

AGREEMENT PURSUANT TO  
TOWN LAW §§64, 198 and  
GENERAL MUNICIPAL LAW ARTICLE 5-G

– BETWEEN

THE TOWN OF GREENBURGH AND THE VILLAGE OF IRVINGTON  
FOR USE OF THE TOWN OF GREENBURGH SEWER SYSTEM

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the Town of Greenburgh (“Town”), a municipal corporation organized under the existing under the laws of the State of New York, located at 177 Hillside Avenue, Greenburgh, New York 10607, and the Village of Irvington (“Village”), a municipal corporation organized and existing under the laws of the State of New York, located at 85 Main Street, Irvington, New York 10533, acting upon the request of the owners of four properties located on Hermits Road.

**WITNESSETH:**

**WHEREAS**, the Town’s sanitary sewer system was constructed by the Town of Greenburgh to serve Town residents; and

WHEREAS, the Town’s sanitary sewer system is owned, operated and maintained by the Town; and

**WHEREAS**, the owners of four properties located on Hermits Road, specifically, Tax Lots 2.110-58-4.1 (Otto), 2.110-58-5 (Copp), 2.070-27-1 (Hall), and 2.070-27-2 (Abdou), in the Village of Irvington are seeking to connect sanitary sewer services from their four properties into the Town of Greenburgh’s sanitary sewer system (“Hermits Road Sewer Force Main System”) and have petitioned the Town to expand the Town’s sewer district to include those four properties; and

**WHEREAS**, on March 3, 2009, the Town Board passed a resolution, a copy of which is attached and incorporated herein, expanding the sewer district to include the property designated on the Town Tax Map as Lot 2.070-27-2 (Abdou); and

**WHEREAS**, on \_\_\_\_\_, 2018, the Town Board passed a resolution, a copy of which is attached and incorporated herein, expanding the sewer district to include the three properties

designated on the Town Tax Map as Tax Lots 2.110-58-4.1 (Otto), 2.110-58-5 (Copp), and 2.070-27-2 (Hall); and

**WHEREAS**, the Hermits Road Sewer Force Main System will consist of a new 2" PVC sewer force main running under Hermits Road in the Village and then under Peter Bont Road (a/k/a/ Mountain Road) in the Town and will connect to an existing Town sewer manhole and sanitary sewer system located near the intersection of Peter Bont Road and Blueberry Hill Road in the Town; and

**WHEREAS**, the Westchester County Health Department requires that the Town and Village enter into an Inter-municipal Agreement regarding any sanitary sewer system connection involving more than one municipality before the connection will be approved; and

**WHEREAS**, by mutual agreement by and between the Town and Village, the Hermits Road Sewer Force Main System has been authorized to be connected to the Town's sanitary sewer system; and

**WHEREAS**, on \_\_\_\_\_, 2018, the Town Board passed a resolution, a copy of which is attached and incorporated herein, authorizing the Town Supervisor to sign an agreement permitting the Hermits Road Sewer Force Main System to access and use the Town sewer system; and

**WHEREAS**, on \_\_\_\_\_, 2018, the Irvington Board of Trustees passed a resolution, a copy of which is attached and incorporated herein, authorizing the Village Administrator to sign an agreement permitting the Hermits Road Sewer Force Main System to connect with and use the Town's sanitary sewer system;

**NOW, THEREFORE, BE IT RESOLVED** by and between the Town, its successors and assigns, and the Village as follows:

**1 SCOPE OF AGREEMENT**

1.1 The Town agrees that the Village acting pursuant to a request from four property owners on Hermits and Peter Bond Roads, specifically Tax Lots 2.110-58-4.1, 2.110-58-5, 2.070-27-1, and 2.070-27-2, may access the Town's sanitary sewer system for the purpose of providing sewer services to those four properties.

**2 TERM, TERMINATION and RENEWAL**

2.1 The term of this Agreement between the Town and Village shall be for fifty years and annually renewed automatically unless terminated by the parties.

### **3 OBLIGATIONS**

3.1 The Village shall be responsible for maintenance of so much of the Hermits Road Sewer System as lies in Village-owned property. The Town shall be responsible for maintenance of so much of the Hermits Road Sewer Force Main System as lies in Town-owned property.

3.2 The property owners connecting to the Hermits Road Sewer Force Main System shall pay a sewer tax to the Town of Greenburgh as well as a sewer charge on their Village water bill.

### **4 INDEMNIFICATION AND SAVE HARMLESS**

4.1 The Village hereby agrees to indemnify and hold the Town, its officers, agents, employees, and volunteers performing authorized tasks on behalf of the Town, harmless from and against all liability, including all expenses, reasonable attorney's fees, losses and claims, demands, payments, suits, actions, recoveries and judgments of any nature and description whatsoever resulting from any claim or claims arising out of this Agreement, or the procedures leading thereto, for any act or omission of the Village, its agents or employees, representatives, or sub-contractors, during or in furtherance of the performance to this Agreement.

4.2 In the event of any action commenced against the Town, or its officers, agents, volunteers performing authorized tasks, or employees, which is within the scope of this indemnification, the Town will promptly give notice thereof to the Village and the Village will have the right to select and furnish counsel for the defense. of any such action, provided such counsel is acceptable to the Town, which acceptance shall not be unreasonably withheld, at no cost or expense to the Town. The Town agrees to cooperate with the Village as reasonably required for the defense of any such action.

