

AMENDED AND RESTATED AGREEMENT

WAYNE COUNTY WATER AND SEWER AUTHORITY

~with~

TOWN OF ARCADIA, TOWN OF HURON, TOWN OF
LYONS, TOWN OF MARION, TOWN OF SODUS
and TOWN OF WILLIAMSON

REGIONAL WATER STORAGE SYSTEM IMPROVEMENTS AND SERVICES

EFFECTIVE AS OF JANUARY 1, 2020

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WAYNE COUNTY WATER AND SEWER AUTHORITY

- WITH -

**TOWN OF ARCADIA, TOWN OF HURON, TOWN OF LYONS, TOWN OF MARION,
TOWN OF SODUS AND TOWN OF WILLIAMSON**

THIS AMENDED AND RESTATED REGIONAL WATER STORAGE SYSTEM IMPROVEMENTS AND SERVICES AGREEMENT (the "Agreement") dated and effective as of January 1, 2020, (the "Effective Date") is made by and among the **Wayne County Water And Sewer Authority**, a public benefit corporation with offices located at 3377 Daansen Road, Walworth, New York 14568 (the "Authority"), the **Town of Arcadia**, a municipal corporation with its principal offices located at 201 Frey Street, Newark, New York 14513, on its own behalf and on behalf of all existing and any future water districts/improvement areas established with approval of the Town Board of the Town of Arcadia (the "Town of Arcadia"); the **Town of Huron**, a municipal corporation with its principal offices located at 10880 Lummisville Road, Wolcott, New York 14590, on its own behalf and on behalf of all existing and any future water districts/improvement areas established with approval of the Town Board of the Town of Huron (the "Town of Huron"); the **Town of Lyons**, a municipal corporation with its principal offices located at 43 Phelps Street, Lyons, New York 14489, on its own behalf and on behalf of all existing and any future water districts/improvement areas established with approval of the Town Board of the Town of Lyons (the "Town of Lyons"); the **Town of Marion**, a municipal corporation with its principal offices located at 3823 North Main Street, P.O Box 260, Marion, New York 14505, on its own behalf and on behalf of all existing and any future water districts/improvement areas established with approval of the Town Board of the Town of Marion (the "Town of Marion"); the **Town of Sodus**, a municipal corporation with its principal offices located at 14-16 Mill Street, Sodus, New York 14551, on its own behalf and on behalf of all existing and any future water districts/improvement areas established with approval of the Town Board of the Town of Sodus (the "Town of Sodus"); and the **Town of Williamson**, a municipal corporation with its principal offices located at 6380 Route 21, Suite 2, Williamson, New York 14589, on its own behalf and on behalf of all existing and any future water districts/improvement areas established with approval of the Town Board of the Town of Williamson (the "Town of Williamson") (the Town of Arcadia, the Town of Huron, the Town of Lyons, the Town of Marion, the Town of Sodus and the Town of Williamson are collectively referred to as the "Participating Municipalities").

W I T N E S S E T H

WHEREAS, each of the Participating Municipalities is in need of enhanced water supply, water storage, fire protection, redundancy, resiliency and related services (collectively, "Regional Water Storage Services"). In lieu of working independently to meet these needs, the Participating Municipalities have agreed to work together cooperatively with the Authority to develop regional water storage tank improvements with related pump station and transmission system improvements that will meet their collective needs pursuant to that certain Regional Water Storage System Improvements And Services Agreement, entered into and effective as of January 1, 2020 (the

“IMA”). Such facilities and improvements will be owned and financed by the Authority for the benefit of “Users” (as hereinafter defined) within the Participating Municipalities; and

WHEREAS, the Town of Williamson is a supplier of water to the Authority pursuant to that certain Amended And Restated Agreement for the Sale of Water from the Town of Williamson to the Authority, effective as of April 1, 2017 (the “Williamson Supply Agreement”); and

WHEREAS, the Authority has agreed to design, procure and finance regional water storage tank improvements; pump station improvements; and transmission mains, waterlines and related improvements (collectively, the “Project,” as more particularly hereinafter defined) and to provide Regional Water Storage Services for the benefit of the Participating Municipalities; and

WHEREAS, the Authority has agreed to construct and operate certain Project improvements outside of the geographic limits of the Town of Williamson (collectively, the “Authority Improvements” as more particularly hereinafter defined); and

WHEREAS, the Town of Williamson has agreed to construct and operate certain Project improvements within the geographic limits of the Town of Williamson (collectively, the “Williamson Improvements” as more particularly hereinafter defined); and

WHEREAS, each of the Participating Municipalities has agreed to participate in the Project and to receive Regional Water Storage Services from the Authority and to pay the Authority its respective “Pro Rata Share” (as hereinafter defined) of the cost of the design, procurement, acquisition, financing, construction and permitting of the Project in consideration of the Authority (i) providing Regional Water Storage Services to the Participating Municipalities and (ii) operating and maintaining the Authority Improvements, with the Town of Williamson operating and maintaining the Williamson Improvements; and

WHEREAS, the Authority is willing and has agreed to operate and maintain the Authority Improvements at the Authority’s expense;

WHEREAS, the Town of Williamson is willing and has agreed to operate and maintain the Williamson Improvements at the Town of Williamson’s expense; and

WHEREAS, the parties desire to (i) revise certain provisions in the IMA relating to the “Annual Connection And Improvement Fee” (as hereinafter defined); the definition of “Equivalent Dwelling Unit” (as hereinafter defined and as set forth in Exhibit “A”); the definition of “EDU Period” (as hereinafter defined); the definition of *force majeure* events; and the limitation of liability and (ii) otherwise amend and restate the terms, covenants and conditions of the IMA;

NOW THEREFORE, in consideration of the promises and covenants contained in this Agreement, the Authority and the Participating Municipalities agree as follows:

1. Definitions. In addition to words and terms defined elsewhere in this Agreement, unless the context or use clearly indicates another meaning:

“Annual Connection and Improvement Fee” means the annual fee that each of the Towns of Arcadia, Huron and Sodus has the right to impose and collect from each User/owner of a parcel of land receiving Regional Water Storage Services that is

located outside of an existing town water district and/or improvement area and requests permission, in accordance with Section 19 of this Agreement, to connect directly to the Authority Transmission Improvements.

