited to:
 1. Contribution of approximately \$750,000 for Infiltration and Inflow abatement within the Village’s sewer collection system for the purpose of restoring growth capacity for the Village use. Such contribution shall be part of the one-time lump sum payment to the Village and shall include associated non-construction costs.
 2. Contribution of approximately \$250,000 toward construction of a new belt filter press system and appurtenances at the WWTP for enhanced sludge dewatering. Such

As to the Town: Town of Richmondville
 104 Municipal Lane
 Richmondville, NY 12149
 Attention: Town Clerk

“Sewer Use Charge” means for each Billing Period commencing with the first Billing Period during which the Village furnishes sewer use services to the Richmondville Sewer District No. 1 an amount equal to the metered actual wastewater flow times 1.27 the rate per 1000 gallons then in effect, less any portion consisting of future debt service related to improvement, repair or extension of the Village Sewer Collection System. The meter for billing purposes shall be a single master meter in the force main and shall be located at or near the Village line.

“State” means the State of New York.

“Town” means the Town of Richmondville, a Town and Municipal Corporation and political subdivision of the State located in the County of Schoharie, New York

“Village” means the Village of Richmondville, a Village and Municipal Corporation and political subdivision of the State located in the County of Schoharie, New York.

Unless the context indicates otherwise, words imparting the singular number include the plural number and vice versa; the terms “hereof,” “herein,” “hereunder” and similar terms refer to this Contract and the term “hereafter” means after and the term “heretofore” means before the date of the Contract. Words of any gender include the correlative words of the other gender unless the sense indicates otherwise.

Section 2. Provisions

- A. The Village does hereby agree to provide wastewater treatment services for up to 35,000 gallons per day (30 day average flow) to the Town upon the terms and conditions set forth herein.
- B. The Town does hereby agree to pay the Village all costs identified herein upon the terms and conditions set forth herein for the “Capacity” and the wastewater treatment services.
- C. The Town does hereby agree to pay the Village \$15,000 annually for basic daily operation of the Sewer District No. 1 facilities. This annual fee covers only normal operation labor and excludes repairs, utilities, chemicals, after-hours callouts, service contracts, etc. The annual fee identified above will be the first-year cost and will be subject to increase annually commensurate with approved cost increases related to Village employees. The annual fee shall be billed to the Town in quarterly installments for inclusion in the quarterly customer billing. Further, for any collection system repairs that may be necessary, the Town agrees to offer this work to the Village as an additional service to the basic operational duties.
- D. Should future WWTP upgrade or rehabilitation work be required as a result of permitting changes from a regulatory agency (excluding the Village collection system), the Town shall participate in paying for same, in accordance with the Sewer Use Charge.

Section 3. Representations

A. Representations of the Village

- 1. The Village is a municipal corporation of the State authorized to (i) provide Sewer Use services to the Town (but at no time in excess of the Capacity unless service is available in excess of Capacity AND is requested in writing by the Town, AND the

Village agrees to provide such services in excess of the originally agreed Capacity), and
(ii) enter into this Contract.

2. The Village has or hereafter will comply with all applicable administrative and regulatory requirements of the State, including environmental compliance proceedings in order to provide for the continued and uninterrupted sewage disposal services for the Capacity allocated hereunder.

B. Representations of the Town

1. The Town is a municipal corporation of the State authorized to contract for the provision of Sewer Use Services.

2. The Town represents that the wastewater discharged from the Richmondville Sewer District No. 1 will be of normal strength, type and quantity for domestic sewage, and will meet the requirements of and be subject to the terms and requirements of the Village of Richmondville Sewer Ordinance, which is attached hereto and made a part hereof as **Exhibit "A"**.

