

**USE AND OCCUPANCY AGREEMENT BY AND BETWEEN THE NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE TOWN
OF DRYDEN AND THE VILLAGE OF DRYDEN**

THIS AGREEMENT, made and entered into on the ____ day of _____, 201_, by and between the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, with its principal office at 625 Broadway, 14th Floor, Albany, New York 12233-1500 (hereinafter “Department”), and the TOWN OF DRYDEN a municipal corporation of the State of New York, with its principal office at 93 East Main Street, Dryden, New York 13053 (hereinafter “Town”), and the VILLAGE OF DRYDEN, a municipal corporation of the State of New York, with its principal office at 16 South Street, P.O. Box 820, Dryden, New York 13053 (hereinafter “Village”). The Department and the Town and the Village are hereinafter individually identified as a “Party” to this Agreement and collectively referred to as the “Parties” to this Agreement.

WITNESSETH

WHEREAS, the People of the State of New York acting through the Department have previously acquired title to certain real property known as the Dryden Lake Multiple Use Area (hereinafter the “Premises”) situated in the Town of Dryden, County of Tompkins, State of New York and described more particularly in Appendix A of the August 14, 1990 Use and Occupancy Agreement between the Department and the Town (hereinafter the “1990 Use and Occupancy Agreement”) attached hereto and made a part of this Agreement; and

WHEREAS, the Department, pursuant to New York State Environmental Conservation Law (hereinafter “ECL”) Section 3-0301(2)(v), has the authority to administer and manage the real property under its jurisdiction, employing all appropriate management activities; and

WHEREAS, the Department, pursuant to ECL Section 3-0305(11), also has the authority to enter into agreements for the use and occupancy of real property under its jurisdiction which the Department deems are beneficial to the State; and

WHEREAS, on August 14, 1990 the Department and the Town entered into a Use and Occupancy Agreement (hereinafter the “1990 Use and Occupancy Agreement”) pursuant to which the Town operates and maintains a portion of the Premises as an outdoor recreational area or park and provides for fishing, picnicking and other recreational facilities on the Premises (hereinafter the “Town Recreational Area”) for a term of twenty-five (25) years, subject to renewal. When the 1990 Use and Occupancy Agreement expired on August 13, 2015, the Department and the Town agreed to extend the 1990 Use and Occupancy Agreement on a month-to-month basis until a new agreement could be reached; and

WHEREAS, it is the intent of the Town to continue to operate and maintain the Town Recreational

Area in harmony with and not to the exclusion of the rights of the general public, subject to Departmental laws and regulations, to enter upon and use the Premises for outdoor recreational purposes; and

WHEREAS, the Village now desires to enter into an agreement with the Department to use a portion of the Premises to provide additional sources of safe drinking water for its residents and to provide a public drinking water fountain/source for members of the general public who use the Premises (hereinafter the “Village Water System Improvements Project”); and

WHEREAS, the Department, pursuant to ECL Section 3-0305(11), deems it beneficial to the State to enter into this Agreement to continue the general public’s use of the Town Recreation Area and to allow the Village to provide for additional sources of safe drinking water to its residents and members of the general public via the Village Water System Improvements Project; and

WHEREAS, the continued use of the Premises by the Town for the Town Recreational Area and the proposed use of the Premises by the Village for the Village Water System Improvements Project will not interfere with the Department’s use of or jurisdiction over the Premises;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

