

RESOLUTION 44-2023

AT A MEETING of the Town Board of the Town of Groveland, held at the Town Hall, 4955 Aten Road, Town of Groveland, County of Livingston, State of New York, on the 9th day of March 2023 at 9:00 a.m. there were:

Present: Bill Devine, Supervisor
Sandra Bean, Deputy Supervisor & Councilmember
Amy Hunter, Councilmember
Steve Atterbury, Councilmember
John Macauley, Councilmember

WHEREAS, the Town Board has met at the time and place at its regular meeting, to review the Intermunicipal Agreement with Livingston County Water & Sewer Authority (LCWSA) to perform and provide services relating to the Town of Groveland Water District Number 1; and

WHEREAS, the Authority is made pursuant to NYS General Municipal Law, Article 5-G and NYS Public Authorities Law section 1199-CCCC; and

THEREFORE BE RESOLVED, the Town Attorney David DiMatteo & Town Board agrees with such contract and authorizes William Devine to sign the Agreement.

The adoption of the foregoing RESOLUTION was duly out in vote on motion of Councilmember and seconded by Councilmember and the results were carried with nay, ayes. Roll Call Votes: Supervisor Devine, aye/ nay; Deputy Supervisor & Councilmember Bean, aye/ nay; Councilmember Hunter, aye/ nay; Councilmember Atterbury, aye/ nay and Councilmember Macauley, aye/ nay.

Dated: March 09, 2023

Under Hand and Seal of Town Clerk

LEASE AGREEMENT
between the
LIVINGSTON COUNTY WATER AND SEWER AUTHORITY
and the
TOWN OF GROVELAND

This Agreement entered into as of _____, 2023, by and between the **Livingston County Water and Sewer Authority**, a public benefit corporation (the "Authority"), having an office at 1997 D'Angelo Drive, Lakeville, New York and the **Town of Groveland**, a municipal corporation, on its own behalf and on behalf of the **Town of Groveland Water District No. 1** (the "Town"), having offices at 4955 Aten Road, Groveland New York 14462.

WHEREAS, the Authority was created by state legislation (See NYS Public Authorities Law §1199-CCCC) for the express purpose of providing water and sewer services within Livingston County, New York; and

WHEREAS, the Authority has expertise in the operation of water distribution systems and sewer treatment and distribution systems; and

WHEREAS, the Town of Groveland has duly established the Town of Groveland Water District No. 1 (here after "Water District No. 1"), pursuant to a Map, Plan and Report prepared by CPL, D.P.C. and dated November, 2020; and

WHEREAS, the Town, on behalf of Water District No. 1, intends to undertake certain capital infrastructure improvements within Water District No. 1, which will consist of the installation of approximately 80,000 linear feet of 4 inch, 6 inch, 8 inch and 12 inch pvc water transmission mains and appurtenant improvements including fire hydrants, valves, water meters and water services, all as detailed in the November, 2020 Map, Plan and Report prepared by CPL, D.P.C., and that will comprise cumulatively the water distribution improvements located within the Town of Groveland Water District No. 1 (the "System"). The detailed improvements that comprise the System are set forth in Exhibit "A" which is attached hereto and made a part hereof; and

WHEREAS, the Town has determined that it is in the best interest of the residents within Town of Groveland Water District No. 1 to lease the System to the Authority, so that the Authority can operate and maintain such improvements and provide water delivery services for the benefit of Water District No. 1 customers; and

WHEREAS, the Town has the legal standing to lease the System to the Authority pursuant to NYS Town Law §198 12. (b); and

WHEREAS, the Authority has determined that it is in furtherance of its legislative purpose (to provide water and sewer services within Livingston County) to lease the System from the Town

and to operate and maintain such improvements for the benefit of the customers of Water District No. 1 and the other customers of the Authority; and

WHEREAS, the Authority has the power to acquire leasehold interest in, and to operate the Town's System pursuant to NYS Public Authorities Law §1199-DDDD; and

WHEREAS, the Town and the Authority desire to enter into a long-term agreement, wherein the Authority will lease, maintain, operate, repair and replace the facilities of the System, and will supply water directly to customers served by the System, under the terms and conditions specified in this Agreement.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, including the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. Lease of Facilities; Commencement Date.

- 1.1 Beginning on the Commencement Date and continuing through the remainder of the Term as defined below, the Town hereby leases to the Authority, subject to the terms and conditions of this Agreement, the entire System, together with any replacements, additions, betterments and improvements that may hereafter be furnished and installed during the Term of this Agreement and including any interests in real property.
- 1.2 For purposes of this Agreement the "Commencement Date" shall be _____, 2023, unless a different date is mutually agreed upon in writing by the Town and the Authority.