3. The Town represents that in the event wastewater flow from the Richmondville Sewer District No. 1 violates the requirements of the Village of Richmondville Sewer Ordinance and causes or contributes to a SPDES Permit Violation at the Village WWTP, the Town shall be subject to the provision of said Village of Richmondville Sewer Ordinance and shall:

a. immediately take steps to correct the situation; and

- b. participate honestly and faithfully in any legal defense or negotiations with Regulating Agencies (including but not limited to NYSDEC presumably) pursuant to the violation; and
- c. pay all or a portion of fines levied pursuant to the violation depending on the proportion of responsibility that the Town bears for such violation, as determined by agreement or by the Regulatory Agencies. Should the quality or quantity of wastewater from the Richmondville Sewer District No. 1 change to the extent that it is untreatable at the Village WWTP, the Town shall have a reasonable time to correct the situation after which, if uncorrected, the Village shall have the right to terminate service.

Section 4. Term

The initial term of this Contract shall commence on the date hereof and shall continue for a period of 1 year(s). After the initial term of 1 year(s), this Agreement shall be reviewed and subject to modifications and/or amendments for further approval. Upon further approval, this agreement shall thereafter automatically renew from year to year unless one party serves notice on the other party six (6) months prior to the renewal date of its intention not to renew the Agreement for the reason that the Agreement is no longer necessary as set forth below. It is the intent of both parties that this agreement will be renewed for at least 40 years to satisfy funding requirements. The Agreement is no longer necessary when the Town ceases to send sewage to the Village WWTP and either no longer generates sewage requiring treatment and/or has made alternative arrangement for sewage disposal.

Section 5. Connection Improvements Repair and Maintenance

The Connection Improvements will be constructed within the lands and property of the Village as approved by the Village and all required regulatory agencies. All right, title and interest to the Connection Improvements shall be transferred to the Village and such improvements shall thereafter be maintained and repaired by the Village at its sole cost and expense (but such cost and expense shall be part of the cost of Operation and Maintenance that will be included as part of the sewer rent hereunder).

Section 6. Cost of Capacity and Connection Improvements

A. Cost of Capacity

Within ninety (90) days of the date upon which the Town issues notice of award for the construction of the sewer improvements, the Town will pay the Cost of Capacity to the Village.

B. Connection Improvements

It is the parties' intent that the Connection Improvements will be made by the Village using the lump sum Cost of Capacity payment in accordance with standard construction practices and all applicable laws. The Village shall provide an annual accounting to the Town of how the Cost of Capacity payment is utilized.

Section 7. Charges for Sewer Use Service; Payment Therefore

A. No later than the 15th day of the month immediately following the first quarter in which Sewer Use service is supplied to the Richmondville Sewer District No. 1, and then quarterly at the beginning of each Billing Period thereafter, the Village shall issue a written invoice and statement of the current Sewer Use Charges to the Town and/or Richmondville Sewer District No. 1, as computed in accordance with this Agreement, due for the immediately

preceding Billing Period and then for each of the succeeding Billing Periods in the current Billing Year.

B. Payments to the Village shall be based on invoices submitted to the Town in a form acceptable to the Town. The Town will make best efforts to process all invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to the Village for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by Law.

Section 8. Events of Default

The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default under this contract.

A. Failure by the Town to pay the Cost for Capacity or the Sewer Use Charges when due under the terms of this Contract, and the continuation of such failure for a period of sixty (60) days or more after written notice of such default is given to the Town by the Village.

B. Failure by the Town to observe or perform any other covenant, agreement or obligation of the Town contained in this Contract and the continuation of such failure for a period of sixty (60) days after written notice of such failure is given by the Village to the Town; provided that if such failure is other than with respect to the payment of money and is of such nature that it can be corrected and the Town is using reasonable diligence to correct the default, such failure shall not constitute an Event of Default.

Notwithstanding the foregoing, neither the Village nor the Town shall be liable for delays in performance reasonably beyond the control of each, but the Village or the Town, as the case may be, shall each use reasonable efforts to mitigate and remediate any such delay.