“Authority Improvements” means collectively the Storage Tank Improvements and the Authority Transmission Improvements.

“Authority Transmission Improvements” means approximately 80,500 linear feet of transmission mains, waterlines and related improvements to be constructed by the Authority outside of the geographic limits of the Town of Williamson in accordance with the Plans as part of the Project.

“Billing Period” means with respect to the Periodic Capital Charge, either (x) the annual period commencing on the date specified by the Authority or (y) the semi-annual period commencing on the dates specified by the Authority of each Billing Year. The Authority shall notify the Participating Municipalities of the due date(s) of Periodic Capital Charge within thirty (30) days after closing on the construction financing and, thereafter, permanent financing for the Project.

“Billing Year” means the period commencing on January 1 of a year and ending on December 31 of the same year.

“Board” means the Board of the Authority acting as the governing body and finance board as described in Public Authorities Law §1199-dd.

“Bonds” means the revenue bonds to be issued by the Authority to permanently finance the Project or Improvements, or upon the determination of its Board, to provide construction and permanent financing for the Project or Improvements.

“Capital Charge” means, for any Billing Year, the principal, premium, if any, and interest due on the Bonds or the Notes payable by the Authority at any time during any Billing Year. In addition, “Capital Charge” shall include any fees incurred by the Authority in connection with the sale, issuance, or redemption (whether as stated maturity or earlier optional redemption) of the Bonds or the Notes including, for the avoidance of doubt, any service and/or administrative fee imposed by the New York State Environmental Facilities Corporation or other funding agency.

“Code” means the Internal Revenue Code of 1986, as amended.

“Completion of the Project” means the date on which construction and installation of the Facilities is substantially complete and Regional Water Storage Services are being furnished by the Authority to the Participating Municipalities.

“Equivalent Dwelling Unit” or “EDU” means “equivalent dwelling unit” as defined and set forth in Exhibit “A.” Such definition shall be included in the Map, Plan and Report to be filed with the respective clerk of each Participating Municipality forming improvement areas pursuant to Section 7.1 of this Agreement or as otherwise legislatively defined and determined by each of the Participating Municipalities.

“EDU Period” means (i) with respect to the 2021 Billing Year, the four (4) quarters in the 2019 Billing Year; (ii) with respect to the 2022 Billing Year, the four (4) quarters of the 2020 Billing Year; and (iii) with respect to each succeeding Billing Year thereafter during the term of this Agreement, the four (4) quarters of the Billing Year two (2) years in advance of such Billing Year, thereby constituting four (4) consecutive quarters.

“Facilities” means collectively the Project Improvements consisting of the Authority Improvements and the Williamson Improvements, together with necessary appurtenances and equipment in connection therewith constructed as part of the Project. A map showing the location of the Facilities is attached hereto as Exhibit “B”.

“GML” means the General Municipal Law of the State, as amended.

“Improvements” means any improvements, additions, replacements or extensions to the Project including real property and interests in real property, buildings, structures, fixtures, permanent process machinery, equipment, apparatus, facilities and additions thereto, where the cost of the Improvements is paid through the issuance of Bonds. For the avoidance of doubt, Improvements shall be deemed to include both the Authority Improvements and the Williamson Improvements.

“Independent Engineer” means the engineering firm employed by the Authority to provide the Authority with advice concerning the Project, including its cost and operation, which, in the determination of the Board, possesses sufficient experience and personnel to advise the Authority with respect to the operation and maintenance of governmentally owned water storage tank, transmission mains and related pump station improvements. The Independent Engineer shall provide those design, inspection, construction administration and construction observation services as requested and authorized by the Authority in connection with the construction of the Facilities. Initially, for all purposes concerning the Project, the Independent Engineer will be MRB Group, Engineering, Architecture, Surveying, DPC (“MRB Group”), with offices at the Culver Road Armory, 145 Culver Road, Suite 160, Rochester, New York, 14620.

“Lateral Restrictions” means restrictions required by the New York State Department of Agriculture and Markets pursuant to Agriculture and Markets Law Section 305(4), as amended, on connections to Water Line Improvements within agriculture districts, as adopted or amended by the Authority and/or a Participating Municipality during the term of this Agreement.

“Map, Plan and Report” means the map, plan and report to be filed with the respective town clerk of each Participating Municipality incident to the formation of districts or improvement areas to which Capital Charges are to be assessed pursuant Town Law Section Town Law §202, §202-a and/or 209-q. Such Map, Plan and Report shall contain a common definition of “EDU” as set forth in Exhibit “A” and be otherwise reasonably acceptable to the Authority.

“NEPA” means the National Environmental Policy Act of 1970, as amended.

"Notes" means the bond and/or revenue anticipation notes to be issued by the Authority in lieu of the Bonds, or other short-term instruments authorized by the Public Authorities Law, to provide construction financing for the Project or Improvements.

"Notice Address" means, unless otherwise changed in writing by any of the following to the other:

Authority: Wayne County Water And Sewer Authority
3377 Daansen Road
Walworth, New York 14568
Attention: Executive Director

Town of Arcadia: Town of Arcadia
201 Frey Street
Newark, New York 14513
Attention: Supervisor

Town of Huron: Town of Huron
10880 Lummisville Road
Wolcott, New York 14590
Attention: Supervisor

Town of Lyons: Town of Lyons
43 Phelps Street
Lyons, New York 14489
Attention: Supervisor

Town of Marion: Town of Marion
3823 North Main Street
P.O. Box 260
Marion, New York 14505
Attention: Supervisor

Town of Sodus: Town of Sodus
14-16 Mill Street
Sodus, New York 14551
Attention: Supervisor

Town of Williamson: Town of Williamson
6380 Route 21, Suite 2
Williamson, New York 14589
Attention: Supervisor

"Operating Expenses" means all reasonable expenses for the operation, maintenance, administration and ordinary current repair of the Project necessary in order to maintain and operate the Facilities in a reasonable and prudent manner, and including items usually included as essential expenses in the operating budget of a publicly owned water system, including replacement of short-lived assets; insurance

premiums; engineering, legal, accounting and consulting fees and expenses arising from the operation, repair or maintenance of the Project; charges for electricity, telephone, wi-fi or other public or private utility charges; equipment, vehicles and tools used in operations; and, an allocation of administrative and overhead expenses. For the avoidance of doubt, Operating Expenses shall not include either Capital Charges or amounts used to pay principal and interest on obligations of the Authority incurred to finance Improvements or to refinance or refund such indebtedness or the Bonds.