ARTICLE I. TERM AND RENEWAL

1. The term of this Agreement shall be twenty-five (25) years commencing on the _____ day of _____ in the year _____. Thereafter, the term of this Agreement shall automatically renew for three (3) successive twenty-five (25) year terms unless the Department provides written notice to the Town and/or the Village at least one (1) calendar year in advance of the end of the then existing term that the Department does not wish to renew the term of this Agreement with the Town and/or the Village for any of the reasons specified in paragraph 2 or paragraph 3, below.
2. The Agreement shall be renewed unless the Department makes a determination that the Town’s and/or the Village’s uses of the Premises are not compatible with the Department’s management objectives for the Premises. If the Department determines that the uses by one of the Parties are compatible with the Department’s management objectives but the uses by the other Party are not, the Department and the Party with the compatible uses may enter into a new agreement for that Party’s continued use of the Premises. The Department’s management objectives for the Premises include, but are not limited to:
 - a. recreational use, including fishing, hunting, birding, boating and picnicking;
 - b. maintaining habitats for terrestrial, wetland, and aquatic flora and fauna;
 - c. maintaining the integrity and functions of the dam, access roads, parking areas, and boat launch area; and
 - d. minimizing antisocial and nuisance behavior such as vandalism, littering, and

noise.

The Department shall notify the Town and the Village in writing of its determination, and the reasons supporting the determination, at least one (1) calendar year prior to the expiration of the Agreement. If the Department determines that one or both Parties' uses are not compatible with the Department's management objectives, the affected Party or Parties may, within thirty (30) calendar days of receipt of the determination, present information to the Department regarding its uses and the determination. The Department shall notify the Town and the Village in writing within thirty (30) calendar days of its receipt of such information as to whether its determination has changed in light of the information.

3. The use and occupancy of the Premises by the Town and/or the Village created by this Agreement is subject to termination by the Department: (a) in the event the Department determines that the use and occupancy of the Premises by the Town or the Village is incompatible with, interferes with or adversely impacts the Department's management objectives for the Premises; (b) in the event the Department determines that the Town Recreational Area or the Village Water System Improvements Project is not being maintained to the Department's standards; or (c) in the event the Town or the Village fails to comply with any applicable local, state or federal law or regulation. In the event the Department so finds, the Department shall notify the Town and/or Village that is the subject of the finding of its finding and, unless a mutually agreeable plan for curing the cause of the finding can be developed within one (1) calendar year from the date of the affected Party's/Parties' receipt of the finding, the Town and/or the Village that is the subject of the finding shall cease its/their use and occupancy of the Premises as described in this Agreement within one (1) calendar year from the date of the affected Party's/Parties' receipt of the Department's finding. Written notice of the Department's finding shall be via certified U.S. Mail, return receipt requested, to the subject Town's and/or Village's contact person(s) and address(es) as identified in paragraph 24, below.

Notwithstanding any other provisions herein, and given the nature of the Village's and the Town's intended long-range uses of the Premises and the potential issues that may arise if the Department exercises its termination rights following the initial twenty-five (25) year term as set forth above, it is hereby intended and agreed that upon any such termination of this Agreement it shall **not** become effective until one (1) calendar year after written notification by the Department, whereupon the Village and the Town will thereby respectively have sufficient time to ensure its needs as to the continuation of providing (i) beneficial safe drinking water to the Village pursuant to and in accordance with the Village Water System Improvements Project currently being undertaken by the Village, and (ii) continuing recreational activities for the Town and others, all of which ultimately being intended to provide benefits to all three (3) Parties to this Agreement.