Section 9. Binding Effect

This Contract shall be binding on the parties hereto, their agents, assigns and successors. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any term or provision hereof. The headings in this Agreement are for convenience of reference only and shall not alter or otherwise affect the meaning hereof.

Section 10. Amendments

This Contract may be amended by the parties hereto only in writing from time to time. It is understood that no conduct, course of conduct or oral or written statement (other than such express written waiver, consent, modification, or amendment, as the case may be) shall be deemed to constitute a waiver, consent, modification or amendment. Requests for modification shall not be unreasonably denied.

Section 11. Entire Agreement

This Contract is the entire agreement of the Village and the Town with respect to the subject matter hereof, and supersedes all prior understandings between the parties with respect to such subject matter. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any term or provision hereof. The headings in this Agreement are for convenience of reference only and shall not alter or otherwise affect the meaning hereof.

Section 12. State Law

This Contract shall be governed by, construed and interpreted in accordance with the laws of the State of New York, unless Federal law clearly applies.

Section 13. Approvals

In order to proceed with the sewer connection, the Town has to form a sewer district (Richmondville Sewer District No. 1) and has to construct the necessary improvements. The Town will be (has) applying(ied) for several and various grants to fund the project. Up until the time that the Town awards the construction contract, the Town (or the property owners within the proposed sewer district) may elect to terminate the project. If the Town serves notice on the Village prior to awarding the construction contract of project termination, the Agreement shall terminate.

Should the Town fail to establish the sewer district within **36 months** from the date of this Agreement, then at the Village's option, this Agreement shall be null and void, and of no effect, and the Village shall have no obligation thereafter to provide services specified herein.

Section 14. Independent Contractors, not an Agent

Each party is an independent entity, unrelated to other party, and is solely and exclusively responsible for its own acts at all times. Neither party is authorized or empowered to act as an agent for other party and does not have the right or authority to assume or create obligations of any kind on behalf of other party, or to accept service of any legal process of any kind addressed to or intended for other party, or to bind other party in any respect whatsoever.

Section 15. Indemnity

Each party shall indemnify, defend and hold harmless the other party and each of its board members, employees and agents from any and all claims, damages and costs in connection with and arising out of that party's negligence and/or malfeasance in conducting activities under this Agreement. In the event that any claim is made, suit is brought or other proceeding is instituted against either party and involves a claim for which indemnification is required

hereunder, the party seeking indemnity (the “Indemnified Party”) shall give the party from which indemnification is required (the “Indemnifying Party”) notice of such claim within a reasonable time after becoming aware of the claim. The Indemnifying Party shall thereafter assume and control the cost of the defense of such claim, suit or proceeding using legal counsel reasonably acceptable to the Indemnified Party. The Indemnifying Party shall not settle any such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

Section 16. Notices

Any notice or other communication in connection with this Agreement shall be in writing and shall be deemed to be delivered upon receipt and if addressed as provided above (See Notice Address) and if sent by reputable courier service providing proof of delivery.

Section 17. Dispute Resolution

A. Negotiation Period. In the event of a dispute between the parties to this Agreement, the parties shall attempt in good faith to resolve such dispute through negotiation for a period of thirty (30) days after written notice of such dispute is received by either party from the other party (the “Negotiation Period”).

B. If the dispute is not resolved during the Negotiation Period, either party may invoke the binding resolution procedure set forth below (the “Binding Resolution Procedure”). In order to invoke the Binding Resolution Procedure, a notice of ongoing dispute (the “Dispute Notice”) must be served by either party on the other party within thirty (30) days following the expiration of the Negotiation Period. The Dispute Notice must identify with specificity the nature of the claim/dispute including a complete summary of the basis of the claim/dispute and the relief being requested. Within thirty (30) days of receipt of the Dispute Notice, the parties shall select an

