

INTERMUNICIPAL AGREEMENT

THIS INTERMUNICIPAL AGREEMENT, made this ____ day of _____, 2023,
by and among:

VILLAGE OF BUCHANAN, a municipal corporation, with an address of 236 Tate Avenue, Buchanan, New York 10511 (hereinafter “the Village”); and

TOWN OF CORTLANDT, a municipal corporation, with an address of 1 Heady Street, Cortlandt Manor, New York 10567 (hereinafter “the Town”).

WITNESSETH

WHEREAS, the Village owns, operates and maintains the Village of Buchanan Wastewater Treatment Plant (hereinafter “the Treatment Plant”) for rendering Wastewater collection, transmission, treatment and disposal service in and for the Village of Buchanan (hereinafter the “Village System”); and

WHEREAS, the Town wishes to connect “The Montrose Business District” (MBD) defined as the area along the Route 9A corridor from the Hendrick Hudson High School to the Cortlandt train station and which shall only include residential, mixed use and commercial uses, and the Cortlandt Quarry, a 99 acre Town owned parcel in the Verplanck neighborhood which is proposed to be redeveloped with recreation and commercial uses only (see Exhibit “A” annexed hereto), to the Village System for the purpose of transmitting, treatment and disposal of wastewater from the Town and utilizing the Village System’s wastewater treatment capacity, subject to the terms and conditions established herein; and

WHEREAS, the Town desires to contract with the Village for provision of Wastewater transportation, treatment and disposal services by the Village to the Town, pursuant to the terms and conditions contained herein; and

WHEREAS, the Village agrees to accept, receive, transport, treat and dispose of Wastewater from the Town pursuant to the terms and conditions contained herein; and

WHEREAS, the Town shall reimburse the Village for services provided to the Town at a rate of 1.30 percent of the prorated flow based on actual flow and expenses on a monthly or quarterly basis as determined by the Village.

NOW, THEREFORE, the Parties hereto, in consideration of the mutual promises, covenants, and undertakings herein contained, each binding itself and representing that it has proper legal authority to enter into this Agreement, and intending to be legally bound, agree as follows:

ARTICLE I

The term of this agreement is perpetual as the Parties are municipal corporations unless usage by the Town users renders the plant inadequate for Village use. See, NY Village Law § 14-1404.

All terms agreed upon by the Town and Village in the Cooperative Agreement executed by the Town on February 15, 2022 and the Village on February 17, 2022 shall be incorporated into this agreement and shall be binding upon the Parties, with the exception of the area the Town wishes to develop as part of this Agreement (the MBD) now defined as the area along the Route 9A corridor from the Hendrick Hudson High School to the Cortlandt train station and Cortlandt Quarry which shall only include mixed use and/or commercial uses.

Definitions

Section 1.01. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified whenever they are used or referred to herein, unless a different meaning clearly appears from the context:

- A. “*Agreement*” shall mean this document and all modifications, alterations, amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as “hereto”, “hereby”, “herein”, “hereof”, “hereunder” or other descriptive words or phrases having similar import;
- B. “*Allocated Capacity*” shall mean the amount of hydraulic capacity that a Party has reserved in the Treatment Plant pursuant to Exhibit A or Article IV hereunder;
- C. “*Allocated Capacity Default*” shall mean a discharge of Wastewater into the Village System by a Party that exceeds the peak hydraulic flow rate of 100% of the Allocated Capacity based upon the Town’s total flow for a three consecutive month period.
- D. “*Attributed Flow*” shall mean the sewage flow attributed to the Town, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow.
- E. “*Bonds*” shall mean the notes, bonds or other debt obligations subsequently authorized and issued to the Village or the Village’s assignee or designee, the proceeds of which would be applied for the purposes of financing Costs relating to the Treatment Plant, or notes, bonds or other debt obligations issued by the Village or the Village’s assignee or designee to refund the same, where the proceeds of such bonds, notes or debt are or will be applied in part to pay Costs attributable to the Town, and where no Capital Contribution has been tendered by the Town, as applicable, to cover the full amount of its appropriate share of such Costs;
- F. “*Capacity*” shall mean the ability of the Treatment Plant to receive and effectively

treat a specified load;

- G. "*Capital Contribution*" shall mean the tendering by the Town, as applicable, of a lump sum certain amount calculated under the terms hereof, for the payment of all or a portion of the Town's prorated share of the Costs of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant. Capital Costs are any fixed one-time expense not related to O & M Expenses.
- H. "*Certified Public Accountant*" shall mean a Person, who shall be Independent, appointed by the governing body of the Village, actively engaged in the business of public accounting and duly certified as a Certified Public Accountant under the authority of laws of the State of New York;
- I. Intentionally Omitted
- J. Intentionally Omitted
- K. "*Connected Municipalities Meeting*" shall mean the quarterly meeting of the Village and the Town pursuant to Section 2.04;
- L. "*Connection Point*" shall mean an underground sewage pipe at which the Town collection system is connected to the Village collection system.
- M. "*Consulting Engineers*" shall mean a Person who shall be appointed by the governing body of the Village, qualified to pass upon engineering questions relating to Wastewater collection, transmission, treatment and/or disposal systems. If such Person shall be an individual, he shall be a professional engineer duly registered under laws of the New York State. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the State of New York and the individual assigned to the Village shall be a professional engineer duly registered under laws of the State of New York;
- N. "*Costs.*" "*Costs of Acquisition.*" or "*Costs of Construction.*" as to the Treatment Plant shall mean and include all capital costs related to acquiring or constructing any portion of the Treatment Plant, and betterments thereto, necessary to maintain current flows or providing an increased availability to the Town unless specified otherwise, and shall include, but not be limited to, the following:
 - 1. Obligations incurred and payments made or required to be made by the Village to workmen and laborers or to contractors, subcontractors, builders, and suppliers.
 - 2. Administrative expenses of the Village during the period of any acquisition or construction, including the financing thereof;
 - 3. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of settlement or compromise of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or

- convenient in connection with the Treatment Plant; amounts of any damages incident to or consequent upon acquisition or construction; and payments for restoration of property damaged or destroyed in connection with construction;
4. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable by the Village for carrying out purposes of the Village relating to the Treatment Plant, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, which can be operated as part of the Treatment Plant and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, engineering fees, legal fees, costs of abstracts of title, title insurance, title opinions, surveys and reports;
 5. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any governmental or regulatory authority related to construction of any part of the Treatment Plant, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;
 6. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations thereof, the preparation of plans or updates, supervision of acquisition or construction, inspections and performance of all other duties of engineers or architects in connection with any acquisition or construction and the financing thereof;
 7. Expenses of audits, initial compensation of a trustee or paying agent with respect to Bonds of any series; fees and expenses, if any, of a trustee, or paying agent relating to a construction fund, if any; financing costs, fees and expenses, including compensation and expenses of a financial advisor or underwriter, if any; costs of preparing, printing and issuing Bonds; legal costs, fees and expenses, including costs arising out of any amendments hereto; advertising expenses; premiums for insurance or contracts of suretyships insuring bondholders against the risk of nonpayment of the principal of, interest on or premium with respect to any particular Bond or Bonds; and all other costs incurred by the Village in connection with financing acquisition or construction and issuing Bonds; Other costs, charges and expenses incident to completion of any improvements, alterations, extensions or additions to the Treatment Plant;
 8. Reimbursement to the Village for advances made by it for any of the above items, including any interest paid or required to be paid by the Village with respect to any such advances, or for any other costs incurred by the Village or for work done by the Village with respect to the Treatment Plant;

9. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction;
 10. Any sums required to reimburse the Village or to pay or retire any indebtedness incurred by the Village, including payment of interim obligations of the Village, for expenditures made for any of the above items or for any other costs properly chargeable as costs of acquisition or construction; and
 11. "*Costs*," "*Costs of Acquisition*," or "*Costs of Construction*" incurred in connection with the Treatment Plant, shall be reduced by any and all grants, reimbursements, subsidies or other payments designated by law, regulation, contract or agreement to be applied to payment of all or any portion of such items (except payments required under this Agreement and any revenue the Village may receive not related to the project;
- O. "*DEC*" shall mean the Department of Environmental Conservation of the State of New York or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- P. "*Debt Service Charge*" shall mean the amounts due to the Village from the Town calculated under the terms hereof, for the payment of all or a portion of the Town's prorated share of the Costs, including principal and interest, of the Treatment Plant and Village Interceptors, or future capital alterations, capital additions, or capital improvements to the Treatment Plant funded through Bonds issued on behalf of the Village;
- Q. "*Domestic Wastes*" shall mean the normal water-borne wastes from a Dwelling Unit such as wastes from kitchens, water closets, lavatories, and laundry facilities;
- R. "*Dwelling Unit*" shall mean any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by one family or other group of Persons living together or by a Person living alone;
- S. "*Effective Date*" shall mean the date the Parties hereto have executed this Agreement and have adopted this agreement pursuant to the applicable rules of their respective governing bodies;
- T. "*EPA*" shall mean the United States Environmental Protection Agency or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- U. "*Extra Strength Wastes (Commercial Sewage)*" shall mean all non-Domestic Wastes which exceed the pollutants, loadings, or waste characteristic limits contained in the pertinent pretreatment ordinance;
- V. "*Fiscal Year*" shall mean the period commencing on June 1 of each year and ending on May 31 of the same year;

- W. "GPD" shall mean gallons of Wastewater discharged during a 24-hour period from midnight to midnight;
- X. "Hydraulic Overload" shall mean the condition that occurs when the monthly average flow entering the Treatment Plant exceeds the hydraulic design capacity for 3 consecutive months out of the preceding 12 months or when the flow in a portion of the Village System exceeds its hydraulic carrying capacity;
- Y. "Independent" shall mean, with respect to the Certified Public Accountant, a Person who is Independent in fact and who is not a member of the governing body, officer or employee of a Party hereto, or any elected or appointed official or employee of a Party hereto, or that is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the governing body, officer or employee of a Party hereto, or an elected or appointed official or employee of a Party hereto; provided, however, that the fact that such Person is retained regularly by a Party hereto shall not make such Person an employee within the meaning of this definition;
- Z. "Industrial User" shall mean any Non-Residential Connection discharging sewage and wastes other than normal water carried domestic sewage and wastes, directly or indirectly, to the Village System;
- AA. Intentionally Omitted
- BB. "Interceptor" shall mean that pipe, pump, facility, lift or other physical installation necessary for the conveyance of Wastewater from a Point of Connection to the Treatment Plant;
- CC. "IPP" shall have the meaning given that term in Section 6.08 hereof;
- DD. "Monthly Average Flow" shall mean the total flow at the Treatment Plant during a calendar month divided by the number of days in that month.
- EE. "Village's Wastewater Collection Systems" shall refer to the Village's Wastewater collection and transportation system facilities presently existing or hereafter to be acquired, constructed, owned and operated by the Municipality to provide Wastewater collection and transportation services to certain portions of the Municipality, together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof;
- FF. "State Pollutant Discharge Elimination System" or "SPDES Permit" shall refer to the authorization, license or equivalent control document issued by DEC to the Village to implement the requirements of NY Cons L §17-0815 (relating to EPA administered permit programs: the State Pollutant Discharge Elimination System; state program requirements; and procedures for decision making) and the Federal Water Pollution Control Act (33 U.S.C.A. § § 1251—1387) also known as the Clean Water Act in effect as of the Effective Date of this Agreement.
- GG. "Non-Residential Connection" shall mean any building, structure, room, group of rooms, establishment or facility, other than a Dwelling Unit, discharging sewage and

- wastes, including industrial wastes, directly or indirectly, to the Village System;
- HH. *"O&M"* shall mean Operating and Maintenance;
- II. *"O&M Charge"* shall mean the charges payable by the Town to the Village hereunder calculated pursuant to Section 5.01 hereof;
- JJ. *"O&M Expenses"* shall have the meaning described in Section 5.02 hereof;
- KK. *"Out of District Users"* All users not within the Village of Buchanan;
- LL. *"Organic Design Capacity"* shall mean the highest daily organic load at which the Treatment Plant can effectively treat the incoming Wastewater at the predetermined limitations contained in the Village's SPDES Permit;
- MM. *"Organic Overload"* shall mean the condition that occurs when the average daily influent organic load at the Treatment Plant exceeds the organic design capacity upon which the permit and Treatment Plant design are based;
- NN. *"Party"* shall mean any party to this Agreement individually;
- OO. *"Parties"* shall mean the Village and the Town;
- PP. *"Person"* or *"Persons"* shall mean an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipal corporation, a municipality, a municipal authority or any other group or legal entity;
- QQ. *"Point of Connection"* shall mean point or points at which the Village receives and accepts Wastewater from the Town.
- RR. *"Pro Rata Share of Attributed Flow"* shall be calculated by dividing the attributable sewage flow from the Town, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow, by the total metered flow discharged to the Treatment Plant or other specific location.
- SS. *"Pump Station, Private"* shall mean a facility that includes pumps and equipment to move wastewater to a higher elevation owned by a single non-municipal entity and serving only one building.
- TT. *"Pump Station, Public"* shall mean a facility that includes pumps and equipment to move wastewater to a higher elevation owned by a municipality and serving more than one building.
- UU. Intentionally Omitted.
- VV. *"Sanitary Wastewater"* shall mean all Domestic Wastes and water-borne wastes of similar character from similar facilities in offices, hotels, stores, restaurants, hospitals, schools, other commercial establishments, and industrial establishments;
- WW. *"Town"* shall mean the Town of Cortlandt, New York, a municipal corporation of the State of New York or its assigns, designees, successors, vendors, or concession holders;
- XX. *"Treatment Plant"* shall mean the existing Wastewater treatment and disposal facilities, the outfall sewer and all other facilities related to treatment and disposal of

Wastewater, together with any additions, improvements, enlargements and/or modifications thereto and/or replacements thereof, heretofore or hereafter acquired or constructed by the Village, and that the Village deems appropriate and necessary to provide treatment and disposal of Wastewater under applicable laws of the State of New York;

- YY. “*Wastewater*” includes Sanitary Wastewater and/or Extra Strength Wastes, together with any ground, surface or storm water as may be present;
- ZZ. “*Village*” shall mean the Village of Buchanan, New York, a municipal corporation of the State of New York or its assigns, designees, successors, vendors, or concession holders;
- “*Village Interceptors*” shall mean the Interceptors owned by the Village carrying the Town’s and the Village’s Wastewater flow from the Points of Connection to the Treatment Plant;
- AAA. “*Village System*” shall mean the Village’s Wastewater Collection System, the Village Interceptors and the Treatment Plant;
- BBB. “*Village Wastewater Collection System*” shall mean the Wastewater collection and transportation system facilities, excluding the Village Interceptors, presently existing or hereafter to be acquired, constructed, owned and operated by the Village to provide Wastewater collection and transportation services to the Village and other bulk service customers (but not the Town), together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof; excluding, however, any facilities included in the definition of “Treatment Plant” and “Village Interceptors”.
- CCC. “*Town Interceptors and Town Wastewater Collection System*” shall mean the collection system and interceptors owned by the Town carrying the Town’s Wastewater flow from within the Town to the Points of Connection to the Village.