"Party" and/or "Parties" means the Authority, the Town of Arcadia, the Town of Huron, the Town of Lyons, the Town of Marion, the Town of Sodus and the Town of Williamson individually or collectively.

"Periodic Capital Charge" means either (i) the semi-annual debt service payment due on the Notes and/or Bonds consisting of (x) an interest-only payment and (y) a principal and interest payment or (ii) the annual, levelized debt service payment due on the Notes and/or Bonds. The Authority shall notify the Participating Municipalities of the preferred form of Periodic Capital Charge within thirty (30) days after closing on the construction financing and, thereafter, permanent financing for the Project.

"Plans" means the detailed maps, plans and specifications for the Project including any preliminary engineering reports prepared by the Independent Engineer as amended from time to time and approved by the Authority and the Participating Municipalities and on file with the Board pursuant to the terms of this Agreement. Such approval by the Participating Municipalities shall be undertaken in a timely and efficient manner.

"Project" means acquisition of the Regional Storage Tank Site and the design, interim and permanent financing, procurement, permitting, construction, start-up, acceptance testing, operation, repair and maintenance of the Facilities, together with necessary easements, licenses, permits and rights-of-way and all necessary work and appurtenances in connection therewith, as specified in the Plans, and any Improvements to the Project.

"Project Development Costs" means those certain preliminary engineering feasibility and grant writing costs associated with the preparation of the preliminary engineering report in the amount of \$75,500.00, together with certain additional Project development costs consisting of engineering, environmental studies and clearances, legal, bond counsel, underwriting and closing costs, site acquisition, water district and/or improvement area formation and related costs incurred by the Parties in connection with the development, construction and permanent financing of the Project.

"Project Costs" means all costs incurred in connection with (i) acquisition of the Regional Storage Tank Site and (ii) the design, procurement, acquisition, financing, construction, permitting and acceptance testing of the Facilities and/or other Project

elements. For the avoidance of doubt, Project Costs shall be deemed to include Project Development Costs.

"Pro Rata Share" means with respect to the Service Fee a percentage derived from dividing the number of EDUs of each Participating Municipality during each EDU Period during the term of this Agreement by the total number of EDUs benefiting and/or receiving Regional Water Storage Services from the Project during such EDU Period, provided, however, that given the unique nature of the Town of Williamson as a supplier of water, (i) the Service Fee allocated to the Town of Williamson each year shall not exceed the Williamson Cap and (ii) any overage shall be allocated to the other Participating Municipalities in proportion to their respective number of EDUs in accordance with Section 8.1 of this Agreement. The Pro Rata Share of each Participating Municipality for the initial Billing Year inclusive of the Williamson Cap is set forth in Exhibit "C". Thereafter, the Pro Rata Share of each Participating Municipality for the next Billing Year and for each succeeding Billing Year thereafter shall be equal to a percentage derived from dividing the number of EDUs of each Participating Municipality during each EDU Period by the total number of EDUs receiving Regional Water Storage Services during such EDU Period, provided, however, that given the unique nature of the Town of Williamson as a supplier of water, (i) the Service Fee allocated to the Town of Williamson each year shall not exceed the Williamson Cap and (ii) any overage shall be allocated to the other Participating Municipalities in proportion to their respective number of EDUs in accordance with Section 8.1 of this Agreement.

"Regional Storage Tank" means one or more regional storage tanks to be constructed by the Authority on the Regional Storage Tank Site in accordance with the Plans and, thereafter, operated and maintained by the Authority in accordance with this Agreement.

"Regional Storage Tank Site" means the site acquired by the Authority in the Town of Arcadia for development of the Regional Storage Tank as more particularly described in the deed dated February 6, 2018 and recorded February 9, 2018 in the Office of the Wayne County Clerk in Instrument No. R9198668.

"SEQRA" means the State Environmental Quality Review Act, as amended.

"Services" means collectively those regional water tank system improvements and Regional Water Storage Services provided by the Authority for the benefit of the Participating Municipalities in connection with the Project.

"Service Fee" means the fee charged by the Authority to the Participating Municipalities for the Services rendered pursuant to this Agreement. The Service Fee shall consist of a "Capital Charge" payable by each Participating Municipality based upon each Participating Municipality's Pro Rata Share of Project Costs including the annual debt service associated with the Notes, Bonds and/or loans issued by the Authority to finance Project Costs calculated in accordance with methodology provided for in Section 8.1 of this Agreement. For the avoidance of doubt, the Service Fee shall not include any Operating Expenses which shall be the

responsibility of the Authority to pay with respect to the Authority Improvements as a component of the Authority's overall, rate-based annual operating budget and the Town of Williamson to pay with respect to the Williamson Improvements, each in accordance with Section 9 of this Agreement.

"State" means the State of New York.

"Storage Tank Improvements" means collectively the Regional Storage Tank and specified pump station improvements to be constructed by the Authority outside of the geographic limits of the Town of Williamson in accordance with the Plans as part of the Project.

"Transferred Property Assets" means specified portions of existing real property, easements, facilities and equipment of the Participating Municipalities required to support the Improvements as more particularly described in Exhibit "E" which real property, easements and equipment shall be transferred to the Authority prior to the construction of the Facilities.

"Users" means those users of water/owners of parcels of land within the Participating Municipalities receiving and/or otherwise benefiting from Regional Water Storage Services during the term of this Agreement. For the avoidance of doubt, Users (i) includes users of water/owners of parcels of land with access to water that are located within districts or improvement areas and approved Authority service areas, as well as approved out-of-district users within the Participating Municipalities, in each case receiving and/or otherwise benefiting from Regional Water Storage Services during the term of this Agreement; but (ii) does not include users of water/owners of parcels of land within (x) the former Village of Lyons, (y) the Gristmill Water District or (z) the Westphal Water District, in each case who currently receive comparable water storage services from existing, municipally-owned water storage tanks.