attorney to act as the mediator (the "Mediator"); the attorney shall be independent of both parties and their respective outside counsel; shall be fair, objective, and cost effective; and shall have at least ten (10) years' experience in general commercial litigation practice and/or alternative dispute resolution in Schoharie County, New York State. The parties shall share the cost of the Mediator equally. Within sixty (60) days from the selection of the Mediator (the "Motion Period"), both parties shall submit to the Mediator and the other party a full and complete statement of their case including, but not limited to, a memorandum of law, supporting affidavits, demonstrative evidence in support of their position and such other supporting documents as each party deems appropriate. Each party shall have thirty (30) days (the "Response Period") from the close of the Motion Period to submit a response to the other party and the Mediator. The Mediator shall have sixty (60) days from the close of the Response Period to issue a recommended written decision providing a reasoned elaboration for his/her decision and the supporting documentation. Within thirty (30) days from receipt of the recommended decision (the "Appeal Period"), either party shall submit its objections to the recommended decision in writing to the Mediator with a copy to the other party. Within thirty (30) days of the close of the Appeal Period, the Mediator shall issue a final decision (the "Final Decision") responding to the objections and identifying any changes to his recommended decision. The Final Decision issued by the Mediator shall become binding on both parties (the "Final Binding Decision"). The Final Binding Decision may be filed and enforced as a judgment by either party and is not subject to an appeal.

Section 18. Counterparts

This Agreement may be executed in one or more counterparts which when executed and delivered shall be deemed to be one and the same instrument.

Section 19. Authority for Execution

The Mayor of the Village of Richmondville has executed this Agreement pursuant to a Resolution and/or Motion approved by the Board of Trustees of the Village of Richmondville, Schoharie County, New York, at a meeting thereof held on September 7, 2022. The Mayor, whose signature appears hereafter, is duly authorized and empowered to execute this agreement and enter into such an agreement on behalf of the Village. This instrument shall be executed in duplicate. At least one duplicate original shall be permanently filed, after execution thereof, in the office of the Village Clerk, Village of Richmondville.

The Town Supervisor of the Town of Richmondville has executed this Agreement pursuant to a Resolution and/or Motion approved by the Town Board of the Town of Richmondville, Schoharie County, New York, at a meeting thereof held on September 8, 2022. The Town Supervisor, whose signature appears hereafter, is duly authorized and empowered to execute this agreement and enter into such an agreement on behalf of the Town. This instrument shall be executed in duplicate. At least one duplicate original shall be permanently filed, after execution thereof, in the office of the Town Clerk, Town of Richmondville.

IN WITNESS THEREOF, the parties hereto have executed or approved this Contract on the dates below their respective signatures.

VILLAGE

Village of Richmondville, New York

By: Carl L. Warner, Jr.

Carl L. Warner, Jr.

Title: Village Mayor

Date: 9-8-22

Hope Bayes

Hope Bayes-Clerk/Treasurer

Date: 9-8-22

[SEAL]

TOWN

Town of Richmondville, New York

By: Jeffrey D. Haslun

Jeffrey D. Haslun

Title: Town Supervisor

Date: 9-8-22

Maggie A. Smith

Maggie A. Smith-Town Clerk

Date: 9-8-2022

[SEAL]

STATE OF NEW YORK, COUNTY OF SCHOHARIE: ss.:

On the 8th day of September, in the year 2022, before me, the undersigned, personally appeared **Carl Warner, Jr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Maggie A. Smith
Notary Public

MAGGIE A. SMITH
Notary Public, State of New York
Qualified in Schoharie County
No. 01SM5016365
Commission Expires Aug. 9, 2025

STATE OF NEW YORK, COUNTY OF SCHOHARIE: ss.:

On the 8th day of September, in the year 2022, before me, the undersigned, personally appeared **Jeffrey D. Haslun**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Maggie A. Smith
Notary Public

MAGGIE A. SMITH
Notary Public, State of New York
Qualified in Schoharie County
No. 01SM5016365
Commission Expires Aug. 9, 2025

Exhibit A

Village of Richmondville Sewer Ordinance