

ESCROW AGREEMENT

THIS AGREEMENT (“Agreement”) is made this ___ day of _____, 2020, among Susan Cosentini, an individual with an address of [REDACTED] 5 Mile Drive, Ithaca, New York (“Cosentini”), the Town of Ithaca, New York, a municipal corporation with an address of 215 N. Tioga Street, Ithaca, New York 14850 (the “Town”), and the Town of Dryden, New York, a municipal corporation with an address of 93 East Main Street, Dryden New York 13073 (the “Escrow Agent”). Each party may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Amabel Sewage-Works Corporation (the “Sewage Corporation”) has been formed under Article 10 of the New York Transportation Corporations Law (“Article 10”) to own and operate a private sanitary sewer collection line(s), pump station and related appurtenances (the “Sewer System”) located within and adjacent to the Amabel subdivision off of Five Mile Drive in the Town;

WHEREAS, Cosentini represents that she owns 100% of the issued and outstanding shares of the Sewage Corporation;

WHEREAS, pursuant to Subsection 119(3)(a) of Article 10, the shares of the Sewage Corporation must be placed in escrow; and

WHEREAS, Cosentini and the Town desire that Escrow Agent act as the escrow agent to hold the shares of the Sewage Corporation pursuant to the requirements of Article 10 and the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the Parties hereby agree as follows:

1. ESTABLISHMENT OF THE ESCROW

- 1.1. Upon her execution of this Agreement, Cosentini shall deposit all of the issued and outstanding shares of the Sewage Corporation with the Escrow Agent, together with fully executed blank stock powers, in the form substantially the same as the form attached at Exhibit “A”, to be held in trust, subject to the terms and conditions of this Agreement. By signing below, Escrow Agent acknowledges receipt of the shares and required stock powers.

2. RELEASE OF SHARES

- 2.1. The Escrow Agent shall release the shares and stock powers from escrow and deliver them to the Town in the event of (a) a failure to complete the construction of the Sewer System, or (b) an abandonment or discontinuance of the maintenance and operation of the Sewer System; provided, however, that the Town shall provide Cosentini (i) thirty (30) days’ advance written notice of their

intent to determine the occurrence of a failure to complete the construction of the Sewer System, and (ii) seven (7) days' advance written notice of its intent to determine an abandonment or discontinuance of the maintenance and operation of the Sewer System has occurred. The Town's notice to Cosentini shall include a description of the facts supporting such determination, and Cosentini shall be empowered during the notice period to remedy any such failure, abandonment or discontinuance. The Escrow Agent may rely on a written notice from the Town confirming that such notification, expiration of cure period, and subsequent determination has occurred. The Town shall send Cosentini a copy of the notice at the same time it sends the notice to the Escrow Agent. The Escrow Agent shall release the shares and stock powers from escrow and deliver them to the Town within five (5) days of receipt of said notice, except the terms of Section 10 below shall govern if Cosentini notifies the Escrow Agent and Town within such five (5) day period of the existence of a dispute described in Section 10 below; provided, however, that, upon the Escrow Agent's earlier receipt of a written notice by Cosentini of her abandonment or discontinuance of the maintenance and operation of the Sewer System, the Escrow Agent may release the shares and stock powers from escrow and deliver them to the Town prior to the expiration of such five (5) day period.

- 2.2. The Escrow Agent shall release the shares and stock powers from escrow and deliver them as directed by a writing signed by both the Town and Cosentini.

3. GENERAL OBLIGATIONS OF ESCROW AGENT

- 3.1. The Escrow Agent shall maintain the shares and stock powers under the direct supervision and control of the Escrow Agent.
- 3.2. A fiduciary relationship shall exist between the Escrow Agent, Cosentini and the Town under this Agreement. The Escrow Agent acknowledges its fiduciary obligations.

4. RESPONSIBILITIES OF COSENTINI

- 4.1. Cosentini shall immediately deliver all outstanding shares of the Sewage Corporation, with fully executed blank stock powers, to the Escrow Agent upon issuance of such shares by the Sewage Corporation.
- 4.2. Cosentini agrees that she shall not interfere with the Escrow Agent's performance of its fiduciary duties and compliance with Article 10.
- 4.3. Cosentini agrees that in the event the Escrow Agent resigns pursuant to Section 8 below, she shall diligently evaluate any successor Escrow Agent proposed by the Town and reasonably and timely consent to same.

5. RESPONSIBILITIES OF THE TOWN

- 5.1 The Town agrees that it shall not interfere with the Escrow Agent's performance of its fiduciary duties and compliance with Article 10.
- 5.2 The Town agrees that in the event the Escrow Agent resigns pursuant to Section 8 below, the Town shall diligently identify a suitable successor Escrow Agent, subject to the consent of Cosentini, which consent may not be unreasonably withheld or delayed.

6. TERMINATION OF AGREEMENT

- 6.1 This Agreement shall remain in effect unless and until it is cancelled, by either:
 - (a) Written notice given by Cosentini and the Town of cancellation of designation of the Escrow Agent to act in said capacity, which cancellation shall take effect only upon the Escrow Agent's receipt of an amendment to this Agreement providing for a successor escrow agent; or
 - (b) The resignation of Escrow Agent pursuant to Section 8 below, which resignation shall take effect only upon the Escrow Agent's receipt of an amendment to this Agreement providing for a successor escrow agent; or
 - (c) All shares held by the Escrow Agent pursuant to this Agreement have been delivered by the Escrow Agent as provided in Section 2.
- 6.2 Upon termination of the duties of the Escrow Agent as described in Paragraph 6.1(a) or (b) above, the Escrow Agent shall deliver the shares and stock powers held by it to the successor escrow agent.

