

**WASTEWATER TRANSPORTATION TREATMENT, AND RELATED
SERVICES AGREEMENT**

This **AGREEMENT** is dated this 31st day of May, 2018, by and, between the **VILLAGE OF SCHUYLERVILLE** (hereinafter “Schuylerville”), with a business address at 35 Spring Street, Schuylerville, New York 12871 and the **VILLAGE OF VICTORY** (hereinafter “Victory”), with a business address at 23 Pine Street, P.O. Box 305, Victory Mills, New York 12884, witnesses the following:

WHEREAS, Schuylerville is the owner of a certain publicly owned treatment works (POTW) for the treatment of wastewater and identified as Village of Schuylerville WWTP, located at Canal Street in the Village of Schuylerville, Saratoga County, New York, NY SPDES Number NY0031941; and

WHEREAS, Schuylerville and Victory previously entered into an agreement titled “**AGREEMENT Between VILLAGE OF VICTORY and VILLAGE OF SCHUYLERVILLE for WASTEWATER TRANSPORTATION AND TREATMENT SERVICES**” dated May 3, 1992, as amended by amendments dated April 8, 1996 and December 12, 2003 (hereinafter “1992 Agreement”) and

WHEREAS, the parties wish to supersede and replace the 1992 Agreement as amended with this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained and set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties intending to be legally bound agree as follows:

1. REVOCATION AND REPLACEMENT OF PRIOR 1992 AGREEMENT: Upon execution of this Agreement by and between Schuylerville and Victory, the “1992 Agreement” is to be deemed void, canceled, withdrawn and of no effect.

2. ANNUAL BILLING FOR TERM OF AGREEMENT: Schuylerville will charge, and Victory will pay, an annual charge for the services provided pursuant to the terms of this Agreement. The annual charge will be billed by Schuylerville on or before September 1st, of each year covered by the Agreement, and the charges so billed will be due to be paid by Victory on or before November 1st of each year, or within 60 days of receipt of the described bill, whichever last occurs. Interest shall accrue on any unpaid but due charges, at the rate of one per cent (1%) per month until paid.

3. AMOUNT TO BE BILLED: Commencing on June 1, 2018, and to cover services provided hereunder for the period from June 1, 2018 through May 31, 2019, Schuylerville will bill Victory Sixty Thousand (\$60,000.00) Dollars, and Victory shall pay same, subject to the provisions of Section 2 above. Such charge covers all operations, maintenance, improvements, assessments, and debt charges that might arise from the services provided to Victory by Schuylerville.

4. TERM OF AGREEMENT: The services to be provided hereunder shall be year to year, billed and paid as above provided, starting on June 1, 2018 and running through May 31, 2045. Victory reserves the right to terminate the Agreement upon five (5) years written notice to Schuylerville, such notice delivered to the Schuylerville Village Clerk in the last month of any annual term.

In the event that Schuylerville stops operating a WWTP during the term of this Agreement, the terms and charges set forth herein shall survive, and be deemed, upon Victory's consent, assigned to any successor to Schuylerville in the treatment of the contemplated waste.

Five years prior to the expiration of this Agreement, each party shall notify the other of its desire and intent to negotiate a new agreement relative to the contents hereof. If both parties desire to continue such service, then the Parties will make reasonable efforts to negotiate a new Agreement for such services.

5. ESCALATION CLAUSE: The parties agree that the charges set forth to be billed in paragraph 3 above shall be subject to annual escalation (or de-escalation) annually starting June 1, 2019, as follows. The amount established in paragraph 3 above shall increase, or decrease by the amount of increase or decrease shown in the published annual change in the the average Consumer Price Index for All Urban Consumers (CPI-U) in the Northeast for the last January through December as reported by the U.S. Bureau of Labor Statistics. The increases or decreases shall be cumulative as the annual CPI is applied to the annual charge then in effect.

6. SERVICES PROVIDED: Schuylerville operates a Waste Water Treatment Plant serving waste streams produced in Schuylerville and Victory as transported through the Villages' Waste

Water Collection Systems. Victory is hereinafter, for the term of this Agreement and subject to the provisions of this Agreement, permitted to discharge the waste generated from within the Victory system, as it now exists or as it may exist during the term of the Agreement, to Schuylerville for treatment and disposal. The discharge contemplated by this paragraph specifically and intentionally includes any discharge from the (Village's) Joint Water Facility that is currently connected to the Victory system. Schuylerville shall accept, for the term of this Agreement, all legal waste so discharged by Victory and the Joint Water Facility.