ARTICLE II. GENERAL RESTRICTIONS

4. The use and occupancy of the Premises by the Town and the Village shall be consistent with the retention of the natural character of the area, especially the woodland and wetland environment.
5. No trees, or portions thereof, over three inches (3") in diameter at breast height shall be cut without prior written authorization by the Department.
6. The Town Recreational Area and the Village Water System Improvements Project shall be located and administered to ensure separation from and non-interference with the State-developed fishing access facilities adjacent to the Dryden Lake Dam. Public fishing shall continue to be available without charge or hindrance. The boat ramp/launch and the adjacent parking lot are State-developed fishing access facilities which shall continue to be available to the public without charge or hindrance.
7. The Department shall retain exclusive responsibility for the integrity, maintenance, repair and any replacement of the Dryden Lake Dam, Spillway, boat ramp/launch, and the parking lot adjacent to the boat ramp/launch. Under no circumstances shall the Town and/or the Village alter or allow to be altered the Dryden Lake Dam, Spillway, boat ramp/launch, or the parking lot adjacent to the boat ramp/launch or take any action to alter the current Dryden Lake level without written approval from the Department.
8. Dryden Lake, its shoreline and the upland areas of the Premises shall continue to be used for public hunting, fishing, trapping, and other recreational uses, subject to all applicable laws, rules, and regulations of the Department. In formulating rules and regulations regarding the Town and Village's uses of the Premises, the Town and Village will ensure that their respective uses will not conflict with other permitted uses of the Premises. The Town and Village recognize that other areas of the Premises are open for hunting, fishing, trapping, and other outdoor recreational uses by the public. The Town shall post the appropriate signs notifying the general public of times when the Town Recreational Area is open. The Village shall post the appropriate signs to ensure the Village Water System Improvements Project is protected from damage and interference.

ARTICLE III. SITE PLANS AND DESIGN CONSIDERATIONS

9. All conceptual and working plans for the development and construction of any improvements, structures or facilities on the Premises by the Town or Village shall be approved in writing by the Department prior to actual construction. The development of all improvements, structures or facilities shall conform to site plans previously approved in writing by the Department.

10. All costs and expenses associated with the construction, operation and maintenance of any improvement, structure or facility shall be borne by the Town or Village, as applicable. The Town and Village are each solely responsible for obtaining all necessary local, State, and federal approvals for any improvement, structure or facility that it constructs, operates, or maintains in connection with this Agreement. Should the Town or Village's use of the Premises be discontinued by revocation, abandonment, failure to renew or any other reason, the Town or Village, as applicable, shall be responsible for the removal of all of its improvements, structures or facilities as directed by the Department.
11. **Town Recreational Area** - This Agreement provides for Town use and occupancy of the Premises for operating and maintaining a portion of the Premises as an outdoor recreational area or park and providing for fishing, picnicking and other recreational facilities on the Premises only. No other use and occupancy of the Premises by the Town is authorized by this Agreement. The Town shall not install, develop or construct any improvements, structures or facilities other than those specified below without prior written authorization from the Department.
- A. Pursuant to the 1990 Use and Occupancy Agreement, as of the date of this Agreement, the Town Recreational Area consists of the following improvements, structures and facilities:
1. Two (2) pavilions
 2. Fishing pier – wooden platform
 3. Playground equipment
 4. Picnic tables on concrete pads
 5. Benches
 6. Barbeque grills
 7. Two (2) composting restrooms
 8. Jim Schug trail
- B. All improvements, structures or facilities proposed, developed and constructed by the Town shall be designed to maximize access for handicapped persons. All improvements, structures or facilities proposed, developed and constructed by the Town shall of a rustic design compatible with the character of the Premises.
- C. Two (2) composting restrooms exist on the Premises and any future toilet facilities at the Premises must be approved by the Tompkins County Department of Health and the New York State Department of Health.
12. **Village Water System Improvements Project** - This Agreement provides for Village use and occupancy of a portion of the Premises for water extraction, treatment, distribution and associated maintenance purposes only. No other use and occupancy of the Premises by the Village is authorized by this Agreement. The Village shall not install, develop or construct

any improvements, structures or facilities other than those specified below without prior written authorization from the Department and the Town.