4.3 The Town hereby agrees to indemnify and hold the Village, its officers, agents, employees, and volunteers performing authorized tasks on behalf of the Village, harmless from and against all liability, including all expenses, reasonable attorney's fees, losses and claims, demands, payments, suits, actions, recoveries and judgments of any nature and description whatsoever resulting from any claim or claims arising out of this Agreement, or the procedures leading thereto, for any act or omission of the Town, its agents or employees representatives, or sub-contractors, during or in furtherance of the performance to this Agreement.

4.4 In the event of any action commenced against the Village, or its officers, agents, volunteers performing authorized tasks, or employees, which is within the scope of this indemnification, the Village will promptly give notice thereof to the Town and the Town will have the right to select and furnish counsel for the defense of any such action, provided such counsel is acceptable to the Village, which acceptance shall not be unreasonably withheld, at no cost or expense to the Village. The Village agrees to cooperate with the Village as reasonably required for the defense of any such action.

4.5 The parties acknowledge and agree that the provisions of this section are not intended to survive termination of this Agreement.

## **5 NO ASSIGNMENT**

5.1 In accordance with the provisions of Section 109 of the General Municipal Law, neither party may assign, transfer, convey, sublet or otherwise dispose of any rights or privileges granted by this Agreement without the prior written consent of both parties. The parties acknowledge and agree that this absolute prohibition against assignment shall survive any bankruptcy proceeding and no creditor, receiver or trustee shall have any right to any interest granted by this agreement.

## **6 REPRESENTATIONS BY THE VILLAGE AND THE TOWN**

6.1 The Village represents and warrants as follows:

6.1.1 Village is a municipal corporation organized and existing under the laws of the State of New York.

6.1.2 Village is financially solvent.

6.1.3 Village is familiar with all federal, state, and local laws, ordinances and regulations which may in any way affect the work or goods and services to be provided and agrees to abide by all applicable local, state and federal rules, regulation and laws.

6.1.4 Village acknowledges and agrees that this Agreement does not include any medical, leave or retirement benefits or confer any rights or interests in such benefits.

6.1.5 Village is fully licensed by all governing regulatory agencies.

6.2 The Town represents and warrants as follows:

6.2.1 Town is a municipal corporation organized and existing under the laws of the State of New York.

6.2.2 Town is financially solvent.

6.2.3 Town is familiar with all federal, state, and local laws, ordinances and regulations which may in any way affect the work or goods and services to be provided and agrees to abide by all applicable local, state and federal rules, regulation and laws.

6.2.4 Town acknowledges and agrees that this Agreement does not include any medical, leave or retirement benefits or confer any rights or interests in such benefits.

6.2.5 Town is fully licensed by all governing regulatory agencies.

## **7 REQUIRED PROVISIONS OF LAW**

7.1 This Agreement shall be governed by the laws of New York State. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision was not inserted through mistake or otherwise, then upon the application of either party, this contract shall be physically amended forthwith to make such insertion.

## **8 AUTHORITY FOR EXECUTION**

8.1 The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town of Greenburgh and under authority of Town Law §§64, 116. Supervisor Paul J. Feiner, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town.

8.2 The Village Administrator who executed this Agreement on Village's behalf, and whose name appears below, is a duly appointed official who executed this agreement pursuant to a Resolution of the Village Board of Trustees.

## **9 NOTICES**

9.1 Any and all notices, communications, payments and demands required under this Agreement shall be in writing, addressed as follows, or to such other address as may hereafter be designated, in writing, by either party hereto:

9.2 To the Town: DPW Commissioner  
Town of Greenburgh  
177 Hillside Avenue  
Greenburgh, New York 10607

9.3 To the Village: Village Administrator  
Village of Irvington  
85 Main Street  
Irvington, New York 10533

9.4 All notices, communications, payments and demands given or made under this Agreement shall be deemed given or made upon receipt and receipt shall be the actual date of receipt or presumed to be five dates after proof of posting, whichever is earlier.

## **10 WAIVER**

10.1 No waiver of any breach or of any condition of this Agreement shall be binding unless executed in writing and signed by the party waiving such breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

## **11 MODIFICATION**

11.1 This Agreement constitutes the complete understanding of the parties. No prior, contemporaneous or subsequent understandings or agreements, oral or written, are valid and no modification of any provisions of the Agreement shall be valid unless in writing and signed by both parties.

## **12 SEVERABILITY**

12.1 If any provision of this Agreement, or the application of any provision to any person or circumstance, is held or declared to be invalid, unenforceable or illegal, the remainder of this Agreement, and the remainder of such provision other than to the extent it is held invalid, unenforceable or illegal, will survive and not be invalidated by such holding or declaration.

**IN WITNESS WHEREOF**, the Town of Greenburgh, by Paul J. Feiner, Supervisor, and the Village, by Lawrence Schopfer, Village Administrator, have each agreed to the terms and conditions set forth herein.

Approved as to form:

\_\_\_\_\_  
TIMOTHY W. LEWIS  
Town Attorney

**TOWN OF GREENBURGH**

\_\_\_\_\_  
BY: PAUL J. FEINER, Supervisor

**VILLAGE OF IRVINGTON**

\_\_\_\_\_  
BY: Lawrence Schopfer,  
Village Administrator

**MUNICIPAL ACKNOWLEDGMENT/GREENBURGH**

STATE OF NEW YORK )

)ss.:

COUNTY OF WESTCHESTER )

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared PAUL J. FEINER, 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 individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public, Westchester County

**MUNICIPAL ACKNOWLEDGMENT/VILLAGE OF IRVINGTON**

STATE OF NEW YORK                    )

) ss.:

COUNTY OF WESTCHESTER            )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared LAWRENCE SCHOPFER, 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 individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public, Westchester County