ARTICLE II

Construction and Operation of the Treatment Plant and other Conditions

Section 2.01. Construction and Operation of Treatment Plant. The Village or its successor shall own the Treatment Plant and be the Treatment Plant permittee. The Village shall operate the Treatment Plant continuously and shall pay or cause to be paid the O&M Expenses of the Treatment Plant.

Section 2.01(a). Wastewater Collection System Costs and Operation. The Town shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the Town’s Wastewater Collection Systems. Similarly, the Village shall pay

all capital costs and expenses related to the acquisition, construction, operation and maintenance of the Village's Wastewater Collection System and Village Interceptors, except as otherwise provided herein. The Town's Wastewater Collection Systems shall each be designed, constructed, operated and maintained in a manner that will not cause it to be in violation of this Agreement and that will not cause the Village to be in violation of any law or regulation of any governmental authority having jurisdiction over the Treatment Plant.

Section 2.01(b). Operation Requirement. Each Party shall operate and maintain its respective Wastewater collection system in a good and sound operating condition.

Section 2.02(a). Connection of the Town's Wastewater Collection Systems and Limitations. The Town shall maintain continuously during the term hereof proper connection of the Town's Wastewater Collection Systems to the Village Interceptors, at such Points of Connection as described in Exhibit B, attached hereto. The pipe at the point of connection between the Village and the Town, and downstream, shall not exceed 75% of its current or future capacity. The Town shall pay a fixed O&M cost for that portion of the conveyance system from the Town Connection Point through any pumping stations to the WWTP which fixed O&M payment shall begin at the time of the Town connection. If it is determined that infrastructure requires an upgrade and/or repair for the sole purpose of the Town, the Town will pay the cost of the upgrade and/or repair. Otherwise, the Town will pay its prorated share of the cost of the upgrade and/or repair based upon the impact from the flow to that infrastructure.

Future additional points of connection by the Town shall be agreed upon by the Town and the Village, and the terms and conditions applicable to such future connections shall be set forth in a separate written agreement between the Parties, which shall constitute an amendment and supplement to this Agreement. The Town shall deliver to the Point of Connection all Wastewater originating within the service area described as applicable and as amended from time to time, as being tributary to the Village Interceptors and Treatment Plant.

Section 2.02(b). Pump Stations. Generally, the construction and use of pump stations should be avoided due to extra operation and maintenance requirements. However, when a pump station is required to transmit wastewater for more than one building, it shall be considered a public pump station. Public pump stations in the Town Wastewater Collection System shall be owned by the Town or transferred to the Village. All costs related to the construction, operation, maintenance, and/or improvement of the public pump station shall be assigned to the party benefiting from the pump station or equivalent portion thereof, consistent with Article V of this Agreement. Pump stations constructed for the benefit of one building should be generally avoided. However, when a pump station is constructed for only one building, it shall be considered a private pump station. All costs related to the operation, maintenance, and/or improvement of the private pump station and force main shall be the sole responsibility of the owner. All pump stations shall include at a minimum a back-up pump,

meter, flow totalizer, auxiliary power, alarms, and overflow capacity consist with Westchester County Department of Health requirements. Furthermore, a written operation and maintenance plan shall be prepared for each pump station and shall include a log of regularly scheduled maintenance and necessary repairs. The owner of the pump station shall submit an annual report consistent with Westchester County standards to the Village prior to January 31st of each year. The Village shall have the authority to review and make requirements for any pump station connecting to the Town Wastewater Collection System. Should any pump station in the Town Wastewater Collection System operate or be maintained in manner that causes deleterious effects to the Village Wastewater Collection System or the Treatment Plant, the Town shall rectify the cause immediately. If the cause is not rectified adequately or timely, as determined by the Village, the Village shall have the authority to rectify the cause through emergency repair, connection cutoff, or similar measures, as necessary to restore the Village Wastewater Collection System or the Treatment Plant. Any costs incurred by the Village for any work related to pump stations located within the Town that connect to the Village Wastewater Collection System shall be assigned to the Town and paid within thirty (30) days, in accordance with this Agreement.

It is specifically noted and agreed that the Village has the right to inspect all pump stations located within the Town that connect to the Village Wastewater Collection System at any and all reasonable times. Moreover, the Town will take responsibility for any pump station within the Town and provide required reports to the Village, when requested.

The Town agrees that it will employ a qualified individual from the Town to inspect and maintain all pump stations located within the Town.

Section 2.03. Cooperation; Sharing of Information. The Parties each agree to the extent possible and economically practicable (except as otherwise required under this Agreement), to cooperate and share pertinent information with each other in facilitating the construction, maintenance and/or operation of their Wastewater collection systems, and the Village will provide the Town with any pertinent information regarding Costs, quantities of discharge, capacity or other matters relating to the Treatment Plant reasonably deemed necessary or desirable as determined by the Town, provided however, that in the event securing such information involves costs which would not normally be incurred as a cost of owning or operating and maintaining the Treatment Plant, the Town shall pay or provide for the payment of such costs. Each Party shall not be financially or otherwise responsible for the Wastewater collection system of the other Party, and the Town shall not be financially or otherwise responsible for the Treatment Plant except to the extent of charges required to be paid by the Town to the Village hereunder, and the performance of all terms and conditions of this Agreement. This paragraph shall not limit the obligations of the Parties set forth in the Special Requirements Article of this Agreement (Article IX).

The Town shall submit to the Village all pertinent written information including, but not limited to, monthly reports, written violations, notifications or other correspondence by outside agencies to the Town whether requested by the Village or not.

Out of District User ; Term of Agreement

Section 3.01. Town Constitutes an Out of District User. The Village agrees to operate and maintain in good working order and in compliance with all applicable laws, regulations, and permits continuously during the term hereof the Village Interceptors and the Treatment Plant, and any enlargements, additions, improvements, and modifications thereto as determined solely by the Village, and to provide the Town, as an Out of District customer, Wastewater treatment, transportation, and disposal services in the Treatment Plant throughout the term hereof, as provided for.

Section 3.02. Term. This agreement will remain in effect until terminated by the parties.