- A. The proposed Village Water System Improvements Project consists of the following improvements, structures or facilities.
 - 1. Production well #2 (southernmost well) consisting of:
 - a. well house with pump and piping;
 - b. seven-feet (7') high chain link fence with three (3) strands of barbed wire around well house; and
 - c. gravel access road.
 - 2. Water fountain near large pavilion with water service provided from well house #2. The Village shall provide water to this fountain without charge to the Town or the Department.
 - 3. Water main from well house #2 to well house #1.
 - 4. Production well #1 (northernmost well);
 - 1.) well house with pump, piping, emergency generator, chlorination disinfection system, and flow meter;
 - 2.) seven-feet (7') high chain link fence with three (3) strands of barbed wire around well house; and
 - 3.) gravel access road.
- B. The Village shall comply with all applicable laws, regulations and standards of the New York State Department of Health and/or the Tompkins County Department of Health applicable to the Village Water System Improvements Project.
- C. The Village Water System Improvements Project shall not be substantially different in scope than the plans approved by the New York State Department of Health and/or the Tompkins County Department of Health. The Village shall provide the Department with as-built plans, including a map, of the Village Water System Improvements Project no later than thirty (30) calendar days after completion of construction. The Village shall also provide the Department a certification from the New York State Department of Health and/or the Tompkins County Department of Health that the constructed Village Water System Improvements Project is substantially consistent in scope with the plans approved by the New York State Department of Health and/or the Tompkins County Department of Health.

ARTICLE IV. USE AND MAINTENANCE OF SITE

- 13. The responsibility for policing and maintaining the Town Recreational Area shall be borne by

the Town, and the responsibility for policing and maintaining the Village Water System Improvements Project shall be borne by the Village. The Town shall maintain the Town Recreational Area so that it presents a neat and attractive appearance at all times and shall pick up refuse daily during the week and as needed on weekends when the Town Recreational Area is open to the general public. The Village shall maintain the Village Water System Improvements Project so that it presents a neat and attractive appearance at all times and shall ensure that it is protected from damage and interference. The Town and the Village will actively participate and cooperate in enforcing all applicable local, State and federal laws and regulations applicable to their respective uses of the Premises.

14. The Town shall set the hours that govern the daily use of the Town Recreational Area by the general public and shall post these hours on signs in the Town Recreational Area.
15. The Town shall plow the entrance way road and the appropriate parking area for the purpose of removing snow at the public fishing access and boat launch site adjacent to the dam. This will allow for safe off-road parking for ice fishing participants.
16. The Village shall be responsible for plowing the gravel access roads to the pump house associated with production well #1 and the pump house associated with production well #2 as the Village deems necessary for the maintenance and operation of the Village Water System Improvements Project.
17. The Town may impose a reasonable uniform fee for the use of the Town Recreational Area. The revenues generated by such fees shall not exceed the amount necessary to offset the actual costs of its maintenance and administration and shall only be charged for use of the Town Recreational Area and shall not be charged for the use of State land and facilities, including the State boat launch.

ARTICLE V. GENERAL TERMS AND CONDITIONS

18. The Village and the Town each agree that their use and occupancy of the Premises is by license granted by the Department, terminable as specified herein. Nothing contained herein shall create or be construed as creating a co-partnership between the Town and the Department, the Village and the Department, or the Town and the Village. Nothing contained herein designates or authorizes the Town or the Village as an agent of the Department or of each other. Nothing contained herein shall be construed as granting a lease of real property or a conveyance of real property by the Department to the Town or the Village.
19. The Parties agree to the following:
 - A. The Town and the Village each assume all risk in the implementation of this Agreement and each shall be solely responsible and answerable in damages for all accidents or injuries to persons or property associated with their respective operations,