7. INDEMNIFICATION OF TOWN

- 7.1 To the fullest extent permitted by law, Cosentini shall indemnify, defend, and hold harmless the Town from any loss, cost, expense, liability, obligation or other damage (including court costs and reasonable attorneys' fees) suffered by the Town resulting from, arising out of, or incurred with respect to the falsity or the breach of any representation, warranty or covenant made by Cosentini in this Agreement.

8. RESIGNATION OF ESCROW AGENT

- 8.1 The Escrow Agent may resign as such at any time by giving written notice to the other Parties. Upon such notice, a successor Escrow Agent shall be appointed upon unanimous consent of Susan Cosentini and the Town. If they are unable to agree upon a successor Escrow Agent within thirty (30) days after such notice, the Escrow Agent shall designate any bank or trust company with an office in the State of New York. In the event any such designee fails to accept such

appointment, then the Escrow Agent shall be entitled to appoint its successor. The Escrow Agent shall continue to serve until this Agreement is amended to name the successor escrow agent, and the successor accepts the escrow and receives the shares and stock powers.

9. LIABILITY OF ESCROW AGENT

- 9.1. The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth in this Agreement and may rely and shall be protected in acting or refraining from action on any instrument or signature believed by it to be genuine and to have been signed or presented by the proper party or parties duly authorized to do so. The Escrow Agent shall have no responsibility for the contents of any writing contemplated herein and may rely without liability upon the contents thereof. The Escrow Agent shall not be liable for any obligations taken or omitted by it in good faith and believed by it to be authorized by this Agreement, nor for action taken or omitted by it in accordance with advice of counsel, and shall not be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind unless caused by willful misconduct or gross negligence. Each Party agrees to indemnify the Escrow Agent and hold it harmless against any and all liabilities incurred by it as a consequence of such Party's action, and the Parties agree jointly to indemnify the Escrow Agent and hold it harmless against any and all liabilities incurred by it which are not a consequence of any Party's action, except in either case for the Escrow Agent's own willful misconduct or gross negligence.

10. DISPUTE

- 10.1. It is understood and agreed that if any dispute arises with respect to the delivery, and/or ownership or right of possession of the stock, or the facts upon which such determinations are based, or the duties of the Escrow Agent, the Escrow Agent is authorized and directed to either: (a) retain in its possession, without liability to anyone, all or any part of the stock until such dispute shall have been settled, either by mutual agreement of the Parties concerned (evidenced by appropriate instructions in writing to the Escrow Agent, signed by all of the Parties), by binding arbitration, or by a final order, decree, or judgment of a court of competent jurisdiction in the State of New York (the time for appeal having expired and no appeal having been perfected), all costs and expenses of which shall be paid equally by the Parties, but the Escrow Agent shall be under no duty whatsoever to institute or defend any such proceedings; or (b) commence an action in the nature of an interpleader and seek to deposit the stock in the Supreme Court, County of Tompkins, State of New York, and the remaining Parties shall thereupon be permitted to pursue their remedies and claims, and resolve their disputes, in such Court.

11. MISCELLANEOUS

- 11.1. Validity. In case 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 provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or enforceable provisions had never been contained.
- 11.2. Notices. All notices required under this Agreement shall be in writing and shall be deemed to have been properly given: (i) upon delivery, if delivered personally or by a courier or by overnight delivery services; or (ii) five (5) business days after mailing by certified mail, postage prepaid, return receipt requested, to each Parties' address shown above (or to such other address of which a Party may notify the others in a notice that complies with the provisions of this paragraph).
- 11.3. Modification. No term, condition, understanding, or agreement purporting to modify the terms or conditions of this Agreement shall be binding unless made in writing and signed by all of the Parties.
- 11.4. Waiver. No term or condition of this Agreement shall be deemed to have been waived nor shall there be an estoppel to enforce any provisions of this Agreement, except a statement in writing signed by the Party against whom enforcement of the waiver or estoppel is sought. Any written waiver shall not be deemed a continuing waiver unless specifically stated, shall operate only as to the specific term or condition waived, and shall not constitute a waiver concerning such term or condition for the future or as to any act other than that specifically waived.
- 11.5. Governing Law. This Agreement shall be deemed to have been executed and delivered in Ithaca, New York, and its validity, enforceability, construction and interpretation shall be governed by New York law, including specifically, but not limited to, Article 10, exclusive of the law of the conflict of laws. Jurisdiction of any action or proceeding brought to enforce this Agreement or otherwise relating to this Agreement shall be in the Supreme Court of the State of New York, with venue in Tompkins County.
- 11.6. Counterparts. 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.
- 11.7. Entire Agreement. Any Exhibits and schedules attached to this Agreement are incorporated into and made a part of this Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, superseding any and all previous proposals, representations, agreements or statements, oral or written.
- 11.8. Binding and Benefit. This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, representatives, successors, and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as to the day(s) and year written below.

Date: _____

SUSAN COSENTINI

THE TOWN OF ITHACA

Date: _____

By: _____
Rod Howe
Town Supervisor

ESCROW AGENT:

THE TOWN OF DRYDEN

Date: _____

By: _____
Jason Leifer
Town Supervisor

EXHIBIT A

For value received, Susan Cosentini hereby sells, assigns, and transfers unto the Town of Ithaca, all of the issued and outstanding common stock of Amabel Sewage-Works Corporation standing in my name on the books of said corporation, and do hereby irrevocably constitute and appoint the Town of Dryden, New York, to transfer the said stock on the books of the corporation with full power of substitution in the premises.

Dated: _____

SUSAN COSENTINI

Signature must correspond exactly with the name as written on the face of the stock certificates

Witness:
