

Inter-Municipal Agreement Between Town of Dryden and Town of Ithaca Regarding Maintenance, Management, Use and Control of the Apple Orchard PRV and NYS Route 366 Water Main

THIS AGREEMENT (the "Agreement") is made and entered into this [redacted] day of October, 2019, by and between TOWN OF DRYDEN (hereafter "Dryden"), a municipal subdivision of the State of New York situate in Tompkins County with offices at 93 East Main Street, Dryden, New York 13053 and the TOWN OF ITHACA, (hereafter "Ithaca"), a municipal subdivision of the State of New York situate in Tompkins County with offices at 215 North Tioga Street, Ithaca, New York 14850 (Dryden and Ithaca are sometimes herein jointly referred to as the "Parties" and severally as a "Party").

WITNESSETH:

WHEREAS, Dryden is the sole member municipality of the Southern Cayuga Lake Intermunicipal Water Commission (hereafter "Bolton Point") lacking a direct physical connection to the Bolton Point water transmission main within its municipal boundary, and Ithaca, Dryden and Bolton Point have historically utilized the Apple Orchard Pressure Reducing Valve (hereafter "Apple Orchard PRV") and NYS Route 366 water mains (hereafter "Mains") as a secondary source of supply for the Ithaca Sapsucker Woods Tank and Dryden Distribution System; and

WHEREAS, recent development within the Town of Dryden necessitates the need to provide an alternative source of supply for the Dryden water distribution system, Ithaca does not have sufficient capacity within its Sapsucker Tank to adequately supply Dryden and its future development, and this increased development, demand, and need necessitates the need to provide a primary source of water supply to Dryden through the Apple Orchard PRV and Mains, and Dryden desires that the Apple Orchard PRV and Mains become the primary source of supply for the Dryden Distribution System, and Dryden desires to utilize and control the Apple Orchard PRV and Mains on behalf of the several Dryden water benefit districts presently relying upon the continual supply of Bolton Point water, or any future consolidated water district(s) and Ithaca is willing to agree to permit Dryden to utilize and control the Apple Orchard PRV and Mains for the purposes of extending, expanding, repairing, replacing and maintaining this infrastructure for the co-benefit and use of Dryden, upon the terms and conditions hereinafter stated; and

WHEREAS, Ithaca will retain the ownership interest in the Apple Orchard PRV and Mains and their remaining capacity for the benefit of continuing service to its parcels in respect of its town-wide Article 12-C water improvement area, and at present the only Ithaca parcels having a water connection utilizing the Apple Orchard PRV and Mains are Cornell University facilities, and

WHEREAS, the Town Board of Ithaca, on [redacted], adopted a Resolution entitled "Apple Orchard Water Main Agreement with Town of Dryden" a resolution authorizing the Supervisor of the Town of Ithaca to enter into an agreement", a copy of which resolution is hereby annexed and marked Exhibit A and made a part hereof as though fully set forth herein; and

WHEREAS, the Town Board of the Town of Dryden, on September 19, 2019, adopted a Resolution entitled "Apple Orchard Water Main Agreement with Town of Ithaca" a resolution authorizing the Supervisor of the Town of Dryden to enter into an agreement" a copy of which resolution is hereby annexed and marked Exhibit B and made a part hereof as though fully set forth herein.

In light of the foregoing approvals and recitations, which are a material part of this Agreement, the Parties now AGREE as follows:

1. Current Ithaca parcels connected to the Mains (mainly between the Apple Orchard PRV and Game Farm Road) will continue to be Ithaca customers and billed for water consumption and any Ithaca District indebtedness. A map and list of facilities that are currently serviced by the Main are contained in Exhibit C hereof.
2. Exhibit D contains an estimate of the remaining capacity in the Apple Orchard PRV and Mains (the "System"), and represents the remaining capacity allocable to Ithaca prior to being required to pay for, or contribute to, any upgrades or improvements to the System. Once the hook-ups and amount of water delivered to Ithaca exceeds the capacity listed in Exhibit D, Dryden shall undertake improvements to the System, including but not limited to increasing main sizes or System capacity, to continue to serve both the Ithaca properties and any needed flow rates or capacity for Dryden districts and authorized users.