- improvements, structures and/or facilities. The Town and the Village each hereby covenant and agree to indemnify, defend, and hold harmless the People of the State of New York and the Department and its officers and employees (each of which is referred to as a “State Indemnified Party”) from any and all claims, suits, leases, damages or injuries to persons or property of whatever kind and nature, whether direct or indirect, arising out of their respective operations under this Agreement or their own carelessness, negligence, or improper conduct (including the carelessness, negligence, or improper conduct of their respective servants, agents, or employees) which responsibility shall not be limited to the insurance coverage required under this Agreement. To the extent a State Indemnified Party is negligent, the Town’s and the Village’s duty to indemnify the State Indemnified Party shall not extend to the proportion of loss attributable to the State Indemnified party’s negligence.
- B. The Town and the Village hereby covenant and agree to indemnify, defend, and hold harmless each other and their respective officers, employees, elected officials, Boards and agents (each of which is referred to as a “Municipal Indemnified Party”) from any and all claims, suits, leases, actions, damages, costs, expenses, liabilities, or injuries to persons or property of whatever kind and nature, whether direct or indirect, arising out of their respective operations under this Agreement or their own carelessness, negligence or improper conduct (including the carelessness, negligence, or improper conduct of their respective servants, agents, or employees), which responsibility shall not be limited to the insurance coverage required under this Agreement. To the extent a Municipal Indemnified Party is negligent, the Town’s and the Village’s duty to indemnify the Municipal Indemnified Party shall not extend to the proportion of loss attributable to the Municipal Indemnified Party’s negligence.
20. The Town and the Village shall each separately procure and maintain, at their own expense and at no expense to the Department, insurance of the kinds and amounts hereinafter provided by insurance companies licensed to do business in the State of New York, covering their respective use and occupancy of the Premises as described in this Agreement, whether performed by the Town or Village or by subcontractors. The Town and Village shall require that each of its respective subcontractors carry insurance with the same limits and provisions as provided herein. Upon execution of this Agreement, the Town and Village shall each deliver to the Department a certificate or policy of insurance, in a form satisfactory to the Department, showing that the Town or Village has complied with this provision, which certificate or policy shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the Department. Proof of insurance coverage must be provided annually for the life of this Agreement. Any certificate or policy shall list the Department and the State of New York and its officers and employees as additional insureds where the naming of additional insureds is permitted. The appropriate endorsement adding the Department and the State of New York to the policy as an additional insured must be provided. In addition, the Town’s and the Village’s certificates shall also name the other municipality’s officers and employees as additional insureds where the naming of additional insureds is permitted. The kinds and amounts of insurance are as follows:

- A. Commercial General Liability Insurance - The Town and the Village shall each separately obtain and maintain Commercial General Liability Insurance with limits of not less than one million dollars (\$1,000,000.00) per occurrence and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including tort liability of another assumed in a contract) and explosion, collapse and underground coverage. If such insurance contains an aggregate limit, it shall apply separately to this Agreement.
- B. Products and Completed Operations Insurance – The Town and the Village shall each separately obtain and maintain Products and Completed Operations Insurance which shall include a provision that coverage will extend for a period not less than twelve (12) months from the date of final completion and acceptance by the hiring party of all of a contractor’s work.
- C. Owners and Contractors Protective Liability Insurance – The Town and the Village shall each separately obtain and maintain Owners and Contractors Protective Liability Insurance in the name of The People of the State of New York and/or Contractor, as appropriate, with limits of not less than one million dollars (\$1,000,000.00) per occurrence.
- D. Workers Compensation, Employers Liability and Disability Benefits Insurance – The Town and the Village shall each separately obtain and maintain Workers Compensation, Employers Liability and Disability Benefits Insurance as required by New York State. If employees will be working on, near or over navigable waters, the U.S. Longshore and Harbor Workers Compensation Act endorsement must be included.
- E. Comprehensive Business Automobile Liability Insurance – The Town and the Village shall each separately obtain and maintain Comprehensive Business Automobile Liability Insurance with a limit of not less than one million dollars (\$1,000,000.00) per accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- F. Commercial Property Insurance – The Town and the Village shall each separately obtain and maintain Commercial Property Insurance covering at a minimum for loss or any damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms and property of the Department held in their care, custody and/or control. During the performance of any construction work, restoration or alteration, the Town and the Village shall obtain and maintain builder’s risk completed value insurance covering loss from collapse, water damage and transit theft of building materials, with deductible reasonably approved by the Department, in non-reporting form, covering the total value

of the work performed and equipment, supplies and materials at any off-site storage location used with respect to the construction work.

