

LEASE AGREEMENT FOR
OPERATION OF CLINTON HEIGHTS, WEST GENESEE, EMERICK HEIGHTS, SENECA
ESTATES, RIVER MIST AND OSWEGO ROAD WATER DISTRICTS
TOWN OF LYSANDER, NEW YORK

THIS LEASE AGREEMENT (the "AGREEMENT"), made as of this ____ day of _____, 2016, by and between the Village of Baldwinsville, a municipal corporation organized and existing under the laws of the State of New York, having its principal office at 16 West Genesee Street, Baldwinsville, New York 13027, herein referred to at times as the "VILLAGE", the Clinton Heights, West Genesee, Emerick Heights, Seneca Estates, River Mist and Oswego Road Water Districts (the "DISTRICTS"), and the Town of Lysander, a municipal corporation of the State of New York having its principal office at 8220 Loop Road, Baldwinsville, New York 13027, hereinafter referred to at times as the "TOWN", acting on behalf of the DISTRICTS, all of the aforesaid hereinafter referred to at times as the "PARTIES".

WITNESSETH:

WHEREAS, the DISTRICTS were duly formed pursuant to the provisions of the Town Law of the State of New York, and the DISTRICTS are the owners of certain facilities used in the sale and distribution of water to consumers in the DISTRICTS, and

WHEREAS, the PARTIES hereto desire to enter into a Lease Agreement for the operation of the DISTRICTS pursuant to Section 198, paragraph 12(b) of the Town Law of the State of New York, whereby the VILLAGE will lease, maintain, repair and operate the facilities of the DISTRICTS, supply water and water service directly to the customers of the DISTRICTS and collect revenues from the customers, under the terms and conditions hereinafter specified, and

WHEREAS, the TOWN and the DISTRICTS represent and warrant that they are duly authorized to enter into this AGREEMENT by virtue of resolutions dated _____; and the VILLAGE represents and warrants that it is authorized to enter into this AGREEMENT by virtue of a resolution dated _____, 2016. Copies of said resolutions are annexed, collectively, as Exhibit A.

Now, THEREFORE, in consideration of the premises aforesaid, the covenants and agreements hereinafter set forth, the mutual benefit expected to be derived from the performance thereof and for other good and valuable consideration, the PARTIES agree as follows:

1. Definitions

Water System – The term Water System shall mean all water piping, valves, hydrants, meter pits, district meters (within pits), and all other associated infrastructure and appurtenances related to

the transmission and distribution of public water within the physical boundaries of the Districts. Water System shall include existing water distribution infrastructure as well as future water distribution infrastructure that may be constructed within the Districts during the term of this agreement.

Base System Fees – For purposes of this Agreement, the term “Base System Fees” shall refer to the amounts billed quarterly and received for water sales outside the Village of Baldwinsville in accordance with this Agreement and Chapter 338 of the Code of the Village of Baldwinsville.

Cost – The term Cost shall refer to the actual cost of work performed by an outside contractor for work completed on the Water System or the cost of work performed by the Village of Baldwinsville Department of Public Works based on their billing rates the Village charges for outside services. Rates for Village of Baldwinsville DPW outside services shall be made available to the Town upon request.

Capital Improvement – Capital Improvement shall refer to the construction of new infrastructure elements of the Water System or the replacement of existing infrastructure elements. This shall include: installation of new water mains, hydrants, valves, etc. and the replacement of water main piping, hydrants, valves, etc.

Operate – Operate shall mean the carrying out of all work tasks and duties required for the proper, safe and legal delivery of public water by the Village to the Districts. The term Operation shall refer to the act of Operating.

Maintenance – Maintenance shall mean all efforts, costs, labor, equipment, materials and incidentals required to perform routine tasks required to keep the Water System in operable condition.

