

SEWER SERVICE AGREEMENT

VILLAGE OF CLAYTON AND TOWN OF CLAYTON FOR HERITAGE HEIGHTS SEWER DISTRICT

This sets forth the Heritage Heights Sewer District (HHSD) Sewer Service Agreement made effective _____, 2011, by and between the **VILLAGE OF CLAYTON**, 425 Mary Street, Clayton, New York 13624 (“Village”) and the **TOWN OF CLAYTON**, 405 Riverside Drive, Clayton, New York 13624 (“User”); and the

RECITALS

- A. The Village owns and operates a sanitary sewer system to provide for the collection and treatment of sewage from the improved properties within the Village limits, including collection and distribution pipes, pump stations, a sewage treatment plant, and other appropriate infrastructure in order to collect, transmit, treat, and discharge sewer from the improved properties within the Village
- B. The User has established by law the Heritage Heights Sewer District (“HHSD”) situated in the Town of Clayton and outside of the Village limits in proximity to the Village sanitary sewer lines, and has requested the right to connect to the sanitary sewer and purchase sanitary sewer service from the Village for the HHSD.
- C. The Village may, pursuant to the Village Law of the State of New York, enter into an agreement with the User to supply sanitary sewer services to property outside of the corporate limits of the Village.
- D. Sewer rents will be charged to the User in accordance with duly adopted laws of the Village and the rates that may be established by the Village from time to time for outside users and pursuant to this Agreement.
- E. The User is authorized to enter into this Agreement by Resolution dated _____, a certified copy of which is attached as **Exhibit “A”**.

DEFINITIONS

For the purpose of this Agreement, the following terms shall have the meanings set forth below:

- a) “Site” shall mean the duly formed Heritage Heights Sewer District (HHSD) located in the Town of Clayton south of the Village limits, on the east side of NYS Route 12.
- b) “User” as defined in the Code of the Village means any individual or entity that is receiving sanitary sewer service from the Village. There is a distinction in the Code between users inside the Village and outside. The User shall be

considered a user outside of the Village. For the purpose of this Agreement, “User” shall mean the Town of Clayton.

- c) “Village” shall mean the Village of Clayton, Jefferson County, New York.
- d) “Point of Connection” shall mean the point at which the User and Village systems connect and shall further mean the point at which maintenance and repair responsibilities are distinguished and separated.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations hereinafter set forth, the parties covenant and agree as follows:

ARTICLE I – VILLAGE OF CLAYTON FACILITIES

Section 101. Facilities. The Village of Clayton will provide sewer service as follows:

- a) The User’s total allocated flow will be set as the combined flow from the pumping station located in the Heritage Heights Sewer District (“HHSD”) that is discharging sewage into the Village of Clayton’s system. The Village agrees to provide the User with an average daily capacity of **15,000 gallons per day** for the HHSD.
- b) The allocation provided includes capacity for 37 equivalent dwelling units (EDUs) for the existing homes located within HHSD.
- c) The User agrees to periodically review its current and projected sewer usage and request an update to this Sewer Service Agreement if projected demands exceed or are less than the allocation contained in this Agreement.
- d) The User agrees to comply with the Village of Clayton’s “Approval Process for Developments Within Existing Water/Sewer Service Areas”.
- e) The User understands that future requests for additional sewer supply allocations must be approved by the Village of Clayton prior to hookup into the HHSD collection lines.
- f) The User recognizes that the Village’s first obligation to provide sanitary sewer services extends to properties within the corporate limits of the Village, and in addition, the Village has an obligation to the New York State Department of Correctional Services to provide certain capacity for the benefit of the Cape Vincent Correctional Facility, and the Village’s obligation under this Agreement with User is conditional upon the Village maintaining excess capacity for the needs of properties located within the corporate limits and the Cape Vincent Correctional Facility. In the event that such capacity does not exist at any time during the Term of this Agreement, due to emergency situation or unforeseen circumstances, the Village may suspend sanitary sewer service to the User upon reasonable notice to the User. Sanitary sewer service to the User shall be resumed once the emergency situation or other cause for interruption has been resolved.

Section 102. Point of Delivery. The Village bears no degree of responsibility for the sewer at any point beyond the point of connection. The User bears the responsibility for maintaining the sanitary sewer lines at any point beyond the point of connection (See **Exhibit “B”**).