"Williamson Cap" means with respect to the Pro Rata Share the number that is equal to the product of (x) the annual debt service costs of the Project times (y) the quotient of \$3.1 Million divided by the total capital cost of the Project.

"Williamson Improvements" means collectively the Williamson Pump Station Improvements and the Williamson Transmission Improvements.

"Williamson Pump Station Improvements" means specified pump station improvements to be constructed within the geographic limits of the Town of Williamson in accordance with the Plans as part of the Project.

"Williamson Transmission Improvements" means approximately 8,300 linear feet of transmission mains, waterlines and related improvements to be constructed by the Town of Williamson within the geographic limits of the Town of Williamson in accordance with the Plans as part of the Project.

Unless the context indicates otherwise, words imparting the singular number include the plural number and vice versa; the terms "hereof," "herein," "hereunder" and similar terms refer to this Agreement; and the term "hereafter" means after and the

term "heretofore" means before, the date of the Agreement. Words of any gender include the correlative words of the other gender unless the sense indicates otherwise, and the terms defined in the singular have a comparable meaning when used in the plural, and vice versa. Wherever the word "include," "includes," or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation." References to specific sections of law shall refer to the laws of the State of New York, unless the context indicates otherwise.

2. Representations.

2.1 Representations of the Authority.

2.1.1 The Authority is a corporate governmental agency constituting a public benefit corporation of the State authorized to (i) undertake the Project as a public purpose pursuant to the Plans, (ii) own, construct, start-up, acceptance test, operate and maintain the Project, (iii) provide the Services to the Participating Municipalities and (iv) enter into this Agreement.

2.1.2 The Authority has the power and authority under the laws of the State to authorize and issue the Bonds and the Notes to finance the Project. Upon its execution and delivery, this Agreement will be the legal, valid and binding obligation of the Authority subject to the provisions of the Federal Bankruptcy Code and insolvency laws of the State and laws relating to the rights of creditors as to its enforceability.

2.1.3 The Authority has or hereafter will comply with all applicable constitutional, administrative and regulatory requirements of the State and federal government, including (i) environmental compliance proceedings and (ii) those set forth in the Public Authorities Law, prior to the issuance of the Bonds or the Notes.

2.1.4 There is no litigation threatened, or to the knowledge of the Authority without due diligence, pending to enjoin the Authority from entering into this Agreement to construct, own, operate or finance the Project, or supply the Services to the Participating Municipalities.

2.1.5 The Authority makes no representation as to the suitability or adequacy of the Project other than as set forth in the Plans with respect to the needs, requirements and expectations of the Participating Municipalities. However, the Plans require that the Facilities meet the minimum standards promulgated by the State for the storage and transmission of potable water in conformance with Part 5, Subpart 5-1, Public Water Supplies of the State Sanitary Code.

2.2 Representations of the Town of Arcadia.

2.2.1 The Town of Arcadia is a municipal corporation of the State, may by action of its Town Board contract in the name of the Town of Arcadia, and

may bind existing and future districts/improvement areas receiving Services from the Project according to the terms of this Agreement.

2.2.2 The Town of Arcadia has the power and authority to enter into this Agreement and upon its approval by the Town Board of the Town of Arcadia, this Agreement will be the legal, valid and binding obligation of the Town of Arcadia and its water districts/improvement areas, subject to the provisions of the Federal Bankruptcy Code and insolvency laws of the State and laws relating to the rights of creditors as to its enforceability.

2.2.3 Sufficient funds to pay amounts required to be paid by the Town of Arcadia under the terms of this Agreement, including the Town of Arcadia's Pro Rata Share of Periodic Capital Charges initially due in 2021 shall be included in its 2021 fiscal year budget and each succeeding fiscal year of the Town of Arcadia during the Term of this Agreement.

2.2.4 The Town of Arcadia shall allocate the Capital Charge component of its Service Fee among the Users within the Town of Arcadia by assessing, levying and collecting the expense thereof from the several lots and parcels of land within such districts or service areas pursuant to Town Law §202, §202-a and/or §209-q(8) such that if unpaid, they can be re-levied by Wayne County pursuant to Real Property Tax Law §936(1).

2.2.5 There is no litigation threatened, or, to the knowledge of the Town of Arcadia without due diligence, pending to enjoin the Town of Arcadia from entering into this Agreement and performing all its obligations, including the obligation to pay amounts to the Authority hereunder.

2.2.6 The Town of Arcadia has determined that the Project is suitable to supply Services for both the current needs and the reasonably foreseeable future needs of the Town of Arcadia.

2.2.7 The Town of Arcadia has heretofore taken no action which would cause the interest on the Bonds or the Notes that would otherwise be tax-exempt to be included in gross income for Federal tax law purposes.

2.2.8 The Town of Arcadia shall (i) adopt, or amend as appropriate, a resolution requesting the Authority to provide the Services under this Agreement as required by Public Authorities Law § 1199-ee(21) on or before the Effective Date of this Agreement and (ii) legislatively adopt and establish a common definition of EDU in the form set forth in Exhibit "A" within five (5) months of closing on interim financing for the Project.

2.3 Representations of the Town of Huron.

2.3.1 The Town of Huron is a municipal corporation of the State, may by action of its Town Board contract in the name of the Town of Huron, and may bind existing and future districts/improvement areas receiving Services from the Project according to the terms of this Agreement.

2.3.2 The Town of Huron has the power and authority to enter into this Agreement and upon its approval by the Town Board of the Town of Huron, this Agreement will be the legal, valid and binding obligation of the Town of Huron and its water districts/improvement areas, subject to the provisions of the Federal Bankruptcy Code and insolvency laws of the State and laws relating to the rights of creditors as to its enforceability.

