

ACT NO. - 2021

AN ACT to Modify the Peekskill Sanitary Sewer District by the addition of one (1) Parcel of Property located in the Town of Yorktown and to authorize a permit agreement with the Town to provide sewer service to the subject Parcel and to accept any easements or other real property interests from the Town.

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. The property owned by the County of Westchester (the "County") and known and designated as 3840 Crompond Road, Sec. 25.20, Block 1, Lot 11 (the "Parcel") on the assessment maps of the Town of Yorktown (the "Town") is hereby added to the Peekskill Sanitary Sewer District (the "District").

§ 2. Pursuant to the provisions of Chapter 237 of the Laws of Westchester County, the Board levies and assesses against the Parcel the aggregate sum of Nineteen Thousand Dollars (\$19,000.00) which amount shall be payable in ten (10) equal annual installments of One Thousand Nine Hundred Dollars (\$1,900.00) and shall be credited to the remaining portion of the District. Payment of said amount by the County shall be subject to execution of the Agreement by the County and the Town.

§ 3. This Act and the District and assessment areas as so altered, changed, modified, reduced and/or enlarged hereby, shall become effective immediately and the assessment rolls filed after the next taxable status date shall show County sewer district assessments and taxes on the basis of such revised District, and taxes levied on such rolls shall be based thereon, but any sewer district tax or assessment levied on any valid assessment rolls in effect prior to the next taxable status date, on any parcel affected by the revisions made by this Act, shall continue valid as such or as a tax lien, until paid and the amount paid shall be credited to the sewer district in which such parcel was assessed on the role on which said tax is levied.

§ 4. The County, acting by and through its Department of Environmental Facilities (“Department”), is hereby further authorized to enter into a permit agreement with the Town, in substantially the form attached hereto (the “Agreement”), pursuant to which the Town will grant the County a permit (the “Permit”) to allow the County to connect to the Town’s sanitary sewer located on Crompond Road for the purpose of providing sewer service to the Parcel, as well as any easements or other real property interests necessary for the County to construct, operate and maintain the connection of the Parcel to the Town’s sanitary sewer, and for the County to have a financeable property interest in the sewer line connection for the purpose of issuing bonds (the “Bonds”).

§ 5. In consideration of the grant of Permit and other benefits to be conferred upon the County by the Town under the Agreement, the County shall be authorized to pay the Town an annual permit fee equivalent to what the County would pay if the Town was able to levy a sewer tax against the Parcel (the “Permit Fee”). The Permit Fee for the first year of the Permit is estimated to be \$5,338.33.

§ 6. In addition to the Permit Fee, the County would also be subject to payment of the Parcel’s share of debt service for any capital improvements made to the Town’s sanitary sewer district during the term of the Agreement.

§ 7. The term of the Agreement shall commence upon execution and shall continue for a period of thirty (30) years thereafter or upon the maturity date of the Bonds, whichever is longer.

§ 8. The County shall be permitted to terminate the Permit upon the sale or other disposition of the Parcel.

§ 9. The County is hereby authorized to accept from the Town any easements or other real property interests necessary to construct, operate and maintain the sewer service connection from the Parcel to the Town’s sanitary sewer and for the County to have a financeable property interest in the sewer line connection for the purpose of issuing bonds.

§ 10. The County Executive or his authorized designee be and hereby is authorized and empowered to execute any and all instruments and to take all action necessary and appropriate to accomplish the purposes hereof.

§ 11. This Act shall take effect immediately.