ARTICLE IV

Allocation of Capacity in the Treatment Plant; Measurement of Flow; Capital Contribution; Updating of Treatment Plant; Additions to Treatment Plant Required by the Village and Calculation of Debt

Service

Section 4.01. Acceptance of Flows from the Town. During the term hereof, the Town shall have the contractual right to discharge Wastewater into the Village Interceptors subject to the following limitations:

Average Daily Flow (ADF):	100,000 Gallons/Day as a monthly average; and A minimum of 25% of any added capacity of the Sewer Treatment Plant
Peak Daily Flow (PDF):*	120,000 Gallons/Day
Peaking Factor:	1.2 PDF/ADF * for a consecutive 3-day period or less

* These numbers shall be adjusted based on any increases in capacity of the Treatment plant.

The Town covenants and agrees that it will not discharge Wastewater into the Village Interceptors in a manner that constitutes an Allocated Capacity Default, as set forth herein, except as may be allowed by the Village hereunder. The Town's allotment is 100,000 gpd and 25% of any additional capacity.

Section 4.02. Measurement of Flow. The sewage entering the Village must be metered by a master meter at the point of connection to the Village which will be owned and maintained by the Village at the cost of the Town. This meter will be used in conjunction with individual water meters to determine wastewater usage. The Town shall provide the Village remote access to the water meters in the district. The calculation for wastewater usage will be based on 100 percent of water usage. The master meter will be used to detect inflow and infiltration into the system.

Section 4.02(a). Flow Meters. The Village shall provide and install a Wastewater flow metering station at the Town's Point of Connection and the Treatment Plant headworks that will achieve the maximum practicable accuracy. Costs associated with the provision and installation of the Wastewater flow metering and sampling stations shall constitute O&M Expenses. The metering station shall be equipped with a flow reading system that will collect and transmit meter readings for download and a display that will allow the rate and total to be read in standard engineering units.

Section 4.02(b). Maintenance of the Flow Meter. The Village shall maintain the above referenced flow meter and station to accurately monitor flow conveyed across municipal boundaries. The flow meter shall be capable of recording flow measurements in one-minute intervals and averaging flows over the hour and day. The meter shall record and totalize all data. The record shall include at least flows at hourly and daily intervals. The Village shall maintain the flow meter in good working order.

The flow meter shall be inspected, tested, and certified for accuracy at reasonable intervals, but no less than one hundred and eighty (180) days. Calibration certification shall be done by a reputable company normally engaged in the business of meter calibration. The Village shall forward such inspection results, testing results, and certificates of calibration to the Town upon request.

In the event of a defective or inoperative flow meter, the Village shall have the right to take such steps as are required to repair or replace the flow meter, and the costs associated with any such maintenance, repair or replacement work shall be paid by the Town.

Section 4.02(c). Monitoring Flow Meters. The Village shall have access at any and all times to the flow meters. The flow meters shall be monitored by the Village, which shall be responsible for collection of data therefrom. In addition, the Town shall have a right of access to such records.

Section 4.02(d). Unmetered Flows. Any point of connection of the Town to the Village System that reaches 20,000 GPD shall require the installation of a sewage flow meter by the Village within nine (9) months of reaching 20,000 GPD at a mutually agreed upon location. The sewage flow meter would be in addition to the use of water meters for calculating usage.

Section 4.02(e). Missing Flow Data. In the event reliable flow data is unavailable, due to malfunction in a flow meter, or in the recording device for said meter, the Village shall estimate flows for any such period as the flows for the same period in the preceding year or for the period immediately preceding the malfunction depending on which of these periods had a rainfall amount closest to that of the period of malfunction. The Village may use other pertinent data, such as water consumption data, in developing an estimate for the missing data. In the event of any dispute between the Parties concerning the reasonableness or accuracy of estimated flows, the dispute shall be resolved pursuant to Section 11.02.

The quantity of Wastewater discharged by the Town into the Treatment Plant shall be the sum of the flow measured at the applicable meters or devices at the Point of Connection for the Town as set forth on Exhibit B plus any unmetered(use of water meter only) or estimated flow (which may be amended from time to time as any additional connection points are permitted by the Village,). In all cases, the Village will use the higher of either the sewage metered flow at the point of connection to the Village or the unmetered flow where water meters are used to determine the flow.

It is understood that technology changes may permit metering changes that are more accurate. The Village reserves the exclusive right to determine metering changes and shall share information on any metering changes with the Town as it may request.

Section 4.04. Expansions or Upgrades of Treatment Plant. The Town shall be required to contribute to and share in the Costs of any other capital expansions or upgrades, improvements, modifications, extraordinary repairs or replacements not considered an O&M Expense, and other projects deemed by the Village to be of a capital nature and undertaken by the Village with respect to the Treatment Plant ("Capital Costs") provided the Town's capacity is maintained and provided the expansion, upgrade, improvements, modifications, extraordinary repairs or replacement will impact the Town. The Town will contribute for any expansion provided the Town gets additional flow allocated from the expanded capacity. Further, the Town shall only be required to contribute based on flow and at the same rate as in-district users. The Town shall have the right to inspect the record of all purchases and expenses involved in the construction. The Village shall provide to the Town on an annual basis a five (5) year projection of expected capital improvements.

Section 4.05. Calculation of Debt Service. For prior or subsequent Bonds issued to finance Capital Costs at the request of or for the benefit of the Town or, if applicable, other parties using the Treatment Plant, pursuant to Section 4.04, the payment of the Debt Service Charge shall commence upon issuance of the Bonds, or at such other time as may be required to assure the timely payment of debt service due on the Bonds. Such debt service charge shall be calculated in a manner consistent with the coverage and other covenants with respect to the Bonds and the calculation of the Capital Contribution hereunder, *i.e.*, the principal and interest attributable to the Capital Costs, together with financing costs, multiplied by a factor equal to the percentage that the Town's capacity increase in the Treatment Plant bears to the total increased capacity of the Treatment Plant (for example if the Town has additional capacity of 10% of the total increased capacity and is thus responsible for paying 10% of the capital cost of the project, the Town shall pay 10% of any debt service charge. Accelerated payments made by or on behalf of the Village on any Bonds shall not release the Town of its obligation to pay the debt service charge for any Capital Costs and any Capital Contribution funded pursuant to this section during the period such Bonds would have been outstanding but for accelerated payment.

Section 4.06. Hydraulic Overload. In the event of Hydraulic Overload, the Parties shall fully comply with any corrective action issued by DEC or EPA to the Village. The Village shall promptly provide notice to the Town when any corrective action issued by DEC or EPA is lifted.

Section 4.07. Organic Overload. In the event of Organic Overload, the Parties shall fully comply with any corrective action issued by DEC or EPA to the Village. The Village shall promptly provide notice to the Municipality when any corrective action issued by DEC or EPA is lifted.

Section 4.08. Allocated Capacity Planning. If at any time the Town's Monthly Average Flow exceeds 90% of the Town's Allocated Capacity, the Town shall, in addition to any action required as a result of any default, submit a plan consistent with this Agreement, for approval by the Village Engineer, to reduce its Monthly Average Flow to comply with this Agreement.

Section 4.08(a). Defaults. Allocated Capacity Defaults shall not be permitted; however, if such a Default occurs it shall be addressed as provided for herein.

Section 4.08(b). Town Allocated Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by the Town, the Village shall notify the Town of said Default in writing, including data, if available. The Town shall, within sixty (60) days of said notice, acknowledge said notice and advise the Village of any discrepancies with such notice of default and the corrective action to be taken in the form of a remedial action plan. The Village shall review any discrepancies and within thirty (30) days provide a response. Once the Town submits to the Village a remedial action plan, the Village shall review the

proposed remedial action plan and provide comments on the proposed remedial action within thirty (30) days of the plan being submitted. Upon approval of the proposed remedial action plan by the Village, the Town shall implement the approved corrective action within ninety (90) days of receipt of approval from the Village, or such longer period that may be reasonably granted by the Village for design, approval, construction and implementation of such corrective actions. In addition, the Village may limit new connections until the conditions that cause the Town to be in Allocated Capacity Default are abated. Any approved corrective action plan, remedial action plan, or limit of connections will be fully complied with by the Town, and the Village shall be entitled to injunctive relief without the requirement of a bond and the Town will reimburse the Village's reasonable attorney fees and costs in the event of such enforcement action.

Section 4.08(c). Default Surcharges. Notwithstanding any contrary provisions contained herein and in addition to all other remedies provided for herein, where the Town exceeds its Peak Daily Flow for more than two (2) consecutive days or more in any thirty (30) day period. Beginning on the 3rd day, it shall pay the Village three times the regular charge per gallon, for any volume over the permitted volume, whichever is greater, for the first three (3) days and thereafter the surcharge will increase to \$2,500.00 per day for the next three (3) days and thereafter the surcharge will increase to \$5,000.00 per day until the Town is no longer exceeding its Peak Daily Flow. In addition, should the Village be issued any fines, penalties or suffer any other verifiable financial impacts as a result of the Town exceeding its Peak Daily Flow, the Town will immediately reimburse the Village for same.

Additionally, where the Town exceeds its annual Allocated Capacity in any fiscal year, it shall pay the Village a surcharge based on the amount of the increased cost of treatment specifically allocated and attributable to the Town's Allocated Capacity Default, plus a fifteen (15%) percent penalty on the value thereof.

Section 4.08(d). Special Charge. If the Town discharges Wastewater at a flow rate that results in an Allocated Capacity Default and fails to, within ninety (90) days of the Default, make the necessary arrangement to eliminate the Default, then the Town shall pay the Village for the amount of the excess usage an amount equal to double what the quarterly charge otherwise would have been on such excess usage for the calendar quarter in which the Default occurred.

Any Special Charge received by the Village shall offset O&M Charges of the Village.

Section 4.08(e). State of Emergency. If a state of emergency is declared by authorities of the State of New York or the United States of America for an area including the Village and/or the Town, the Village and the Town shall not be subject to the Default provisions of this Section during the time in which the emergency is in effect.

Section 4.08(f). Hydraulic Overload Planning. If at any time the total Average Daily Flow for the Treatment Plant exceeds 90% of such Capacity, the Parties shall meet and discuss planning to avoid any hydraulic overload or default within the Village Interceptors and Treatment Plant.

ARTICLE V

O&M Charges and Expenses

Section 5.01. O&M Charge. Commencing upon the Town's connection and flow into the Village system, the Town shall pay to the Village an O&M Charge equivalent to the total O&M Expenses of the Treatment Plant multiplied by the Town's Pro Rata Share of Attributed Flow in the Treatment Plant. The O&M charge to the Town will be 1.3% of the flow attributed to the Town. The O&M Expenses are those costs associated with operating and maintaining the Treatment Plant and providing the Town and Village's third-party customers with Wastewater treatment and disposal services hereunder and are set forth in greater detail in Section 5.02 hereof. The O&M Charge shall be payable to the Village or its designee monthly in arrears. The method of charging for O&M Expenses as set forth in Article V shall begin upon the Effective Date of this Agreement. For example, if the Town's Pro Rata Share of Attributed Flow to the Treatment Plant is fifteen (15%) percent of the total, then the Town shall pay fifteen (15% at a rate of 1.3% of the Town flow) of the Total O&M Expenses. Albeit, there may be conditions where the Pro Rata Share will not be a percentage of the flow. Under this condition, accounting of an item will be provided and the appropriate Village and Town share will be determined by the Village and forwarded to the Town. Further any items that are exclusively used for or solely benefit the town would be paid for by the Town.

Section 5.02. O&M Expenses. O&M Expenses shall include the total of all of the following items, each such item being determined for the Fiscal Year of the Village or portion thereof under consideration, of all the expenses and costs directly incurred by the Village for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Town and any other contributors.

O&M Expenses include, but are not limited to;

- (a) power, chemicals, fuel, materials, and supplies;
- (b) costs of storing, hauling, dumping and disposal of residue or sludge from the Treatment Plant, including composting; and other costs determined by the Village to be costs;
- (c) salaries and wages of administrative, operation or maintenance personnel of the Village directly engaged in operating and maintaining the Treatment Plant,

including any outside contractor, currently Allied Pollution Control, together with the social security and unemployment taxes, workmen's compensation, insurance premiums, health and accident insurance premiums and pension benefits vocational training or any other benefits or costs applicable to the personnel.

(c) equipment and tools;

(d) costs of routine maintenance and repairs (including replacements), and costs of any work done under any contract with respect to the Treatment Plant (excluding capital upgrades or expansions);

(e) fees and expenses of the Consulting Engineers related to operations;

(f) premiums for all insurance to protect operations, structures, equipment and related items regarding the WWTP;

(g) legal expenses related to operations of the plant;

(h) all expenses involved in purchasing nutrient or other credits, if any, required to meet SPDES Permit requirement or other DEP requirements related to the Treatment Plant; and

(i) all other costs and expenses not of a capital nature, including but not limited to, telephone, security and cybersecurity, determined by the Village to be O&M Expenses and reasonably incurred and properly attributable, to the operation, maintenance and/or repair of the Treatment Plant, from time to time.

NON-O&M Expenses: O&M expenses shall not include a general allocation of costs, expenses, overhead and other expense items of the Village or its assignees, designees, successors, vendors or concession holders but shall be limited to those expenses and costs that are directly incurred by the Village for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Town and other contributors, but may include reasonable and supportable overhead expenses incurred by the Village. Non-O&M expenses shall be billed directly to the Town on a monthly or quarterly basis and payment shall be made by the Town within thirty (30) days of receipt. .

Examples of NON- O&M expenses are as follows:

- Village Engineer time spent on Town sewer district matters;
- Legal expenses for time spent on Town Sewer district matters;
- Salary paid to a Certified Public Accountant pursuant to the Town's request for same;

- Village Office staff, as well as hired staff to gather data and manage invoices and prepare bills on behalf of the Town;
- Additional WWTP staff and/or expenses required for treatment/maintenance operations due to Town's wastewater.
- All costs, fines and penalties, verifiably attributable to Town users, including but not limited to costs for prosecution shall be paid by the Town within 30 days of receipt of a detailed invoice from the Village.