2.3.3 Sufficient funds to pay amounts required to be paid by the Town of Huron under the terms of this Agreement, including the Town of Huron's Pro Rata Share of Periodic Capital Charges initially due in 2021 shall be included in its 2021 fiscal year budget and each succeeding fiscal year of the Town of Huron during the Term of this Agreement.

2.3.4 The Town of Huron shall allocate the Capital Charge component of its Service Fee among the Users within the Town of Huron by assessing, levying and collecting the expense thereof from the several lots and parcels of land within such districts or service areas pursuant to Town Law §202, §202-a and/or §209-q(8) such that if unpaid, they can be re-levied by Wayne County pursuant to Real Property Tax Law §936(1).

2.3.5 There is no litigation threatened, or, to the knowledge of the Town of Huron without due diligence, pending to enjoin the Town of Huron from entering into this Agreement and performing all its obligations, including the obligation to pay amounts to the Authority hereunder.

2.3.6 The Town of Huron has determined that the Project is suitable to supply Services for both the current needs and the reasonably foreseeable future needs of the Town of Huron.

2.3.7 The Town of Huron has heretofore taken no action which would cause the interest on the Bonds or the Notes that would otherwise be tax-exempt to be included in gross income for Federal tax law purposes.

2.3.8 The Town of Huron shall (i) adopt, or amend as appropriate, a resolution requesting the Authority to provide the Services under this Agreement as required by Public Authorities Law § 1199-ee(21) on or before the Effective Date of this Agreement and (ii) legislatively adopt and establish a common definition of EDU in the form set forth in Exhibit "A" within five (5) months of closing on interim financing for the Project.

2.4 Representations of the Town of Lyons.

2.4.1 The Town of Lyons is a municipal corporation of the State, may by action of its Town Board contract in the name of the Town of Lyons, and may bind existing and future districts/improvement areas receiving Services from the Project according to the terms of this Agreement.

2.4.2 The Town of Lyons has the power and authority to enter into this Agreement and upon its approval by the Town Board of the Town of Lyons,

this Agreement will be the legal, valid and binding obligation of the Town of Lyons and its water districts/improvement areas, subject to the provisions of the Federal Bankruptcy Code and insolvency laws of the State and laws relating to the rights of creditors as to its enforceability.

2.4.3 Sufficient funds to pay amounts required to be paid by the Town of Lyons under the terms of this Agreement, including the Town of Lyons's Pro Rata Share of Periodic Capital Charges initially due in 2021 shall be included in its 2021 fiscal year budget and each succeeding fiscal year of the Town of Lyons during the Term of this Agreement.

2.4.4 The Town of Lyons shall allocate the Capital Charge component of its Service Fee among the Users within the Town of Lyons by assessing, levying and collecting the expense thereof from the several lots and parcels of land within such districts or service areas pursuant to Town Law §202, §202-a and/or §209-q(8) such that if unpaid, they can be re-levied by Wayne County pursuant to Real Property Tax Law §936(1).

2.4.5 There is no litigation threatened, or, to the knowledge of the Town of Lyons without due diligence, pending to enjoin the Town of Lyons from entering into this Agreement and performing all its obligations, including the obligation to pay amounts to the Authority hereunder.

2.4.6 The Town of Lyons has determined that the Project is suitable to supply Services for both the current needs and the reasonably foreseeable future needs of the Town of Lyons.

2.4.7 The Town of Lyons has heretofore taken no action which would cause the interest on the Bonds or the Notes that would otherwise be tax-exempt to be included in gross income for Federal tax law purposes.

2.4.8 The Town of Lyons shall (i) adopt, or amend as appropriate, a resolution requesting the Authority to provide the Services under this Agreement as required by Public Authorities Law § 1199-ee(21) on or before the Effective Date of this Agreement and (ii) legislatively adopt and establish a common definition of EDU in the form set forth in Exhibit "A" within five (5) months of closing on interim financing for the Project.

2.5 Representations of the Town of Marion.

2.5.1 The Town of Marion is a municipal corporation of the State, may by action of its Town Board contract in the name of the Town of Marion, and may bind existing and future districts/improvement areas receiving Services from the Project to the terms of this Agreement.

2.5.2 The Town of Marion has the power and authority to enter into this Agreement and upon its approval by the Town Board of the Town of Marion, this Agreement will be the legal, valid and binding obligation of the Town of Marion and its water districts/improvement areas, subject to the provisions of

the Federal Bankruptcy Code and insolvency laws of the State and laws relating to the rights of creditors as to its enforceability.

2.5.3 Sufficient funds to pay amounts required to be paid by the Town of Marion under the terms of this Agreement, including the Town of Marion's Pro Rata Share of Periodic Capital Charges initially due in 2021, shall be included in its 2021 fiscal year budget and each succeeding fiscal year of the Town of Marion during the Term of this Agreement.

2.5.4 The Town of Marion shall allocate the Capital Charge component of its Service Fee among the Users within the Town of Marion by assessing, levying and collecting the expense thereof from the several lots and parcels of land within such districts or service areas pursuant to Town Law §202, §202-a and/or §209-q(8) such that if unpaid, they can be re-levied by Wayne County pursuant to Real Property Tax Law §936(1).

2.5.5 There is no litigation threatened, or, to the knowledge of the Town of Marion without due diligence, pending to enjoin the Town of Marion from entering into this Agreement and performing all its obligations, including the obligation to pay amounts to the Authority hereunder.

2.5.6 The Town of Marion has determined that the Project is suitable to supply Services for both the current needs and the reasonably foreseeable future needs of the Town of Marion.

2.5.7 The Town of Marion has heretofore taken no action which would cause the interest on the Bonds or the Notes that would otherwise be tax-exempt to be included in gross income for Federal tax law purposes.

2.5.8 The Town of Marion shall (i) adopt, or amend as appropriate, a resolution requesting the Authority to provide the Services under this Agreement as required by Public Authorities Law § 1199-ee(21) on or before the Effective Date of this Agreement and (ii) legislatively adopt and establish a common definition of EDU in the form set forth in Exhibit "A" within five (5) months of closing on interim financing for the Project.

2.6 Representations of the Town of Sodus.

2.6.1 The Town of Sodus is a municipal corporation of the State, may by action of its Town Board contract in the name of the Town of Sodus, and may bind existing and future districts/improvement areas receiving Services from the Project according to the terms of this Agreement.