For purposes of this Agreement, "illegal waste" shall be deemed to include, but not be limited to, any substance that may cause an upset, bypass of the parties' respective waste water collection system, or would cause or contribute to a violation of Schuylerville's New York State Pollution Discharge Elimination System (SPDES) permit.

Victory also accepts that its collection and transportation system shall be kept and maintained by Victory in good and working order at Victory's sole cost and expense, during the Term of this Agreement, excluding the portions of said system assumed by Schuylerville as set forth elsewhere in this Agreement.

Victory accepts that its collection and transportation system are governed by state and federal law as to what constitutes legal and acceptable waste in the system, and will indemnify Schuylerville for any and all damages suffered as a result of illegal waste being introduced into the system from within the Victory portion of the collection and transportation system.

Schuylerville accepts the obligation and responsibility to operate and maintain any meters and/or pump stations including any replacements to such meters and/or pump stations installed now, or by Schuylerville in the future, in the collection and transport systems. This provision specifically includes meters currently located at Burgoyne Street and Pearl Street, and a pump

station at “White’s Alley”, in Victory, but shall not include any other meters or pump stations unless deemed necessary and accepted by Schuylerville. Victory hereby grants access to such meters and/or pump stations as may be located in Victory, or its rights of way, for purposes of maintenance, repair, upgrade and/or replacement, and agrees not to interfere with such meters and/or pump stations.

Schuylerville will indemnify Victory to the fullest extent of the law for any and all damages suffered by Victory as a result of any negligent or other failure in maintenance or operation of such meters or pump stations located in Victory.

Victory shall keep in full force and effect a sewer use law/ordinance of at least the same force and effect as required by the NYS Department of Environmental Conservation relative to Schuylerville’s SPDES permit, including any amendments that may reasonably be required to such sewer use law/ordinance within 120 days’ notice from Schuylerville to Victory which shall include any applicable NYS Department of Environmental Conservation notice or requirement, and shall further take all reasonable steps to enforce such sewer use law/ordinance.

In the event that a new user within or to be connected to Schuylerville’s system is reasonably identified to be subject to any applicable pre-treatment standards under New York Law or NYS Department of Environmental Conservation regulation, in such instance Schuylerville reserves the right to require any such new business or user to complete such surveys of such user’s proposed sewer discharge, for Schuylerville to gauge any required treatment or pre-treatment of such user’s waste, and Victory agrees to cooperate with Schuylerville in requiring such user to take such steps as Schuylerville may reasonably require with regard to any treatment or pre-treatment of such user’s waste, again, as may be required by Schuylerville’s SPDES permit or applicable New York State laws or NYS DEC regulations pertaining thereto.

In the event any violation of the above is traced by the parties to the Joint Water Facility referenced above, the parties agree to coordinate and work in good faith to address any violation arising from said facility.

7. FUTURE CONNECTIONS TO OR EXPANSION OF THE VICTORY COLLECTION

/TRANSPORTATION SYSTEM: The terms set forth in this Agreement are intended to account for current usage, as well as anticipated or planned variations in use by Victory. The parties have reviewed historical data to the extent available in order to plan for any possible extensive expansion of use by Victory, by either geographical expansion or simply by significant increase in the number of “units” contributing to the system. The parties have intentionally selected figures that anticipate a significant increase in flows prior to this paragraph being triggered, it being the purpose of the paragraph to provide for unforeseen expansion of the use of the system from the Victory side. The charges set forth in this Agreement are based upon historical data flows, from Victory to Schuylerville, up to and including Two Hundred Forty Nine (249) “units”, and accepting flows attributable to the Joint Water Facility that utilizes the Victory system.

The charges and escalation provisions set forth elsewhere in this Agreement shall govern, unless and until Victory reaches Four Hundred Twenty Nine (429) “units”, at which point further and additional charges shall be imposed upon Victory on a per unit basis, starting the next billing period after reaching such number, as follows: the then current annual charge (including CPI escalations), divided by the total number of units contributing to the Victory usage to reach an “additional per unit” charge due annually from Victory ($\text{annual charge} / \text{total units} = \text{per unit annual additional charge}$). The additional per unit charge is then added, only for the units exceeding Four Hundred Twenty Nine (429) in number, to the annual charge, and will then also be subject to CPI

adjustments going forward.