Written records and accounts of all such costs and expenses shall be prepared and maintained by the Village and shall be available to each Party upon request. The Village shall maintain an accurate system of accounts and records with respect to all such O&M Expenses which shall be audited annually by a Certified Public Accountant. A copy of the audit shall be provided to the Town within thirty (30) days of its completion. Such accounts and records may be inspected and copied at reasonable times by the Town and its agents and representatives

ARTICLE VI

Wastewater Quality and Pretreatment Restrictions

Section 6.01. Uniform Standards. The Village has adopted and may amend from time-to-time uniform Wastewater quality standards applicable to the Village Wastewater Collection System, which are intended to comply with the requirements of EPA, DEC, and all other regulatory authorities.

Section 6.02. Compelling Compliance with Standards. (CODE)The Town shall enact or cause to be enacted an ordinance or ordinances or adopt a resolution or resolutions, as applicable, and the Town will cause such ordinance or ordinances or resolution or resolutions, as applicable, to mimic the Village's Sewer Law and/or Village resolutions to remain in full force and effect at all times, prohibiting and providing adequate penalties for the discharge into the Town's Wastewater Collection Systems of anything violating the above-mentioned Wastewater quality standards of the Village, and shall enforce the provisions thereof. Such ordinance or ordinances shall also prohibit and/or regulate, as applicable, the discharge into the Town's Wastewater Collection Systems by industries of prohibited Extra Strength Wastes, as prescribed in the applicable industrial pretreatment regulations adopted and amended by the Village from time to time. The Town shall not permit any discharge into the Town's Wastewater Collection Systems except in the manner and in accordance with the provisions of said ordinance or ordinances. After adoption or amendment of an ordinance, resolution or regulation pertaining to Wastewater, the Party adopting or amending the same shall provide a copy to the other Party to this Agreement.

Commercial sewage shall not be considered equivalent to residential sewage. Therefore, all sewage shall be brought to a residential quality with regard to loading as mentioned in the Village Code by use of pretreatment by the individual property owners. The Village shall have the right to inspect any out of district user and advise the Town of any violation. All violations by private property owners shall be prosecuted in the Village. Violations that are not resolved in a timely manner, shall allow the Village to terminate sewer services and impose fees and/or fines. Unpaid fines and costs related to the fine shall be paid by the Town and the Town shall lien the property through property taxes. In addition, the Village may also perform necessary corrective actions on out-of-district users to prevent regulatory agency permit violations. If any violation causes a DEC permit violation, the responsible party (Town) shall pay any fines and related costs to the Village and can thereafter the Town can seek to recover same from its user(s).

The Parties shall not discharge any Extra Strength Wastes to the Treatment Plant.

Section 6.03. Reimbursement for Damages from Improper Discharge. The Town shall pay the Costs of any damage to the Treatment Plant and fines or penalties resulting from discharge of improper Wastewater from the Town's Wastewater Collection System in violation of quality standards and restrictions and shall indemnify and hold harmless the Village with respect thereto. " Costs for improper discharge by any of the individual users or by the Town shall include but not be limited to legal, engineering, Village staff, and any other costs related to a violation. The Town will pay these costs to the Village and the Town will seek payment from the individual property owners. The Village shall pay or cause to be paid the Costs of any damage to the Treatment Plant resulting from discharge of improper Wastewater from the Village Wastewater Collection System or from any customer (including other bulk users) of the Village (except the Town) in violation of the above-mentioned quality standards and restrictions and shall indemnify and hold harmless the Town with respect thereto.

Section 6.04. Sampling Manholes. Significant Industrial Users shall comply with applicable USEPA, NYSDEC and other regulatory agencies as well as the applicable Village Code which shall be mimicked in the Town Code. This shall include sampling manholes as deemed required by the USEPA, NYSDEC and other regulatory agency requirements. Lab results and any written reports regarding manholes shall be submitted to the Village in a timely manner. Should the Town be required to install manholes, the Village may, at any time, sample the Wastewater in such manholes, the cost of which, including the Consultant Engineer, shall be paid for by the Town.

Section 6.05. Disconnection of Property. The Parties shall prohibit and prevent any Person from discharging Wastewater whose quantity or quality may have a deleterious effect on the Treatment Plant or receiving stream. When requested by the Village, the Town shall prohibit such unlawful discharge from the property to the extent permitted by law.

Section 6.06. Pipe Connection Required. The Parties each shall, to the extent possible, prohibit and prevent by ordinance the discharge of any substance into its respective Wastewater collection system, other than by and through a permanent direct pipe connection. The ordinance shall provide for fines in the maximum amount permitted by law. Accordingly, unauthorized discharges from tank trucks or similar sources into the Town's Wastewater Collection Systems, Village Interceptors or the Village Wastewater Collection System shall be prohibited.

Section 6.07. Prohibition of Septage Discharge. The Parties each shall prohibit and prevent by ordinance the discharge of septic tank or grease trap wastes into its respective Wastewater collection system including the contents of septic tanks of existing establishments when they first connect to its respective Wastewater collection system.

Section 6.08. Implementation of Industrial Pretreatment Program. If the Village is required by the DEC or the EPA to implement an Industrial Pretreatment Program (the "IPP"), the Village may accept primary responsibility from time to time to implement, administer and enforce the IPP, including (but not limited to) conducting and updating Industrial User surveys, and performing inspections and sampling. The Town agrees to empower the Village to act as its agent with respect to the IPP. The Town shall reasonably cooperate with any enforcement action taken by the Village against the Town's Industrial Users and shall take such action in the exercise of its own rights and police powers as may be reasonably requested by the Village to ensure compliance with the Village's IPP. All costs and expenses, including but not limited to, labor, equipment, engineering fees, attorney fees, etc., incurred by the Village in implementing and enforcing Village and Town sewer use regulations against users of the system located in the Town, shall be paid by the Town upon issuance of a monthly invoice by the Village itemizing same. The administrative costs of the Pretreatment Program will be paid by the Village and Town respectively (which costs are passed on to pre-treatment customers) and shall not be part of the O&M charges to the Town.

Section 6.09. Surcharge to Industrial Users. The Village may charge Industrial Users (which also includes landfills) an extra monthly strength surcharge (to be used to reduce O&M Expense) based on deviations over and above the strength considered normal for domestic Wastewater. To the extent reasonably possible, the Town agrees to assist in the collection of any surcharge due from an Industrial User in the Town's service area not paid within 90 days. Such surcharges shall be imposed and calculated in accordance with the Village's ordinances and regulations requiring the surcharges. Unpaid surcharges and costs related thereto shall be paid by the Town and the Town shall collect the unpaid surcharges and costs from its Users.

Section 6.10. Municipal Maintenance Waste Acceptance. The Village at its Treatment Plant shall accept wastes collected by the Town as part of its routine O&M program to maintain its collection system and facilities. Such wastes may include, but not be limited to, wastes collected during line flushing and wet well cleaning activities. Additional costs shall be charged

to the Town for acceptance of these wastes by the Village. The Town shall be responsible for transportation of the wastes to the treatment plant. The Village may limit the acceptance of waste from the Town pursuant to this Section if, in the Village's sole discretion, the quantity or quality of such waste may have a deleterious effect on the Treatment Plant or receiving stream. The Village may waive fees if they deem appropriate.