PERMIT AGREEMENT

THIS AGREEMENT made the _____ day of _____, 2021 by and between:

THE TOWN OF YORKTOWN, a municipal corporation of the State of New York, having an office and place of business at 363 Underhill Avenue, Yorktown Heights, New York 10598 (hereinafter referred to as the "Town")

and

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601 (hereinafter referred to as the "County"), acting by and through its Department of Environmental Facilities (the "Department")

WITNESSETH:

WHEREAS, the County is the owner of certain real property located at 3840 Crompond Road, Cortlandt Manor, New York and designated as Section 25.20, Block No. 1, Lot No. 11 (the "County Property"); and

WHEREAS, the County Property is not currently part of any sewer district; and

WHEREAS, the County Property's septic system is not functional and the County desires that the County Property be added to the County's Peekskill Sanitary Sewer District (the "County District") so that sanitary sewage discharged from the County Property may be treated in the County District's Water Resource Recovery Facility ("WRRF"); and

WHEREAS, the Westchester County Board of Legislators, by Act No. ____-2021, has authorized the County Property be added to the County District; and

WHEREAS, in order for the County Property to receive sewer service, it must first be connected to the Town-owned sanitary sewer system (the "Town District"), a portion of which is located along Route 202 (Crompond Road); and

WHEREAS, the Town District is part of and located within the County District; and

WHEREAS, the Town is willing to grant a permit and such other rights as are hereinafter provided, to the County, to enable the County to connect the County Property to the Town District so that it may receive sewer service, upon the terms and conditions set forth in this IMA (the "Agreement").

NOW, THEREFORE, the parties hereto, in consideration of the terms and conditions herein contained, do agree as follows:

1. **DESCRIPTION.** (a) The Town hereby grants to the County and the County hereby accepts from the Town a permit (the "Permit") to allow the County to connect the County Property to the Town District's sanitary sewer located on Crompond Road and to authorize the County to discharge sanitary sewage from the County Property into the Town District ultimately tributary to the County District, for-treatment in the County District's WRRF. This Permit and the permission granted hereunder is limited to "sanitary sewage", as defined in Chapter 824 of the Laws of Westchester County, which is generated on and discharged from the County Property.

(b) The County, at its sole cost and expense, shall construct, operate and maintain a sewer service line (the "Sewer Service Line") from the County Property to the Town's sanitary sewer manhole located on Crompond Road, and shall be solely responsible for obtaining all necessary permits and approvals from the Town or any other governmental entities that may have jurisdiction over such activities. The County further agrees that the Sewer Service Line will be constructed in strict accordance with all applicable federal, state, local municipal and County codes and ordinances. The County shall require any contractor hired by the County to construct and connect said Sewer Service Line and sanitary sewer pumping station from the County Property to the Town's sanitary sewer manhole, to obtain Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.l) per occurrence and a \$2,000,000 aggregate limit and Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate written on a "follow the form" basis naming the County of Westchester and the Town as an additional insureds.

(c) The Town shall grant the County, its contractors and agents, a non-exclusive license in, upon, under and over the Town Property (as hereinafter defined) to enable the County to

construct, operate and maintain the Sewer Service Line (the "License"), said License to be in effect co-terminus with the Term of this Agreement (as hereinafter defined).

2. **PERMIT FEE.** In consideration for the privilege of connecting to and discharging sanitary sewage from the County Property into the Town District's sanitary sewer during the term of this Permit, the County agrees and covenants to pay a fee equivalent to what the County would pay if the Town was able to levy a sewer tax against the Property (the "Permit Fee"). The Permit Fee for the first year of the Permit is estimated to be \$5,338.33. A cost estimate breakdown was provided by the Town and is included at the end of this Agreement as Appendix "A". The Town agrees to provide an annual cost breakdown similar to what is provided in Appendix "A" with the annual Permit Fee bill sent to the County.

In addition to the Permit Fee, the County would also be subject to payment of its share of debt service for any capital improvements made to the Town District during the term of this Agreement ("Debt Service").

The Town shall bill the County annually for the Permit Fee and for Debt Service, if any, and payment thereon shall be due and payable to the Town no later than thirty (30) days from the date of billing.

4. **TERM.** This Agreement and the privileges granted hereunder shall be valid for a period of thirty (30) years from the date of execution of this Agreement by both parties and approval of same by the Town Attorney and the County Attorney, or upon the maturity date of the County Bonds (as hereinafter defined), whichever is greater (the "Term"), subject to the County's rights of termination hereinafter set forth.

5. **GRANT OF EASEMENT:** Prior to the County's commencement of work on the Sewer Service Line, the Town shall convey to the County and its successors, assigns, invitees, contractors and agents, a non-exclusive easement, in substantially the form attached hereto as Schedule "A" (the "Easement"), in, upon, under and over any property interest of the Town as depicted on the maps and legal descriptions contained in Schedule "B-1", attached hereto and made a part hereof (the "Town Property"), for the purpose of creating a financeable property interest allowing the County to bond for the construction of the Sewer Service Line (the

“County Bonds”). Said Easement shall be in effect for so long as the County Bonds are outstanding. Upon maturity or redemption of the County Bonds, the County’s Easement will automatically terminate.

6. **TERMINATION**. Should the County decide to sell or otherwise dispose of the County Property at any time during the Term of this Agreement, this Agreement, the Permit and License granted hereunder shall immediately terminate upon such sale or disposition and neither party shall have any further liability to the other, provided however, that the County shall be responsible for paying the Town any part of the Permit Fee or Debt Service, if any, due and owing up to the date of such termination, and further provided that the Easement shall continue in full force and effect for the life of the County Bonds.

7. **FIRE DAMAGE, DESTRUCTION, CONDEMNATION**. In the event that the Town District and appurtenant facilities or such a substantial part thereof so as to render impossible the operation of this Permit are destroyed or damaged by fire or other casualty or are taken by eminent domain, then, at the option of the County, this Permit shall continue in full force and effect subject only to abatement of that portion of the Permit Fee attributable to the services that are non-operational; or shall terminate upon the date of such casualty or upon the date that title vests in the Condemnor, and neither party shall have any liability to the other on account of such termination.

8. **PERMITS & REGULATIONS**. It is the understanding and agreement of the parties hereto that each party shall, at their sole cost and expense, procure and maintain, in full force and effect for the term of this Permit, all other permits, licenses and approvals from governmental authorities having jurisdiction required for the lawful operation of this Permit.

9. **INSURANCE & INDEMNIFICATION**. The County represents that it is a self-insured entity and shall provide the Town with proof of such self-insurance upon request. In addition, each party to this Agreement expressly agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the other party, to indemnify and hold harmless the other party, their officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney’s fees or loss arising directly or indirectly out of the

negligent acts or omissions of the indemnifying party or third parties under the direction or control of the indemnifying party; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the negligent acts or omissions of the indemnifying party and to bear all other costs and expenses related thereto; and

(c) in the event the indemnifying party does not provide the above defense and indemnification to the other party, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the indemnifying party shall reimburse the other party's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

10. NOTICES. All notices of any nature referred to in this Permit shall be in writing and sent by registered or certified mail postage prepaid or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the Town

Town Supervisor
Town of Yorktown
363 Underhill Avenue
Yorktown Heights, New York 10598

with a copy to:

Town Attorney
Town of Yorktown
363 Underhill Avenue
Yorktown Heights, New York 10598

To the County:

Commissioner
County of Westchester
Department of Environmental Facilities
270 North Avenue
New Rochelle, New York 10801

with a copy to:

County Attorney
County Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

11. **REMEDIES CUMULATIVE**. The failure of either party to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. Acceptance by either party of payment of any fee due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of such breach and no waiver by the party of any provision hereof shall be implied.

12. **ENTIRE AGREEMENT**. This Permit and its attachments constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

13. **APPROVALS**. This Permit shall not be enforceable until signed by the parties and approved by the Office of the County Attorney.

14. **APPLICABLE LAW**. This Permit shall be construed and enforced pursuant to the law of the State of New York.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Permit in duplicate.