21. This Agreement merges all prior negotiations by and between the Parties and alone expresses the full Agreement by and between the Parties. There are no promises, agreements, covenants or representations other than those expressed herein.
22. This Agreement may not be changed or modified orally and may be modified only by a written instrument subscribed to by the Department, the Town, and the Village.
23. The failure by the Department to insist on the strict performance of any term or condition herein shall not be construed as a waiver of the right to enforce that term or condition in the future.
24. The Department, the Town, and the Village designate the following contact persons and addresses for the purpose of all notices and communications provided for or arising under this Agreement:
 - a. New York State Department of Environmental Conservation:
Regional Director, Region 7
615 Erie Boulevard West
Syracuse, New York 13204-2400
 - b. Town of Dryden:
Town Supervisor
93 East Main Street
Dryden, New York 13053
 - c. Village of Dryden:
Village Mayor
16 South Street
Dryden, New York 13053

Any notices or other communications given under or in relation to this Agreement shall be deemed duly given if served personally or by commercial courier service upon the other Parties at the addresses set forth above, or if mailed by certified mail to the other Parties at the addresses set forth above, return receipt requested. All notices shall be effective upon the last date of receipt. Any Party may change the contact person and the address to which notices are sent by giving notice of such change to the other Parties in the manner set forth above.

25. The Parties hereto agree to execute such further instruments, documents, or certificates as may be necessary or desirable to effectuate the purposes and intent of this Agreement.
26. This Agreement shall be governed in accordance with the laws of the State of New York. Each

and every provision of law and clause as may be required by law to be inserted into this Agreement shall be deemed to be inserted into this Agreement. The venue for any action arising out of or related to this Agreement shall be in Tompkins County, New York.

27. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or enforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been stated herein.
28. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same document. The exchange of copies of this Agreement and signature pages by facsimile transmission or electronically shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or electronically shall be deemed to be their respective original signatures for all purposes.
29. Each Party executing this Agreement represents and warrants that (i) he or she has the specific authority to bind the Party on whose behalf he or she is signing this Agreement; (ii) the consent of any third parties is not required to perfect such authority; (iii) the party on whose he or she is signing this Agreement has undertaken all actions required to enter into this Agreement; and (iv) his or her signature represents the binding obligation of such Party.
30. Whenever in this Agreement an action cannot be undertaken without the consent of another Party, such consent shall not be unreasonably withheld, delayed or denied by the Party giving consent.
31. To the extent permitted by law, each party to this Agreement shall not during the term of this Agreement, nor at any time thereafter, disclose to any party to this Agreement or any other third party any confidential, proprietary or non-public information furnished by any other party in the course of the performance of the obligations of this Agreement. This provision shall survive termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below and caused their respective duly authorized officials to subscribe their names hereto.

TOWN OF DRYDEN

DATE: _____

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss

COUNTY OF TOMPKINS)

On the ___ day of _____ in the year 201_ before me, the undersigned, a Notary Public in aforesaid 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, did depose and say that he/she resides in _____ and is the _____ of the Town of Dryden, the municipal corporation which executed the foregoing instrument; that he/she signed his/her name thereto pursuant to authority duly granted to him/her by resolution of the _____ of the said Town.

NOTARY PUBLIC

VILLAGE OF DRYDEN

DATE: _____

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss

COUNTY OF TOMPKINS)

On the ___ day of _____ in the year 201_ before me, the undersigned, a Notary Public in aforesaid 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, did depose and say that he/she resides in _____ and is the _____ of the Village of Dryden, the municipal corporation which executed the foregoing instrument; that he/she signed his/her name thereto pursuant to authority duly granted to him/her by resolution of the _____ of the said Village.

NOTARY PUBLIC

**NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
Basil Seggos, Commissioner**

DATE: _____

By: _____

**NANCY LUSSIER
Director, Division of Management and Budget**