2.6.2 The Town of Sodus has the power and authority to enter into this Agreement and upon its approval by the Town Board of the Town of Sodus, this Agreement will be the legal, valid and binding obligation of the Town of Sodus and its water districts/improvement areas, subject to the provisions of the Federal Bankruptcy Code and insolvency laws of the State and laws relating to the rights of creditors as to its enforceability.

2.6.3 Sufficient funds to pay amounts required to be paid by the Town of Sodus under the terms of this Agreement, including the Town of Sodus's Pro Rata Share of Periodic Capital Charges initially due in 2021 shall be included in its 2021 fiscal year budget and each succeeding fiscal year of the Town of Sodus during the Term of this Agreement.

2.6.4 The Town of Sodus shall allocate the Capital Charge component of its Service Fee among the Users within the Town of Sodus by assessing, levying and collecting the expense thereof from the several lots and parcels of land within such districts or service areas pursuant to Town Law §202, §202-a and/or §209-q(8) such that if unpaid, they can be re-levied by Wayne County pursuant to Real Property Tax Law §936(1).

2.6.5 There is no litigation threatened, or, to the knowledge of the Town of Sodus without due diligence, pending to enjoin the Town of Sodus from entering into this Agreement and performing all its obligations, including the obligation to pay amounts to the Authority hereunder.

2.6.6 The Town of Sodus has determined that the Project is suitable to supply Services for both the current needs and the reasonably foreseeable future needs of the Town of Sodus.

2.6.7 The Town of Sodus has heretofore taken no action which would cause the interest on the Bonds or the Notes that would otherwise be tax-exempt to be included in gross income for Federal tax law purposes.

2.6.8 The Town of Sodus shall (i) adopt, or amend as appropriate, a resolution requesting the Authority to provide the Services under this Agreement as required by Public Authorities Law § 1199-ee(21) on or before the Effective Date of this Agreement and (ii) legislatively adopt and establish a common definition of EDU in the form set forth in Exhibit "A" within five (5) months of closing on interim financing for the Project.

2.7 Representations of the Town of Williamson.

2.7.1 The Town of Williamson is a municipal corporation of the State, may by action its Town Board contract in the name of the Town of Williamson, and may bind existing and future districts/improvement areas receiving Services from the Project according to the terms of this Agreement.

2.7.2 The Town of Williamson has the power and authority to enter into this Agreement and upon its approval by the Town Board of the Town of Williamson, this Agreement will be the legal, valid and binding obligation of the Town of Williamson, subject to the provisions of the Federal Bankruptcy Code and insolvency laws of the State and laws relating to the rights of creditors as to its enforceability.

2.7.3 Sufficient funds to pay amounts required to be paid by the Town of Williamson under the terms of this Agreement, including the Town of

Williamson's Pro Rata Share of Periodic Capital Charges initially due in 2021, shall be included in its 2021 fiscal year budget and each succeeding fiscal year of the Town of Williamson during the Term of this Agreement.

2.7.4 The Town of Williamson shall allocate the Capital Charge component of its Service Fee among the Users within the Town of Williamson by assessing, levying and collecting the expense thereof from the several lots and parcels of land within such districts or service areas pursuant to Town Law §202, §202-a and/or §209-q(8) such that if unpaid, they can be re-levied by Wayne County pursuant to Real Property Tax Law §936(1).

2.7.5 There is no litigation threatened, or, to the knowledge of the Town of Williamson without due diligence, pending to enjoin the Williamson from entering into this Agreement and performing all its obligations, including the obligation to pay amounts to the Authority hereunder.

2.7.6 The Town of Williamson has determined that the Project is suitable to supply Services for the current needs and the reasonably foreseeable future needs of the Town of Williamson.

2.7.7 The Town of Williamson has heretofore taken no action which would cause the interest on the Bonds or the Notes that would otherwise be tax-exempt to be included in gross income for Federal tax law purposes.

2.7.8 The Town of Williamson shall (i) adopt, or amend as appropriate, a resolution requesting the Authority to provide the Services under this Agreement as required by Public Authorities Law § 1199-ee(21) on or before the Effective Date of this Agreement and (ii) legislatively adopt and establish a common definition of EDU in the form set forth in Exhibit "A" within five (5) months of closing on interim financing for the Project.

3. Term.

- 3.1 The term of this Agreement shall commence on the Effective Date and shall end forty (40) years thereafter, provided that this Agreement may be extended (but not terminated) from time to time for whatever additional period of time the parties hereto mutually agree, and provided, further, that this Agreement shall be and continue to be in full force and effect and the obligation of the Participating Municipalities to pay Capital Charges shall continue during any time that any Notes or Bonds are outstanding. For the avoidance of doubt, this Agreement shall continue during said term regardless of whether Bonds or Notes are redeemed or retired, provided that after redemption or retirement of all outstanding Bonds and Notes, the Capital Charge associated with any outstanding Notes and/or Bonds shall end.

4. Support for Project Funding.

- 4.1 Each of the Participating Municipalities agrees to cooperatively support the Authority's efforts to pursue grants and/or subsidized loans as part of overall

Project financing to maximize available funding opportunities that are intended to facilitate regional solutions to water storage system improvements needs.

5. Payment of Project Development Costs.

- 5.1 Upon submission to the Authority of invoices, reasonable and necessary Project Development Costs shall be reimbursed to the Authority and to each of the Participating Municipalities out of the proceeds of Notes, Bonds, grant and/or loan proceeds upon the closing of interim Project construction and, thereafter, permanent Project financing.

6. Access to/Conveyance of Transferred Property Assets.

- 6.1 Access to the Transferred Property Assets: The Participating Municipalities hereby grant the Authority access to any required Transferred Property Assets for purpose of conducting, at the Authority's expense and as an approved cost of the Project, Phase I audits, subsurface geotechnical and similar pre-construction assessments to confirm the suitability of the Transferred Property Assets for inclusion in the Project.
- 6.2 Conveyance of Transferred Property Assets: The Participating Municipalities agree, to convey ownership of any required Transferred Property Assets to the Authority by executing and delivering deeds, assignments of easements, bills of sale or other appropriate instruments of conveyance. Such conveyance shall be subject to compliance with the permissive referendum requirements of Town Law Section 198(12)(b). The Authority shall be responsible for procuring needed title searches, instrument surveys and fee title insurance as approved costs of the Project. The Participating Municipalities shall receive reasonable and appropriate compensation for any Transferred Property Assets as a component of the overall Project cost.