2. Rights and Obligations of the Authority. The Authority shall have the following rights and obligations with respect to the System as of the Commencement Date:

- 2.1 The Authority shall have the right to use the System for the transmission of water to serve its current and future wholesale and retail customers within the Authority water delivery infrastructure, including but not limited to the System, without the imposition of any rental or other charges by the Town.
- 2.2 The Authority shall have the right to provide for the connection of users to the System during the term of the Agreement. All connection and other fees paid by users who are connected to the System shall be paid to and be the property of the Authority, except as otherwise provided herein.
- 2.3 The Authority shall operate, maintain, repair and replace the System, and any portions or extensions thereof, at its own cost and expense and at its own discretion.
- 2.4 The Authority shall sell water to the customers of Water District No. 1 in accordance with the current Authority rate schedule, which is subject to

periodic change by action of the Authority Board of Directors.

- 2.5 Pursuant to §1199-MMMM of the NYS Public Authorities Law and §406 of the NYS Real Property Tax Law (to the extent applicable pursuant to §89-L of the NYS Public Service Law), the Authority shall not be required to pay taxes or assessments upon any properties, replacements, additions, betterments and improvements made or acquired by it or made upon the System, since the use of the System is a public use.
- 2.6 The Authority shall have the right, at its own cost, to install additional or replacement facilities within the System as the Authority deems necessary or advisable to better serve its customers. Legal title to any facilities installed by the Authority, including any replacements to the System, shall be and remain vested in the Authority.
- 2.7 The Authority shall at all times maintain casualty and liability insurance coverage on the System and shall at the request of the Town, add the Town as an additional insured with regard to such insurance coverage.

3. Rights and Obligations of the Town. The Town shall have the following rights and obligations pursuant to this Agreement:

- 3.1 The Town shall not at any time be obligated, without its consent, to make or pay for replacements, addition betterments or improvements to the System, other than those undertaken pursuant to the November, 2020 Map, Plan and Report by CPL, D.P.C. , which shall be paid for by the customers within Water District No. 1 pursuant to a capital improvement debt charge.
- 3.2 The Town shall not resell or redistribute water supplied from the Authority or through the System to any other municipality or any water districts or water customers, whether wholesale or retail, without the prior written consent of the Authority. In an emergency, the Authority will not unreasonably withhold such consent.
- 3.3 The Town shall assign to the Authority the benefit of all construction and/or service warranties that the Town may have related to the System improvements, except that the Town may retain a joint right to enforce any such warranties.
- 3.4 Town customers will be responsible for expenses related to future capital improvement projects made to the System.
- 3.5 The Town shall remain responsible for payment of all existing or pending debt service associated with the System improvements installed pursuant to the November, 2020 Map, Plan and Report by CPL, D.P.C.

4. Supply of Water

- 4.1 It is understood and agreed that the Authority makes no guarantee as to pressure, quantity or continuity of water service, 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 shutting off of water in case of accident or emergency, or for alterations, extension, connections or repairs, or for any cause other than for such loss, damage, deficiency or failure caused by the carelessness, fault or neglect of the Authority, its agents, servants, employees, contractors, sub-contractors, and/or assigns. In the event of an emergency or other necessity, the Authority shall have the right to shut off or reduce the flow of water for such periods as are necessary, in the Authority's sole discretion. In all cases, other than emergencies, the Authority shall give the Town written notice 48 hours prior to any shut-off or flow reduction. The Authority shall restore service and make water available as soon as it can reasonably do so.
- 4.2 It is expressly understood and agreed that the furnishing of water and the performance of services by the Authority to the Town and its customers shall be in accordance with and governed in all respects by this Agreement and the Authority's rules and regulations for the sale of water, and any charges, amendments or revisions thereof.

5. Collection of Water Charges

- 5.1 As of the Commencement Date or the completion of the System improvements being constructed pursuant to the November, 2020 Map, Plan and Report of CPL, D.P.C., whichever is later, the Authority shall be responsible for providing water to the customers of Water District No. 1, and such customers shall be considered customers of the Authority from the Commencement Date forward.
- 5.2 As of the Commencement Date, the Authority shall be entitled to collect all fees, charges, assessments and claims related to the customers of Water District No. 1 being served by the System.

6. Term of Agreement

- 6.1 The Term of this Agreement will be for a period of 40-years from the Commencement Date.
- 6.2 Upon the expiration of the Term, unless the parties agree otherwise, the Authority shall return to the Town the System leased to it, including any warranty information. In addition, the Town shall have the right, if it determines it to be in the public interest, to acquire from the Authority any additional facilities installed pursuant to Sections 2.6 herein during the lease Term by the Authority at its sole cost and expense for the sole benefit of the System hereby leased. The value of

such additional facilities shall be determined based on the actual cost of such improvements or the fair market value determined by a panel of three qualified appraisers, one chosen by the Authority, one chosen by the Town and the third to be chosen by the two appraisers engaged by the Authority and Town, whichever is less. If the Town desires to obtain such improvements, the Town shall pay the Authority in full for the determined value of the additional facilities at the termination of the lease Term.