ARTICLE VII

Governmental Grants and Subsidies

Section 7.01. Applications. The Village may, at its sole discretion, make applications to the State of New York and to the United States, and their appropriate agencies, for any available grants, subsidies or other payments and for all permits and approvals in respect of the construction, operation and/or maintenance of the Treatment Plant, which amounts shall be applied in accordance with the terms and conditions of such grants or, if no allocation is mandated, to reduce the amounts payable by the Village and the Town on a proportional basis or as otherwise agreed, in accordance with the terms hereof. The Village shall be under no obligation to seek or provide funding for acquisition or construction of the Town's Wastewater Collection Systems, unless agreed to by the Village in writing.

Section 7.02. Compliance with Law and Conditions for Grants. The Parties hereto will take all such actions, within their legal powers, as may be required to comply with all applicable laws, regulations and permits applicable to their respective Wastewater collection systems and with agreements relating to applicable United States and State of New York grants and subsidies.

ARTICLE VIII

Connections to Wastewater Collections Systems and Charges

Section 8.01. Imposition of Sewer Rates. The Parties covenant that they will impose sewer rates or charges upon owners of improved property that shall be connected to the Town's Wastewater Collection System and the Village Wastewater Collection System for use thereof. The Parties also covenant to thereafter maintain such ordinances or resolutions or subsequent ordinances or resolutions, as applicable, imposing such sewer rates or charges in full force and effect continuously during the term hereof.

Section 8.02. Enforcement of Sewer Rates. The Town covenants to continue to enforce or to cause to be enforced sewer rates or charges in effect at any particular time and to collect or cause to be collected all amounts becoming due. If any amounts becoming due thereunder

shall not be paid, in accordance with provisions thereof at the time in effect, the Town shall pay the amounts due and can thereafter seek to recover same from Town users.

ARTICLE IX

Special Requirements

Section 9.01. No approval or right shall be granted to make any connection to the Town's Wastewater Collection Systems if the new connection would cause the Town to be in Allocated Capacity Default or if the Town, at the time of the application, is in Allocated Capacity Default. The Village reserves the right to review and approve all applications in accordance with its obligations under the sewer code of the Village. Furthermore, if the Village requires connections to be limited then, to the extent required by the Village, the Town agrees not to approve any sewer until the limit on connections is no longer in place or within the guidelines of the regulations.

Section 9.02. Building Permits. Testing. Each existing commercial user shall have a sample of waste tested to be used to classify the user as an industrial user or for the need of pretreatment. The Town will not issue any building permits that include connections or permit any connections for development which do not have adequate hydraulic capacity, during any limit of connections imposed by the Village.

Section 9.03. Connection Accounting. Town shall provide an accounting to the Village, in form and content as required by the Village, as to existing and planned sewer connections, so as to assist the Village in complying with the terms of this Agreement and any regulatory agency requirements

Section 9.04. Payment Default. All payments required under this Agreement shall be due thirty (30) days after the date of the invoice or written demand, except for the capital contribution discussed in Section 4.04 which is due in thirty (30) days from the date of written demand, and if not paid within such period, then a late charge of five (5%) percent for the first month and an additional one (1%) percent per month thereafter, compounded.

ARTICLE X

Reserved for inclusion of identifiable expenses billed to the TOC – examples include cost of sludge removal, chemicals, operator time, over and above the percentage billed to the TOC based upon flow.

ARTICLE XI

Miscellaneous

Section 11.01. Insurance; Repairs and Construction. The Village will insure or cause to be insured the Treatment Plant. Insurance shall be with a responsible company or companies authorized and qualified to do business under the laws of the State of New York, against loss or damage by fire and such other risks (including public liability) and casualties and in such amounts as are usually carried on like properties in the State of New York and as shall be reviewed and approved, at least annually, by the Consulting Engineers or other insurance advisor. Such insurance policies shall be non-assessable. A copy of the annual insurance renewal along with policy limits shall be provided to the Town within 30 days of renewal. The Town shall be named as an additional insured on said policy. Immediately upon the occurrence of any loss or damage to any part of the Treatment Plant which is covered by insurance, the Village will commence and promptly complete, or cause to be so commenced and promptly completed, the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by the Consulting Engineers and shall collect and apply, or cause to be applied, the proceeds of such insurance to the costs of such repair, replacement or reconstruction unless the Village determines that it is unwise to make such repair, replacement or reconstruction and shall agree upon other disposition of said insurance proceeds. In the event it becomes necessary to make any extraordinary repairs or replacements at the Treatment Plant because of damage or destruction and there are insufficient funds available from the insurance proceeds to pay the costs thereof, the Parties agree to pay their pro rata share of the additional costs in the same proportion as their Pro Rata Share of Allocated Capacity to the Treatment Plant. The Municipality agrees to share the cost of public liability insurance based upon the lowest bona-fide quote provided that the proportionate share of such cost being shared in the same manner as O&M.

The cost of the public liability insurance shall be shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof. In the event there is a judgment against the Village related to the Treatment Plant, which judgment is greater than the policy limits of the quoted policy, and if the Village has purchased a public liability policy and the judgment is greater than the policy limits, then the Village and the Town shall share the cost of the judgment in excess of the policy limits in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof.

Section 11.02. Binding Arbitration. Upon the written request of a Party, any dispute or claim in law or equity arising out of this Agreement shall be submitted to neutral, -binding mediation prior to the commencement of arbitration, or any other proceeding before a trier of fact. The Parties agree to act in good faith to participate in mediation and to identify a mutually acceptable mediator. If they are unable to agree upon a mediator, the Parties may, after twenty

(20) days have elapsed from the date of the written request for mediation, have the AAA appoint a mediator. The Parties shall share equally in the costs for mediation services. If the dispute or claim is resolved through mediation, the resolution will be documented by a written agreement executed by the Parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the Parties reflecting the same, and the Parties may then proceed to seek an alternative form of resolution to the dispute or claim in accordance with the remaining terms of this Agreement and other rights and remedies afforded by law.

Section 11.03. Inspection. The Parties, as applicable, shall provide each other, from time to time, all information relevant to the proper administration of their responsibilities under this Agreement, or in respect to the interpretation hereof, as and in such form and detail as may be reasonably requested and each shall, at all reasonable times and from time to time, permit the examination and inspection of their respective records and physical facilities relevant to the subject matter of this Agreement.

Section 11.04. Force Majeure. Notwithstanding any other provision of this Agreement, no Party shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, unforeseeable breakdown of the Treatment Plant and/or their respective Wastewater collection systems, or other event beyond its reasonable control. The Party having the responsibility for the facilities so affected, however, shall proceed promptly to remedy the consequences of such event, with Costs to be shared, if applicable, to the extent provided elsewhere herein.

Section 11.05. Indemnity. Each Party agrees to indemnify, defend and save harmless the other Party against all costs, losses or damage, including payment of reasonable attorney's fees, on account of any injury to persons or property occurring in the performance of this Agreement due to its negligence or the negligence of its agents or employees; provided, however, that no Party waives any rights or immunities arising out of any applicable governmental immunity laws and statutes.