7. Formation of Improvement Areas/Use of Existing Districts.

- 7.1 For those Participating Municipalities intending to form improvement areas for the purpose of allocating the Capital Charge component of their respective Service Fees among Users, such improvement areas shall be formed on or before October 1, 2020 so that the Capital Charges can be assessed, levied and collected as part of the 2021 budget of such Participating Municipalities.
- 7.2 For those Participating Municipalities intending to assess, levy and collect the Capital Charge component of their respective Service Fee from Users within existing water districts, such charges shall be added to the 2020 special assessment roll for inclusion in the 2021 budget of such Participating Municipalities.

8. Calculation of Service Fee.

- 8.1 To calculate the Service Fee attributable to each Participating Municipality, the Authority shall first determine the “Initial Service Fee Allocation” based on their respective Pro Rata Share of Project Costs using the number of EDUs in each Participating Municipality receiving Water Storage Services/benefiting from the Project. In the event that the Initial Service Fee Allocation attributable to the Town of Williamson exceeds the Williamson Cap, the Authority shall allocate any amount in excess of the Williamson Cap (the “Overage Amount”) to the other Participating Municipalities in proportion to their respective number of EDUs excluding, for such purpose only, the number of EDUs attributable to the Town of Williamson. The Authority shall then add for each Participating Municipality (other than the Town of Williamson) the costs based on the Initial Service Fee Allocation to the costs resulting from allocating the Overage Amount to determine the “Adjusted Service Fee Allocation” for each Participating Municipality, provided that the Adjusted Service Allocation attributable to the Town of Williamson shall not exceed the amount of the Williamson Cap. (An illustration of the methodology used to determine the Adjusted Service Fee Calculation is set forth in Exhibit “D”).

9. Construction/Operation of the Project.

- 9.1 The Authority covenants to proceed with all reasonable diligence, to construct the Authority Improvements and any authorized Improvements in accordance with the Plans and upon the advice of and in consultation with the Independent Engineer, subject to and contingent upon (i) all other waivers, consents and approvals from governmental regulatory bodies, the granting of which are necessary for construction; (ii) closing on interim, construction financing; and (iii) acquisition of any required Transferred Property Assets. However, the Authority makes no covenant, representation or warranty as to the date by which construction of the Authority Improvements will commence or the date construction of the Authority Improvements will be complete or the date on which the Project will be placed in service. In addition, the Authority shall:
- 9.1.1 Engage the services of necessary professional consultants including engineers, legal counsel, financial advisors, grant writers, bond counsel and underwriters. In addition to engaging the Independent Engineer, The Authority has engaged LaBella Associates P.C. to advise on SEQRA and NEPA compliance; Harris Beach PLLC to act as bond counsel; and, Bernard P. Donegan Inc. to act as financial advisor to the Project.
 - 9.1.2 Serve as the overall Project administrator and carry out the Project in accordance with the requirements of the funding agencies and this Agreement.
 - 9.1.3 Serve as lead agency for NEPA and SEQRA review, as necessary.

- 9.1.4 Coordinate the Project among the Participating Municipalities.
- 9.1.5 Supervise and conduct Project procurement activities in accordance with applicable competitive bidding and MWBE requirements. With respect to the Storage Tank Improvements and the Williamson Pump Station Improvements, the Authority intends to utilize third party contractors following the solicitation of competitive bids pursuant to GML §103, with the Independent Engineer providing design, construction administration and construction observation services. With respect to the Authority Transmission Improvements, the Authority at its option intends to either (i) utilize third party contractors following the solicitation of competitive bids pursuant to GML §103, with the Independent Engineer providing design and inspection services to construct and install such improvements or (ii) solicit competitive bids pursuant to GML §103 for pipe and materials and utilize Authority personnel to construct and install such improvements pursuant to a “cooperative agreement” to be entered into between the Authority and the Participating Municipalities, with the Independent Engineer providing design, construction administration and construction observation services.
- 9.1.6 Obtain all necessary Project permits and approvals including required easements, licenses and rights-of-way.
- 9.1.7 Conduct a Phase I environmental and sub-surface geotechnical assessment of the proposed site for the Regional Storage Tank, pump stations and, to the extent necessary, the Authority Transmission Improvements and/or the Williamson Transmission Improvements.
- 9.1.8 Own the Facilities, Transferred Property Assets and any authorized Improvements, provided, however that the Authority (i) shall transfer title to the Williamson Improvements to the Town of Williamson upon payment in full of the principal of, redemption premium, if any, and interest on any Notes or Bonds and (ii) hereby licenses use of the Williamson Improvements to the Town of Williamson during the Term of this Agreement so that the Town of Williamson can utilize the Williamson Improvements to continue to meet its supply obligations to the Authority pursuant to the Williamson Supply Agreement.
- 9.1.9 Arrange for interim, construction and permanent Project financing by securing available grants and loans and issuing Notes and Bonds, as necessary to cover Project costs.
- 9.1.10 Insure the Authority Improvements during construction and operation in accordance with Section 17 hereof.