As an example to illustrate the intended effect of this paragraph, the following example is adopted: Assume Victory reaches Four Hundred Fifty (450) “units” in year X, at a time when the annual charge has reached \$64,000.00 per year by reason of the built in adjustments (CPI). $\$64,000 / 429 = \149.18 per additional unit. $450 - 429 = 21$ additional units. $21 \times \$149.18 = \$3,132.86$ increase in annual charge going forward, which will then be subject to annual escalation clauses.

8. SEVERABILITY: If any portion or portions of this Agreement is or are declared illegal or invalid, all other portions shall, to the maximum extent possible, remain in full force and effect.

9. INTERPRETATION: The Parties agree that both Parties have negotiated this Agreement in good faith and under the guidance of counsel. In the event of any dispute arising from this Agreement, no interpretation against any drafter hereof shall be had or made by or against any Party.

10. NOTICES: Any notices required to be sent hereunder shall be sent to the Parties at their respective address set forth above unless a Party provides alternative address information to the other party, and shall be sent care of the respective mayor, or in his or her absence, the respective village clerk.

11. TITLES: The titles used in the sections of this Agreement are for convenience only and shall not be used in interpreting these sections.

12. NO ASSIGNMENT: The rights and obligations of this Agreement may not be assigned in whole or in part by any Party hereto without the express and prior written consent of any Party, which consent may be withheld in the discretion of the requested Party.

13. ENTIRE AGREEMENT: This document contains the entire agreement between the Parties and may not be changed, modified, altered or in any way amended, except by agreement in writing.

14. WAIVER: The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

15. FORCE MAJEURE: Each of the Parties hereto shall be excused (other than payment obligations for services rendered or to be rendered under this Agreement) from performance hereunder to the extent prevented by any cause beyond its reasonable control, including but not limited to strikes, fire, floods, and other acts of God, to the extent such event was not caused by or contributed by an act or omission of such party and the effects of which could not have been prevented, avoided, or mitigated by due diligence if reasonable efforts had been expended by such party. Any party so excused shall use due diligence to correct or remove the cause giving rise to any such condition and to resume full performance herewith as soon as possible. Provided, however, that no relief shall be had for any event that would otherwise be excused by this section if any regulatory authority imposes any fine, violation or other enforcement relative to such event.

16. DISPUTE RESOLUTION:

(a) The Parties agree to attempt to resolve each and every dispute, controversy, claim or alleged breach arising out of or relating to the billing by Schuylerville to Victory under this Agreement first through voluntary mediation using a mediator selected by the parties and if the parties cannot agree within thirty (30) days of one party notifying the other of its election of mediators, within fourteen (14) days of the expiration of such notice, both parties shall select a mediator and such mediators shall together select a third mediator who shall act as mediator. The costs of individual mediators to be borne by the Parties individually, and the third mediator shall be paid by both parties equally. If such mediation is not successful in resolving any such dispute, then the parties may avail themselves of any remedy, equitable or legal, that they otherwise have.

(b) In the event of any other violation of this Agreement, the non-violating party shall send written notice to the other party, directing the cure or abatement of such violation, which notice shall provide no less than seven (7) days notice for such cure, provided that in the event such violation would cause or contribute a bypass, upset, or violation of Schuylerville's SPDES permit, either party may order immediate remedy. In the event of the failure to comply, the non-violating party may take all reasonable steps to cure the violation, which shall be at the cost and expense of the breaching party. In the event of any dispute arising from this Section 16(b), any judge overseeing such dispute shall, in his or her discretion, be authorized to decide as to any prevailing party, and to award any such prevailing party all costs and expenses, including reasonable attorney's fees, arising from or related to such dispute.

17. CHOICE OF LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any action or proceeding arising from or related in any way to this Agreement shall be heard in a court of competent jurisdiction in Saratoga County, New York.

18. RESOLUTIONS: This Agreement has been agreed to and approved by formal resolution of the Boards of Trustees of both Parties and attached hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

VILLAGE OF SCHUYLERVILLE

By: _____
Dan Carpenter, Mayor

Date: May 31, 2018

VILLAGE OF VICTORY

By: _____
Pat Dewey, Mayor

Date: May 31, 2018