Section 103. Metering. The User will provide a meter, meeting Village requirements, at each point of connection that will be utilized to measure flow for billing purposes. In the event such meter is not installed and maintained, the Village will bill according to the rates set by the Village Board on or before April 30th each year. The Village will notify the Town of any rate changes no later than September 1st each year. A copy of the current rate schedule is attached (See **Exhibit “C”**).

ARTICLE II – OPERATION OF THE SYSTEM

Section 201. Operation. The Village shall operate and maintain, or contract for the operation and maintenance, of all facilities required to transport sewerage from the HHSD to the Village’s Wastewater Treatment Plant. It shall use reasonable diligence to provide regular and uninterrupted sewer service.

Section 202. Meter Testing. The Village, at the expense of the User shall periodically inspect and test meters at intervals of no longer than one year. In the event the meter(s) fail to register or registers incorrectly, the quantity of service delivered during that period shall be estimated and an equitable adjustment based thereon shall be made in the invoice for that period. Meter registration deviation by less than 5% shall be deemed correct. The Village of Clayton shall have unrestricted access to the meters at all times for testing and reading.

Section 203. Leak Detection. If sewer discharge records indicate a likely leak in the system the User agrees to conduct infiltration and inflow surveys to find the source of excess flow, and to correct any leaking lines that are located, at the User’s expense.

Section 204. Design Approval. The design and construction of new construction, which will be connected to Village--owned systems, either directly or indirectly through existing connection points, are subject to review and approval by the Village of Clayton’s Engineer.

Section 205. District Service to Others. To insure adequate capacity to serve existing users, the User shall not permit the use of its facility for sewer service to other municipalities or districts without the prior written consent of the Village of Clayton.

Section 206. Rules and Regulations. The User shall comply with all rules and regulations promulgated by the Village of Clayton, including rate schedules. With respect to the operation of the HHSD, the User will comply with applicable federal, state and local requirements, including amendments made thereto from time to time.

ARTICLE III – Terms

Section 301. Term. The term of this Agreement shall be 10 years from the date hereof unless earlier terminated as per this section. In the event the Village and User have not entered into a new or renewal Agreement at the expiration of the Term of this Agreement, the User is not in default under this Agreement and the Village has not provided User with an intent not to

renew, this Agreement shall continue on a year to year basis thereafter unless and until the Village provides a written notice of its intent to terminate, and the rates to be charged shall be as the Village shall from time to time determine. In the event additional allocations are provided by the Village, rates for such additional allocations shall be in accordance with rates as set forth in Article I of this Agreement. If the User decides not to renew this Agreement, the User shall give written notice to the Village at least one hundred eighty (180) days prior to the expiration of the Term or any applicable Renewal Term of its intent not to renew.

In the event that User is in default under any provision of this Agreement, the Village may terminate this Agreement upon written notice mailed to User at the address provided for User herein by regular first class mail or hand delivered to User.

The Village may terminate this agreement upon written notice not less than one hundred eight (180) days prior to the expiration of the Term or any renewal term only for the reason that the Village lacks sufficient excess capacity in the facility to continue service to the User or in the event the User is in breach of this agreement. The Village may not terminate this agreement for the reason that other sewer districts may be formed or other requests may be received from non-residents of the Village to discharge wastewater into the Village sewer system. The Village shall deliver such notice to User either personally or by mailing by first class mail to the address provided for User herein. In such case, this Agreement and User's right to receive sewer service hereunder shall cease upon the end of such Term.

ARTICLE IV – District Charges and Payment Thereof

Section 401. Charges and Payment. The Village of Clayton shall take meter readings monthly to determine the volume of sewer delivered from the HHSD. The rate per 1,000 gallons is established annually by the Village for each fiscal year and is based upon the Village's debt service, operation/maintenance costs, replacement reserves and the charge for treatment and prorated to the point of connection into the Village's facility. The User shall pay the Village the annual service charge, based upon the volume discharged times the rate per 1,000 gallons, annually in February at the rates and charges established by the Village from time to time (See *Section 103*). As of August 1, 2011, there are thirty-seven (37) households in the District. The User shall notify the Village as new development and/or additional connections are made within the District. The User shall pay all costs of operation and maintenance of its system, including the cost of electricity and maintaining the District's pumping stations and sewer mains. The Village shall bill the User by October 1st of each year for the following year's payment.