3. Any new connections to the Main after the effective date of this Agreement shall be subject to prior review/approval of Dryden, which may not be unreasonably withheld unless Ithaca's capacity has been exceeded and Ithaca and Dryden have not come to agreement upon the allocation of costs for System improvements.
4. The termination or abandonment of any existing Ithaca customer connections shall be completed at the Main per Bolton Point Standards in a timely manner.
5. Dryden hereby undertakes all responsibility for the testing, management, inspection, maintenance, repairs to, and replacement of the System and its appurtenances, and all related costs thereof, and accepts each and all such components, appurtenances, and the Apple Orchard PRV, Mains, and System in their respective and collective present "AS IS, WHERE IS" location and condition, without recourse. Dryden is responsible for all system upgrades and capacity improvements, except as may be required by paragraph 2, above. For the purposes of clarity, Dryden is also responsible for: (i) mowing and any building and grounds maintenance for Apple Orchard PRV and Main locations and improvements; (ii) all electric costs for the Apple Orchard PRV and Main, and Ithaca and Dryden shall cooperate to have all electric billing accounts transferred to Dryden; (iii) all Bolton Point billing for SCADA upgrades and maintenance, and Ithaca and Dryden shall cooperate to effect such change in Bolton Point billing and invoicing. The responsibilities of Dryden shall cover all Apple Orchard PRV and Mains, and all related facilities, from the take off point as defined in Bolton Point Rules and Regulations, being the first outlet valve off the SCLIWC transmission main subject to the Oakcrest pump station, Burdick Hill and East Hill water storage tank pressures, being also the outlet valve off the transmission main to the PRV building.
6. The following procedures shall apply to system management and upgrades: (a) At any time during the period of this Agreement, or any Renewal Term hereof, either Party may present to the other a plan for the expansion of the System to meet current and future capacity requirements of the respective water districts; (b) Whenever Ithaca or Dryden commence the process of examining upgrades or improvements to the System, such Party shall notify the other and allow the other Party to participate so as to provide for proper capital and cost management and improvements, as well as the proper coordination of System construction and financing; and (c) at least once in the year preceding the commencement of any Renewal Term the Parties shall coordinate to determine whether any capital improvements or increases in System capacity are required. In any case where both Parties are to participate in capacity upgrades, the terms and conditions for sharing the capital cost of such an expansion will be covered by a separate agreement. Unless a Party participates in the upgrade in capacity, the allocation of available increased capacity shall belong to the Party paying for or financing such improvements; otherwise capacity shall be allocated fairly in the separate agreement referenced above. Notwithstanding the foregoing or any other clause in this Agreement, Dryden is and hereafter shall be solely and primarily responsible for all construction contracts and installations implementing all improvements, as well as all costs pertaining to general System costs, and management, including all maintenance and repair. However, both Parties reserve the right to effect inspections to assure proper construction, and agree that Bolton Point may also undertake final inspections, testing, and permitting in respect of the same.
7. Whenever Dryden undertakes action in respect of the System, including inspections and surveying, Dryden shall be deemed to be acting jointly with, and as an agent of, Ithaca, and shall act in accord with, and within the scope of, any easements and rights-of-way running in favor of Ithaca allowing access to the System. If and as needed, Ithaca agrees to cooperate to help obtain any needed easements, licenses, or rights-of-way naming or running in favor of Dryden as are now or hereafter necessary or convenient for the Parties to implement this Agreement and carry out the duties and responsibilities set forth herein.
8. The Parties acknowledge that this Agreement does not require a permit from the New York State Department of Environmental Conservation (DEC) pursuant to Environmental Conservation Law § 15-1521.
9. Ithaca shall not be liable or responsible for any water quality issues or problems, interruptions in service, water pressure or quantity issues, or any direct or indirect claims arising from any of the foregoing, including from third parties. To the fullest extent authorized by law, Dryden shall to the extent of its commercial general liability insurance defend, indemnify and hold harmless Ithaca, its officers and employees for all claims, damages, expenses and costs (including reasonable attorney's fees if assessed by a court of competent jurisdiction) or injury to persons or property which may arise out of the acts or omissions of Dryden, or its special districts, agents or employees in the course of their employment in carrying out the terms of this Agreement, except to the extent that such claims, damages, expenses and costs are attributable to the acts or omissions of Ithaca and its officers, employees, agents, and volunteers. Likewise, to the fullest extent authorized by law, Ithaca shall to the extent of its commercial general liability insurance defend, indemnify and hold

harmless Dryden, its special districts, officers and employees for all claims, damages, expenses and costs (including reasonable attorney's fees if assessed by a court of competent jurisdiction) or injury to persons or property which may arise out of the acts or omissions of Ithaca, or its agents or employees in the course of their employment in carrying out the terms of this Agreement, except to the extent that such claims, damages, expenses and costs are attributable to the acts or omissions of Ithaca and its officers, employees, agents, and volunteers. Each Party shall carry commercial general liability coverages in the minimum coverage amount of \$3,000,000 per incident/per person, and shall have at all times contractual liability endorsements or coverages with like limits to help give effect to the indemnity obligations of each Party to the other, including as set forth herein. Each Party waives, individually and on behalf of its insurer(s), any and all claims or rights of subrogation against the other Party for any loss or damage insured.

10. This Agreement shall continue in force for a period of five years from the date of execution of this Agreement, and will be automatically renewed for additional five-year periods (the "Renewal Term") unless otherwise terminated by any Party, or unless otherwise amended or superseded by agreement between the Parties. This Agreement may be terminated on 120-days' notice at any time by either Party.

11. Each Party shall keep detailed and accurate records of their undertakings, costs and expenses incurred in connection with this Agreement, and make all such records accessible to the other Party upon reasonable notice and request, including for, but not limited to, auditing and finance/grant verification and compliance purposes.