Repair – Repair shall mean all efforts, costs, labor, equipment, materials and incidentals required to correct any condition in the Water System that does not involve a capital improvement. The distinction between a Capital Improvement and Repair is the extent to which new materials are employed to the Water System. Example - Two repair clamps and a ten-foot length of pipe to fix a leak in a water main is a repairs; the installation of forty feet of new pipe to replace a section of main that has had repeated leaks is a Capital Investment.

Capital Improvement Depreciated Value – Capital Improvement Depreciated Value (“CIDV”) shall refer to the value of capital improvements made to the Water System at the end of the term of this Agreement. The CIDV shall be the initial capital cost of the improvement minus 2.5% of the capital cost times the number of years since the installation of the capital improvement.

Example:

$$\text{CIDV} = (\text{Capital Improvement Cost}) - (\text{Capital Improvement Cost} * 0.025 * \text{No. of years Capital Improvement has been in place})$$

System Upgrade - System Upgrades- System Upgrades shall refer to the construction of new infrastructure elements of the Water System that are in addition to the existing Water System. [Note: The distinction between System Upgrades and Capital Improvements is that a Capital Improvement is the construction of new infrastructure to replace aging, damaged or failed system components that are required to properly continue to serve all customers in the Town and/or

Districts. System Upgrades, on the other hand, are construction of new infrastructure that does not replace any existing components of the Water System but rather extend, enhance or expand the Water System.]

2. Operation & Maintenance

- 1.1 The DISTRICTS hereby transfer possession of and leases to the VILLAGE for the term hereinafter specified the Water System located, or to be located, within the DISTRICTS and any extensions thereof, or otherwise owned by or to be owned by the DISTRICTS, together with any Upgrades and Capital Improvements which may hereafter be furnished and installed in the DISTRICTS and any extension thereof during the term of this AGREEMENT.
- 1.2 Upon the transfer of possession which occurs when the term of this AGREEMENT commences, the VILLAGE agrees (1) to pay the TOWN on behalf of and for the benefit of the DISTRICTS a lump sum of One Dollar (\$1.00) and (2) to operate, maintain and repair at its own cost and expense the Water System of the DISTRICTS and to sell water to the customers of the DISTRICTS in accordance with the Code of the VILLAGE as it from time to time may be amended during the term of this AGREEMENT as is more specifically provided in Article V.
- 1.3 The VILLAGE agrees to maintain general liability insurance and property casualty insurance for the leased facilities naming the DISTRICTS and the TOWN as additional insureds, the coverage limits of such policy(s) to be in such amounts as are consistent with the VILLAGE's general standards and practices regarding same. Such policy(s) of insurance shall specifically insure against the liability assumed hereunder by the VILLAGE and shall provide that it is primary insurance and not excess of contributory with any other valid, existing and applicable insurance in force for or on behalf of the DISTRICTS and/or the TOWN, and shall provide that the TOWN shall receive at least thirty (30) days' notice from the insurer prior to any cancellation or change of coverage. The VILLAGE shall deliver to the TOWN certificates of insurance coverage in accordance herewith not more than thirty (30) days following commencement of the lease term under this AGREEMENT.[Note: this section to be reviewed by the Village insurance agent]

II. CAPITAL IMPROVEMENTS

- 2.1 Capital Improvements shall be made when a component or element of the Water System no longer performs as designed and required to assure continued regular delivery of water to the Districts at adequate pressure and volume. Both the Town and Village shall discuss and mutually agree to completing a Capital Improvement prior to the start of any work related to a Capital Improvement.

2.2 Capital Improvements shall be undertaken by the Village either using in-house resources or contracting the work to an outside vendor.

2.3 Payment for Capital Improvements Within the First Five Years of Agreement – In years one through five (inclusive) of the Agreement the Village shall hold the base system fees collected from each District in separate escrow accounts. The money in these accounts shall be used specifically and solely for covering Capital Improvement costs incurred in each individual District during the first five years of this agreement. The Town (District) will be responsible to reimburse the Village for the cost of the Capital Improvement, costs above what is available in the escrow account for the District in which this particular Capital Improvement was incurred, in the percentages outlined in the table below:

Year 1	100%
Year 2	80%
Year 3	60%
Year 4	40%
Year 5	20%

The Village shall provide annual financial reports for the escrow accounts set up for each district within 90 days of the end of the Village fiscal year.

2.4 The VILLAGE shall, at its own cost and expense, make such Capital Improvements within the DISTRICTS as are necessary in order to provide an adequate supply of water at proper pressure to any household/member in the DISTRICTS. Legal title to such replacements, additions, betterments and improvements installed by the VILLAGE at its own cost and expense shall be and will remain in the VILLAGE unless and until reimbursement therefor shall have been made as provided herein. If this AGREEMENT is not renewed at the end of the term or any renewal thereof, or is terminated for any cause whatsoever prior to the expiration of the term or any renewal thereof, the TOWN (or the DISTRICTS) may, if it determines it to be in the public interest after a public hearing as provided in the Town Law, acquire from the VILLAGE the replacements, additions, betterments or improvements installed during the term of this AGREEMENT by the VILLAGE at its own cost and expense for the sole benefit of the Water System hereby leased. An estimated value less depreciation of capital improvements shall be provided to the Town for review in year 38 of this agreement. The value of any such replacements, additions, betterments or improvements shall be computed at capital improvements less depreciated value (CIDV) as such depreciation shall appear upon the books and records of the VILLAGE in the definition of CIDV included in section I of this agreement. During the term of this AGREEMENT, upon reasonable notice by the TOWN or the DISTRICT,

the VILLAGE shall provide the TOWN or DISTRICT with the value of such replacements, additions, betterments or improvements at that time, as computed at CIDV.

- 2.5 Transfer of Escrow Funds to Village Water Balance – At the end of year five of this agreement (January 1, 2021) all funds in the escrow accounts held by the Village from base fees collected by the Village for each District shall be transferred to the Village Water Fund Balance and become assets held and controlled by the Village.
- 2.6 Payment for Capital Improvements Beyond Year Five of the Agreement – The Village shall be responsible for 100% of all Capital Improvement costs starting on the first day of year six of this agreement for the remainder of the term of this agreement.

III. SERVICE CONNECTIONS

- 3.1 During the term of this LEASE AGREEMENT, all service connections shall be made by the VILLAGE in accordance with the Code of the VILLAGE as they from time to time may be amended.

IV. SYSTEM UPGRADES REQUESTED BY THE TOWN

- 4.1 Upon receipt of a certified copy of a resolution of the TOWN (or the DISTRICTS) requesting the installation of additional system upgrades and specifying the locations where the same are to be placed upon the mains of the system, the VILLAGE will place and install the system upgrades at actual cost plus 10% with the TOWN (or the DISTRICTS) paying such costs. Legal title to hydrants and hydrant connections installed by the VILLAGE and paid for by the TOWN (or the DISTRICTS) shall be and remain in the TOWN (or the DISTRICTS).
- 4.2 All hydrants in the DISTRICTS now existing or hereafter installed shall be maintained in service by the VILLAGE. The Village shall provide the Town with an Annual Hydrant Maintenance Record for the previous year no later than April 1st of each year. A hydrant maintenance charge will be paid by the Town to the Village of \$60.00 Per hydrant payable within thirty days following submission of the Annual Hydrant Maintenance Record. This fee may be increased a maximum of 1% from the previous year's fee.

V. WATER SUPPLY

- 5.1 Beginning on the effective date of this AGREEMENT the VILLAGE will furnish and supply water and water service to all those customers within

the DISTRICTS. Customers in the DISTRICTS will pay the then current Village outside user rates for water as set forth in the Code of the VILLAGE as it from time to time may be amended. The rates to be charged by the VILLAGE shall be the meter rates as set forth in the Schedule of Meter Rates as adopted by the VILLAGE from time to time pursuant to Section 338-25 of the Code of the VILLAGE, said rates shall increase proportionally with Village user rate increases other than what has already been approved by the Village Board at the beginning of this agreement. A copy of said current rates and previously established future rates is annexed as Exhibit "B". When requested by the TOWN COMPTROLLER or by the DISTRICTS, the VILLAGE shall add to its rates such additional rates established by the TOWN or the DISTRICTS. Such additional rates, which shall be related to DISTRICTS purposes, shall be billed and collected by the VILLAGE, then remitted to the TOWN or to the DISTRICTS. Additional rates requested by the TOWN or the DISTRICT shall not be included in the determination of the above rates.

- 5.2 It is expressly understood and agreed that the furnishing of water and water service by the VILLAGE to the DISTRICTS and to the customers of the DISTRICTS shall be in accordance with the terms of this agreement and the Code of the VILLAGE, and the laws of the STATE OF NEW YORK as they from time to time may be amended. The provisions of Chapter 338 of the Code of the VILLAGE shall apply to all customers of the DISTRICTS as though they were residents of the VILLAGE.
- 5.3 It is expressly understood and agreed that the VILLAGE shall perform meter reading services four times per year. The VILLAGE shall also produce and mail bills to all customers within the DISTRICTS. The cost of meter reading services and the preparation and mailing of bills is included in the water rate provided in Article V.
- 5.5 It is expressly understood and agreed that the VILLAGE makes no guarantee as to the pressure of water in the pipes or as to the supply of water in the pipes of the DISTRICTS, or any extensions thereof, or other districts, and shall not, under any circumstances, be held liable for loss or damage from a deficiency or failure in the supply of water, whether caused by interrupting water service in case of accident or for alterations, extensions, connections or repairs, or for any other cause whatsoever. It is further agreed that any construction and/or installation of water services shall be commenced on or after the date of this AGREEMENT and shall be fully completed in accordance with the plan attached hereto. It is also specifically agreed by the PARTIES that the performance under this AGREEMENT by the VILLAGE shall not be required or continued when circumstances beyond its control prevent, prohibit or interfere with such

performance. Such circumstances include, but shall not be limited to, delays in delivery of materials, weather conditions, strikes or other labor difficulties, clearing of easements on private roads, public road permits, causes commonly referred to as “Acts of God”, acts or omissions attributable to the TOWN and/or DISTRICTS and other conditions not reasonably foreseeable.

VI. OBLIGATIONS OF THE TOWN

- 6.1 The PARTIES agree that upon certification by the VILLAGE, any water bill which remains unpaid on October 25th of each year of the agreement the VILLAGE will be added by the TOWN to the tax bill of the owner of the property in accordance with applicable provisions of the Town Law, the TOWN will forward such amount to the VILLAGE, no later than February 15th of each year.
- 6.2 The PARTIES also agree that prior to the effective date of the AGREEMENT the TOWN shall furnish the VILLAGE with the following information:
 - a) All existing as-built maps of the water systems of the DISTRICTS showing the location and size of any and all water mains and extensions thereto with identification as to the kind of pipe, location of existing valves, location of hydrants, location of services and location of all other appurtenances together with accurate “as-built” plans of any construction of improvements and extensions which shall be certified by the TOWN engineers.
 - b) Copies of current books and records of the TOWN and DISTRICTS pertaining to water and water service.
 - c) For any areas that as-built drawings are currently unavailable the Town will perform GPS mapping.
- 6.3 It is expressly understood and agreed that the VILLAGE shall read all meters and bill the customers, if any on behalf of the DISTRICTS, for water sold up to the effective date of this AGREEMENT. The VILLAGE assumes no responsibility for collection of such accounts or liability for the same.
- 6.4 The Town shall notify the Village in writing of any proposed expansions of the existing district boundaries. Expansions shall mean expansion of the boundary of any district or the increase in the number of lots in any district beyond that approved at the time this agreement went into effect. Prior to any proposed district expansions being approved by the Town the Village Board of Trustees shall approve by resolution the

proposed district expansions. The Village Board of Trustees shall only consider adequate water fire flow and minimum system pressures of the proposed district expansion in their review of all district expansion requests.