Section 402. Guarantee of Payment. The User agrees, represents and warrants that it shall properly and lawfully assess the real property and improvements to users within the HHSD and levy taxes or user charges thereon in sufficient amount each year during the term of this Agreement so that sums to be paid hereunder shall be duly provided and paid within such years. Unpaid charges and taxes shall be collected in a timely manner in accordance with applicable laws and include establishment of a lien on the real property within the respective municipality to be levied in the subsequent year.

ARTICLE V – Insurance & Indemnification

Section 501. Insurance. The User shall secure and maintain insurance in amounts satisfactory to the Village against loss or damage to the Village and its facilities and against public or other liability. All insurance coverages shall be provided by insurers licensed to do business by the State of New York and shall name the Village of Clayton as additionally insured. The Village of Clayton shall secure and maintain insurance satisfactory to the User and shall name the respective municipalities as additional insured on the liability policy.

Section 502. Indemnification.

- a) The Village hereby agrees to indemnify, defend, save and hold harmless the User from and against, and to reimburse the User for or in respect of any and all losses, damages, deficiencies, liabilities, claims, obligations, expenses, fines, penalties, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements, fees and expenses including, without limitation, special, indirect, incidental, and all out-of-pocket expenses of any nature whatsoever, incurred or sustained by the User arising out of, based upon, resulting from or by reason of any negligence or material breach by the Village of Clayton of any of its warranties, representations, covenants or agreements contained.
- b) The User hereby agrees to indemnify, defend, save and hold harmless the Village from and against, and to reimburse the Village of Clayton for or in respect of any and all losses, damages, deficiencies, liabilities, claims, obligations, expenses, fines, penalties, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements, fees and expenses including, without limitation, special, indirect, incidental, and all out-of-pocket expenses of any nature whatsoever, incurred or sustained by the Village of Clayton arising out of, based upon, resulting from or by reason of any negligence or material breach by the User of any of its warranties, representations, covenants or agreements contained.

Section 503. Limitations of Liability. The Village of Clayton shall use reasonable diligence to provide the services herein required, but shall not be liable to the User for damages, breach of contract, or otherwise, for failure, suspension, diminution, or other variations of service occasioned by any cause beyond the control of the Village of Clayton. The User will not be liable in the event of a breach beyond their control. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, riots, strikes, civil disturbance, quarantine, restrictions, or inability to obtain equipment or supplies.

ARTICLE VI – Miscellaneous

Section 601. Dispute Resolution. The parties agree to attempt to resolve each and every dispute, controversy, claim or alleged breach arising out of or relating to this Agreement or the obligations of the parties hereunder first through a dispute resolution committee consisting of the Village Mayor, the Town Supervisor, and an impartial third party selected by the Village

and Town Boards. The majority decision of the committee shall be final. However, each party reserves the right to appeal the dispute resolution committee decision through voluntary mediation.

Section 602. No Waiver. No failure or forbearance of enforcement by the User or Village of any breach of any term, covenant or condition contained in this Agreement shall operate as a waiver of such term, covenant or condition itself, or of any subsequent breach thereof.

Section 603. Severability. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall continue to be valid and unenforceable to the fullest extent permitted by law.

Section 604. Entire Agreement. This Agreement contains the entire agreement of the parties and may be modified or amended only by the written mutual agreement of the parties. This agreement supersedes any and all former sewer service agreements between the User and the Village of Clayton.

Section 605. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by certified or registered mail, return receipt requested, postage prepaid.

Section 606. Execution in Counterparts. This Agreement may be executed in any number of counterparts each of which shall be executed by the User and the Village and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first set forth above.

VILLAGE OF CLAYTON (“VILLAGE”)

By: _____
Norma J. Zimmer, Mayor

TOWN OF CLAYTON (“USER”)

By: _____
Justin A. Taylor, Supervisor

ACKNOWLEDGMENTS

STATE OF NEW YORK)
COUNTY OF JEFFERSON) **s.s.:**

On the ____ day of _____ in the year 20____, before me, the undersigned, a Notary Public in and for said state, personally appeared Norma J. Zimmer, 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 (s)he executed the same in his/her capacity , and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument with full authorization to do so.

Notary Public

STATE OF NEW YORK)
COUNTY OF JEFFERSON) **s.s.:**

On the ____ day of _____ in the year 20____, before me, the undersigned, a Notary Public in and for said state, personally appeared Justin A. Taylor, 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 (s)he executed the same in his/her capacity , and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument with full authorization to do so.

Notary Public