- 6.3 Notwithstanding the provisions of Section 6.2, the Town shall not have the right to acquire from the Authority any water delivery infrastructure and appurtenant improvements owned by the Authority if such infrastructure and appurtenant improvements are used by the Authority to provide water services to other municipalities and/or customers, unless adequate provisions are made for continuing service to such municipalities and/or customers consistent with the Authority's contractual obligations. In the event this Agreement has terminated, and in the event that Town and Authority are not able to agree as to the price for such infrastructure and appurtenant improvements to be acquired by the Town, the Authority agrees to pay to the Town a reasonable fee (as determined by the Authority and the Town) for transmission through the System from such infrastructure and appurtenant improvements.
- 6.4 In the event that this Agreement terminates and the Town takes back the System leased hereunder, the Authority and the Town agree to negotiate in good faith to reach a mutually acceptable arrangement (such as, but not limited to, the lease or sale of facilities to the other or the entering into of rights for the joint use of facilities) whereby the Town will be able to operate its water delivery system and provide water services to its customers and the Authority will be able to use the facilities owned by the Town to meet the Authority's obligations to furnish water services to its customers. Such arrangement will address, as necessary, the rights of the Town and Authority to use the other's facilities, and the terms for such use. If the parties have failed to reach agreement six months before the date when the System is to be returned to the Town, the Authority and the Town agree to use non-binding alternative dispute resolution procedures, such as mediation or voluntary arbitration, to assist in the negotiations.

7. Representations, Warranties and Indemnification

- 7.1 The Town represents and warrants to the Authority that it has taken all necessary steps and followed all lawful procedures in the formation of the Town of Groveland Water District No. 1, including, but not limited to obtaining any necessary approval of the New York State Comptroller.
- 7.2 The Town represents and warrants to the Authority that it has taken all actions necessary or required to be taken by it, including any referendum necessary, and that the Town has full power and authority necessary to execute this Agreement and perform in accordance with its terms.
- 7.3 The Town represents and warrants that there are no liens, judgments,

claims or other liabilities associated with the System that would impede or affect the leasehold interest of the Authority as created hereunder.

- 7.4 The Town hereby agrees to indemnify and hold the Authority harmless from any and all claims, liabilities, damages, suits, cause of action or other costs (including reasonable attorney fees) resulting from any action or failure to act or in any way associated with the System that arose prior to the Commencement Date.
- 7.5 The Authority hereby agrees to indemnify and hold the Town harmless from any and all claims, liabilities, damages, suits, cause of action or other costs (including reasonable attorney fees) resulting from any action or failure to act or in any way associated with the System that arises after the Commencement Date and during the Term of this Agreement.

8. Miscellaneous

- 8.1 It is expressly understood and agreed that the furnishing of water and the performance of services by the Authority to the Town shall be in accordance with and governed in all respects by Subpart 5-1, Public Water Supplies of the New York State Sanitary Code, and any other applicable laws, rules or regulations, including reasonable rules and regulations of the Authority.
- 8.2 No party may assign its rights or obligations under this agreement, unless the written consent of all other parties hereto is obtained.
- 8.3 This agreement may be amended or modified only by a subsequent written document executed by and parties hereto.
- 8.4 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 8.5 If any term or terms of this Agreement shall be held invalid, illegal or against public policy by any court, governmental agency or other body having appropriate jurisdiction, the parties agree to promptly and in good faith take any reasonable necessary action and negotiate, adopt, execute and deliver such amends hereto so as to correct any invalidity or illegality in a manner consistent with the intent thereof, and the remaining terms of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

**LIVINGSTON COUNTY WATER
AND SEWER AUTHORITY**

TOWN OF GROVELAND

By: _____
Jason Molino, Executive Director

By: _____
William G. Devine, Supervisor

Date: _____

Date: _____

SCHEDULE A

DESCRIPTION OF LEASED IMPROVEMENTS

The proposed Water District No. 1 will include a total of approximately 80,000 linear feet of 4-inch, 6-inch, 8-inch, and 12-inch water main. The water main will be installed along portions of Barber Hill Road, Hunt Hill Road, Lee Road, Geneseo Road, Morris Road, Gamble Road, Adamson Road, Logan Road, Turner Road, Dantz Road, Baily Road, NYS Route 36, and Groveland Station Road. The project will also include the installation of a booster pump station to serve the properties along Barber Hill Road.