Notwithstanding the foregoing and to the extent such liability is not caused by the intentional or willful conduct of the Village, in the event of a general breakdown of the jointly used Village Interceptors or the Treatment Plant so as to force the temporary cessation of sewer service contemplated hereunder, the Village shall not be liable to the Town or their sewer service customers for any damage sustained while such facilities are out of service, and the Town shall indemnify and hold harmless the Village from any claims of its users in such event.

Section 11.07. Severability. Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 11.08. Headings. The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

Section 11.09. Waiver. The failure of a Party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

Section 11.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

Section 11.12. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

Section 11.13. Supersedes Prior Agreements. This Agreement supersedes and repeals any prior agreements, contracts, and understandings, written or oral, by or between the Parties hereto with respect to the subject matter contained herein.

Section 11.14. Modification. This Agreement may be modified or amended in a writing signed by all the Parties hereto.

Section 11.15. New York State Law. This Agreement shall be construed according to be subject to and be governed by the laws of the State of New York.

Section 11.16. Recording. This Agreement may be recorded by either Party hereto.

Section 11.17. Interpretation. The Parties agree this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the Village.

Section 11.18. No Unintended Third-Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 11.19. Breach. In the event of a breach of this Agreement by either Party, the non-breaching Party reserves/retains all of its rights in law and in equity (including, but not limited to, damages, injunctive relief and specific performance) to remedy such breach. Specifically, if the Town disconnects the Town's Wastewater Collection Systems such that it no longer utilizes the Village's wastewater treatment capacity during the initial term set forth in Section 3.02 or any subsequent renewal period, the Town shall remain liable under this

Agreement for a lump sum payment to the Village in an amount equal to its pro-rata share of any outstanding capital expenses or Debt Service Charges as calculated pursuant to Sections 4.04 and 4.05 of this Agreement at the time of disconnection from the Village System.

Section 11.20 The Village and/or the Town may, for the purpose of further consideration and on thirty (30) days' notice, reopen the IMA to address any inconsistency, new codes, changes in laws, fees or other issue that are found to be deficient, ineffectual or for any other reason to ensure the IMA functions as originally intended. If the parties cannot agree to reopen the agreement, the parties will submit the issue to a panel of three (3) for determination of the issue. Each party will pick one panel member and a third will be designated by the American Arbitration Association. The panel's decision will be final.

Section 11.21 The Village is increasing the permit capacity of the plant. There may be additional treatment costs and expenses not available at the time of this agreement which will be made as an amendment to this agreement and the costs will be shared by the Town.

Section 11.22 The above does not include any work associated with the SEQRA process required as a result of allowing the Town to connect to the Village wastewater collection system. Any costs associated with this item were not available at the time of this agreement and will be annexed as an amendment to this agreement and the costs will be paid by the Town.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers and their respective seals to be hereunto affixed.

ATTEST:

TOWN OF CORTLANDT,
Westchester County, New York

Secretary

(SEAL)

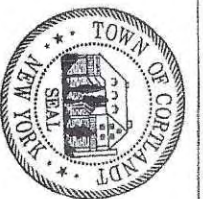
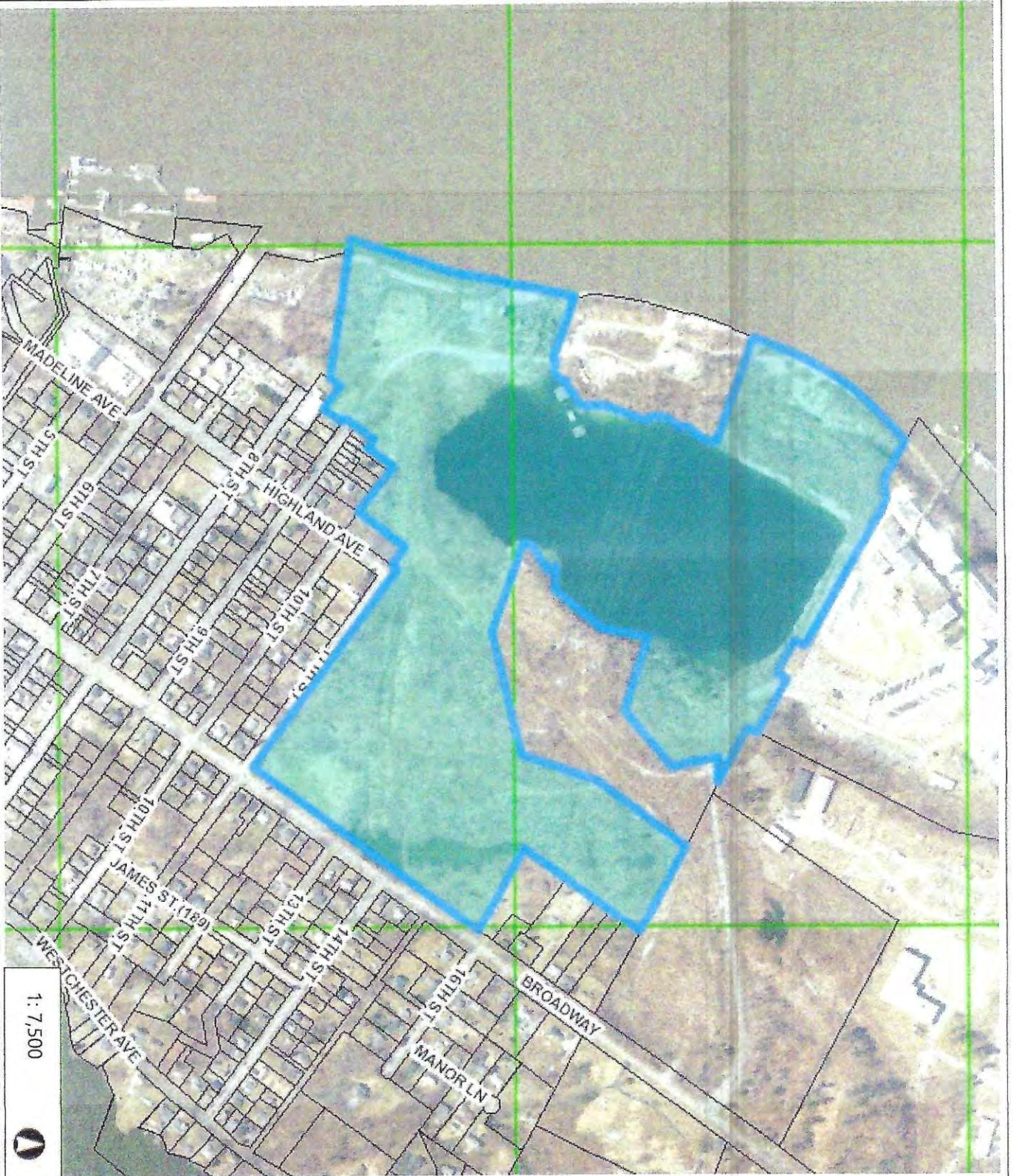
By: _____
Town Supervisor

ATTEST:

VILLAGE OF BUCHANAN

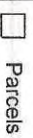
By: _____
Village Mayor

EXHIBIT A



Town of Cortlandt

Legend



Parcels

Road Labels

Notes: Outlined property identified as the 99
Acre property known as the
"Quarry" on the Interimperial
Agreement between the Town of
Cortlandt and the Village of Buchanan dated
April, 2023.