VII. WORK PERFORMANCE

- 7.1 It is expressly understood and agreed that the VILLAGE, its officers, agents and employees, with respect to the performance of any services or work performed under this AGREEMENT shall be that of an independent contractor. Neither the VILLAGE nor any of its officers or employees will hold themselves out as nor claim to be officers or employees of the TOWN or of the DISTRICTS by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the TOWN or of the DISTRICT, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

VIII. INDEMNIFICATION

- 8.1 The VILLAGE agrees to indemnify and save the TOWN and the DISTRICTS, their officers, board members, agents and employees, harmless from any and all liability imposed upon the TOWN and/or the DISTRICTS, their officers, agents and/or employees arising from any negligence, active or passive, of the VILLAGE in the performance of any of its obligations under this AGREEMENT. The TOWN agrees to indemnify and hold the VILLAGE, its officers, board members, agents and employees, harmless from any and all liability imposed upon the VILLAGE due to failure to supply water as set forth in Paragraph 5.5 of this Agreement.

IX. ASSIGNMENT

- 9.1 In the event the VILLAGE transfers any obligations it currently has with respect to all or any portion of its water system, or any obligations it has under this AGREEMENT, to a public authority or to any other entity, including but not limited to OCWA, the rate charged for water to any members of the DISTRICTS shall not exceed the rate charged by the Authority to residents of the VILLAGE. This AGREEMENT may not be assigned by the VILLAGE without the written permission of the TOWN.

X. NEW METERS

- 10.1 Pursuant to this AGREEMENT, the existing master meters will be maintained by the VILLAGE as part of its operation and maintenance

responsibilities. In addition, new meters will be installed at each household within the DISTRICT. The VILLAGE will purchase and install said meters during year twenty (20) of this lease, at its cost and expense, in accordance with its operation and maintenance obligations under this AGREEMENT.

XII. TERM OF THIS LEASE AGREEMENT

- 12.1 This AGREEMENT shall be for a period of forty (40) years from the first (1st) day of the first month following the date of execution of this AGREEMENT.

- 12.2 In the event that this AGREEMENT is terminated for any reason attributable to the fault of the TOWN prior to the expiration of said term or any renewal thereof, the TOWN further agrees to reimburse the VILLAGE on a pro-rated basis for any and all sums paid, or credits made, by the VILLAGE to the TOWN, if any, pursuant to the terms thereof without interest. The pro-ration under this Paragraph shall be determined by the CIDV of all capital improvements and the date of termination.

IN WITNESS WHEREOF, the PARTIES hereto have hereunto set their hands and seals the day and year first above written.

VILLAGE OF BALDWINSVILLE

By _____
Richard Clarke, Mayor

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, RICHARD CLARKE, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

TOWN OF LYSANDER acting on behalf of
Clinton Heights, West Genesee, Emerick Heights,
Seneca Estates, River Mist and Oswego Road Water
Districts

By _____
Joseph A. Saraceni, Town Supervisor

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, JOSEPH A. SARACENI, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

By _____
Robert Gerarci, Town Councilor

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, ROBERT GERARCI, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

By _____
Roman Diamond, Town Councilor

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, ROMAN DIAMOND, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

By _____
Peter J. Moore, Town Councilor

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, PETER J. MOORE, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

By _____
Robert H. Ellis, Town Councilor

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, ROBERT H. ELLIS, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

CLINTON HEIGHTS WATER DISTRICT

By _____

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

WEST GENESEE WATER DISTRICT

By _____

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

EMERICK HEIGHTS WATER DISTRICT

By _____

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

SENECA ESTATES WATER DISTRICT

By _____

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

RIVER MIST WATER DISTRICT

By _____

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

OSWEGO ROAD WATER DISTRICT

By _____

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On the _____ day of _____ in the year 2016, before me, the undersigned, personally appeared, _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public