THE TOWN OF YORKTOWN

By: _____
Name:
Title:

THE COUNTY OF WESTCHESTER

By: _____
Vincent Kopicki, P.E., Commissioner
Department of Environmental Facilities

Authorized by the Westchester County Board of Legislators by Act No. ____-2021, approved on _____, 2021.

Authorized by the Town Board of the Town of Yorktown at a meeting duly held on the _____ day of _____, 2021.

Approved as to form and
manner of execution

Sr. Assistant County Attorney
The County of Westchester

Approved as to form and
manner of execution

Town Attorney
Town of Yorktown

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF

On the _____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

DRAFT

SCHEDULE "A"

THIS EASEMENT AGREEMENT, made the ___ day of _____, 20___, by

TOWN OF YORKTOWN, a municipal corporation organized and existing under the laws of the State of New York having an office and place of business at 363 Underhill Avenue, Yorktown Heights, New York 10598 ("Grantor"); and

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (hereinafter referred to as the "County" and/or the "Grantee")

WITNESSETH:

WHEREAS, Grantor is the owner of the fee title of those certain parcels of real property located in the Town of Yorktown, New York and identified on the tax maps of the Town as: Section __, Block __, Lot __, which real property is more particularly described in Schedule "B-1," which is annexed hereto and made a part hereof (the "Subject Property").

That the Grantor in consideration of the sum of One (\$1.00) Dollar lawful money of the United States, paid by the Grantee, receipt of which is hereby acknowledged, does hereby grant and release unto the Grantee, its successors and assigns, a non-exclusive easement (the "Easement") in, on, over, under and through the Subject Property, as more particularly described in Schedule "B-1," which is attached hereto and made a part hereof for the purpose of accessing certain improvements (the "Project Improvements") as described in a separate Agreement of even date between the Grantor and Grantee, to construct, operate, maintain, repair, replace, inspect, or restore the Project Improvements.

The Easement granted herein is subject to the following restrictions:

The Grantor covenants that, until such time as the Bonds (defined below) have matured or been fully redeemed, neither it, nor its successors or assigns, shall do anything, or allow anything to be done, which in the reasonable opinion of the County would injure, endanger, impede use of or impair the Project in any material respect, or the operation thereof, located within the Easement.

The Grantor acknowledges that the easement rights of the County granted herein regarding the Project Improvements constructed in, on, over, under or through the Easement shall encumber such Project Improvements for so long as the bonds of the County (the "Bonds"), which made funds available for said Project are outstanding, pursuant to the terms of the certain inter-municipal agreement by and between the Municipality and the County of even date herewith. The Grantee shall not interfere with or disturb the construction, use, operation, maintenance or repair of any improvements now or hereafter situated within or upon the Project property.

The Easement shall run with the land and the provisions contained herein shall be binding upon and inure to the benefit of and be enforceable by the County, its successors and assigns until the Bonds have matured or been fully redeemed.

TO HAVE AND TO HOLD the Easement granted herein unto the County, its successors and assigns, until such time as the Bonds have matured or been fully redeemed.

IN WITNESS WHEREOF, the Grantor has executed this instrument the day and year first above written.

TOWN OF YORKTOWN

By: _____

COUNTY OF WESTCHESTER

By: _____

Record and Return to:

DRAFT

MUNICIPALITY'S ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 20__ before me, the undersigned, a Notary Public in and for said State, 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/she 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; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgment

COUNTY'S ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, 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/she 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; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgment

SCHEDULE "B-1"

DRAFT

Appendix A

Westchester County Garage, 3840 Crompond Road, Sec. 25.20, Block 1 Lot 11

District Name	District Number	Unit Charge	Tax Rate	Total Tax
Hunter Brook Sewer	S0046	26.14	\$197.244	\$5,155.97
Hunter Brook Sewer 202 Ext	S0048	26.14	\$6.97617	\$182.36

Approximate Sewer Charge

\$5,338.33

Charges provided by the Town of Yorktown on a breakdown dated December 10, 2020. Charges are based on 2020 tax rates and are subject to change.

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