12. No waiver of any breach of any condition of this Agreement shall be binding unless in writing and signed by the Party waiving said 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.

13. This Agreement is governed by the laws of the State of New York, without regard to or the application of New York State's conflicts of law principles.

14. This Agreement shall be deemed executory and each Party's liability is limited in accord with funds appropriated and available for this Agreement. Dryden warrants and promises that it will annually appropriate sufficient funds as to ensure the timely delivery of potable water in accord with standard water district practices and standards undertaken by member municipalities of Bolton Point.

15. Notwithstanding anything to the contrary contained in this Agreement, no Party shall be liable or responsible to the other Party or to any third party for consequential, incidental, indirect, special, punitive, or exemplary damages arising out of or related to the transaction contemplated hereunder, including claims for or damages relating to loss of profits, loss of the benefits of use, or loss of business, even if a Party was apprised of the likelihood of such damages, and even if such damage or loss was foreseeable. It is expressly understood and agreed that each and every provision of this Agreement that provides for a limitation of liability, a disclaimer of warranties, or an exclusion of damages, is intended by the Parties to be severable from any other provision, and is a separable and independent element of risk allocation intended to be enforced as such. There are no intended or implied third party beneficiaries or third-party rights arising under or in relation to this Agreement.

16. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision, and such invalid provision shall be reformed to the minimum extent required to bring it into compliance with applicable law, or to otherwise make such provision enforceable. Such reformation shall be performed by first considering purposes sought by the Parties in any such provision, and secondly by the intent of the Parties as set forth in this Agreement. If such reformation is not possible, then such provision shall be severed from this Agreement and the Parties agree to immediately begin negotiations to replace, update, or take other required action to replace such provision. As well, any clause or provision required by law to be part of this Agreement shall be deemed a part of this Agreement and the Parties shall again promptly meet to formally integrate any such requirement. Examples include, but are not limited to, EEOC requirements, MWBE requirements, anti-discrimination requirements, OFAC rules, state and federal Executive Orders, the MacBride Fair Employment Practices Act, the Trading with the Enemy Act, the Foreign Narcotics Kingpin Act, the Iran Divestment Act, wage and hour standards, including prevailing wage and public works requirements, procurement and public bidding requirements, non-collusion requirements, the requirements of the Omnibus Procurement Act of 1992, state and federal debarment list requirements, State Finance Law 165 and the prohibition against use of tropical hardwoods, and like requirements of state, federal or local law.

17. This Agreement constitutes the entire understanding of the Parties, revokes and supersedes all prior discussions, negotiations, and agreements between the Parties, and is intended as a final expression of their Agreement. It shall not be modified or amended except by a signed written agreement between the Parties that specifically refers to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict herewith, and no Party shall be bound by any agent's or employee's representation, promise, or inducement not set forth in this Agreement. No course of prior dealings between the Parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. Acceptance of or acquiescence in a course of performance rendered under this Agreement (or any prior agreements) shall not be relevant or admissible to determine the meaning of this Agreement, even though the accepting or acquiescing Party has knowledge of the nature of performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

18. All disputes arising under or in relation to this Agreement, or the System and purposes sought to be implemented and affected hereby, including the interpretation, enforcement, or alleged breach of or non-performance of any term or requirement herein, shall be resolved by the Parties by mediation through a neutral, recognized third-party mediation service or professional. Absent resolution by meditation, the Parties agree that any such dispute may thereafter proceed to be resolved judicially, but only in a New York State Court of record having territorial jurisdiction in and over Tompkins County, New York.

IN WITNESS WHEREOF, the Town of Dryden has caused its corporate seal to be affixed hereto and these presents to be signed by Jason Leifer, its Town Supervisor and duly authorized representative, as attested to by Bambi Avery, Town Clerk, and the Town of Ithaca has caused its corporate seal to be affixed hereto and these presents to be signed by Bill Goodman, its Town Supervisor and duly authorized representative, as attested to by _____, Town Clerk, effective the day and year first above written.

Attest: By:

Town of Dryden

Bambi Avery, Town Clerk
[Seal of the Town of Dryden]

By: _____
Jason Leifer, Town Supervisor

Attest: By:

Town of Ithaca

, Town Clerk
[Seal of the Town of Ithaca]

By: _____
Bill Goodman, Town Supervisor

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

On the ____ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Town of Dryden Supervisor, JASON LEIFER, 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.

Notary Public

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

On the ___ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Town of Ithaca Supervisor, BILL GOODMAN, 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.

Notary Public

EXHIBIT A

FUTURE RESOLUTION OF TOWN BOARD OF THE TOWN OF ITHACA

EXHIBIT B

FUTURE TOWN BOARD RESOLUTION OF THE TOWN BOARD OF THE TOWN OF DRYDEN

EXHIBIT C

**MAP AND LIST OF PROPERTIES AND FACILITIES CURRENTLY
SERVED BY APPLE ORCHARD WATER MAIN**

EXHIBIT D

REMAINING SYSTEM CAPACITY WITHIN APPLE ORCHARD MAIN

EXHIBIT E