- 9.1.11 Upon Completion of the Project, operate, repair, maintain, replace and upgrade the Authority Improvements in accordance with prudent municipal utility practice and assume responsibility for the Operating Expenses associated with the Authority Improvements.
- 9.1.12 It is understood and agreed that the Authority makes no guarantee as to pressure, quantity or continuity of service and shall not, to the fullest extent permitted by law, under any circumstances be held liable for loss or damage from a deficiency or failure in (i) the operation of the Facilities and/or (ii) the provision of Regional Water Storage Services, whether caused by cessation or shutting off such services in the case of accident or for alterations, replacements or repairs, or for any cause whatsoever, including *force majeure* events as defined in Section 20.6 of this Agreement, other than for gross negligence. 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 all cases, other than emergencies, the Authority shall give each Participating Municipality 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..
- 9.2 The Town of Williamson covenants to proceed with all reasonable diligence, to construct the Williamson Transmission Improvements and any other authorized Improvements in accordance with the Plans and upon the advice of and in consultation with the Independent Engineer, subject to and contingent upon (i) all other waivers, consents and approvals from governmental regulatory bodies, the granting of which are necessary for construction and (ii) closing by the Authority on interim, construction financing. However, the Town of Williamson makes no covenant, representation or warranty as to the date by which construction of the Williamson Transmission Improvements will commence or the date construction of the Williamson Transmission Improvements will be complete. In addition, the Town of Williamson agrees as follows:
- 9.2.1 For the avoidance of doubt, the Authority shall be responsible for procurement of the Williamson Pump Station Improvements as provided for in Section 9.1.5 of this Agreement.
- 9.2.2 With respect to the Williamson Transmission Improvements, the Town of Williamson at its option intends to either (i) utilize third party contractors following the solicitation of competitive bids pursuant to GML §103 utilizing competitively procured materials from the Authority or otherwise, with the Independent Engineer providing design and inspection services to construct and install such improvements or (ii) utilize competitively procured materials from the Authority or otherwise for pipe and materials and Town of Williamson personnel to construct and install such improvements at a negotiated

contract price pursuant to a “cooperative agreement” to be entered into between the Town of Williamson and the Authority, with the Independent Engineer providing design, construction administration and construction observation services.

9.2.3 To insure the Williamson Improvements during construction and operation in accordance with Section 17 hereof.

9.2.4 Upon Completion of the Project, to operate, repair, maintain, replace and upgrade the Williamson Improvements in accordance with prudent municipal utility practice and to assume responsibility for the Operating Expenses associated with the Williamson Improvements.

10. Cost of Project.

10.1 Based upon the Plans and reports of the Independent Engineer, the total cost of the Project (“Project Cost”) is currently estimated to be \$10,500,000 which includes the cost of interest during construction. If, however, after obtaining bids on the construction of the Project, the Authority determines that the cost of the Project will likely exceed \$10,500,000 including the cost of interest during construction, then the Parties agree that the Authority shall, nevertheless, continue to advance the Project by increasing the maximum amount of Notes and/or Bonds to be issued by the Authority to cover such additional costs, with a corresponding increase to the Capital Charge component of the Service Fee to be paid by the Participating Municipalities, provided that such increase does not exceed 110% of the original, estimated Project Cost. If, however, the Authority determines that the cost of the Project including the cost of interest during construction will likely exceed 110% of the original, estimated Project Cost, the Participating Municipalities shall have the right to terminate this Agreement and cause the Authority to discontinue the Project by providing written notice of termination to the Authority, provided that in such event the Participating Municipalities shall as a condition of termination be responsible for promptly reimbursing the Authority for the entire cost of (i) any Project Development Costs to date and (ii) paying off and discharging any interim, construction financing including any Notes or Bonds that are then outstanding.

11. Payment Obligation

11.1 The Participating Municipalities shall be obligated to pay their respective Pro Rata Shares of the Capital Charge as a component of the Service Fee until the principal of, redemption premium, if any, and interest on any Notes or Bonds is paid in full, regardless of the status of the Completion of the Project or whether the Facilities are in operation. A schedule showing each Participating Municipalities’ respective Pro Rata Share of Capital Charges for the initial Billing Year is attached hereto as Exhibit “C”. Within thirty (30) days following the issuance of any Notes to finance the construction of the Project and with thirty (30) days of the issuance of any Bonds following Completion

of the Project, the Authority will supply the Participating Municipalities with a schedule showing their respective Pro Rata Shares of such updated Capital Charges based on such financing costs.

- 11.2 At any time any Notes or Bonds are outstanding, each of the Participating Municipalities shall pay on a continuing and unlimited basis, but subject to Section 20.13, their respective Pro Rata Shares of the Capital Charge component of the Service Fee, notwithstanding that the Facilities may not commence and/or cease operation, and without regard to any defense, set off, or counterclaim which may at any time be available to or be asserted by any of them against the Authority.

12. Budgeting; Assessment of Charges

- 12.1 Commencing with the 2021 Billing Year and continuing each Billing Year thereafter in which any Notes or Bonds are outstanding, the Participating Municipalities shall each (i) include in their respective annual municipal budgets and appropriate amounts sufficient to pay for the Capital Charge component of their respective Service Fees in the manner and at the times set forth in Section 11.1 and in Section 13.3; and (ii) allocate the Capital Charge component of its Service Fee among the Users by assessing, levying and collecting the expense thereof from the several lots and parcels of land within such districts or service areas pursuant to Town Law §202, §202-a and/or §209-q(8) such that if unpaid, they can be re-levied by Wayne County pursuant to Real Property Tax Law §936(1).

13. Regional Water Storage Services, Charges and Payment.

- 13.1 Provision of Service: The Authority shall provide each of the Participating Municipalities with Services, subject to and contingent upon (i) receipt of all necessary permits to construct and operate the Facilities and (ii) adoption by each of the Participating Municipalities of a resolution requesting the Authority to provide the Services under this Agreement as required by Public Authorities Law § 1199-ee(21) and legislatively adopting and establishing the common definition of EDU.
- 13.2 Invoicing for Capital Charges: Commencing on the date specified by the Authority in 2021 and annually or semi-annually thereafter, the Authority shall provide to each Participating Municipality an invoice showing the Periodic Capital Charge component of their respective Service Fees. Such invoice shall be sent at least seventy-five (75) days in advance of the date upon which a debt service payment is due by the Authority in connection with any Notes issued to provide such construction financing and annually or semi-annually thereafter until all Notes and Bonds have been paid in full. Payment of such invoice by the Participating Municipalities shall be due on the forty-fifth (45th) day following receipt of the invoice.
- 13.3 Payment of Capital Charges:

13.3.1 Each of the Participating Municipalities agrees and covenants to timely pay their respective Pro Rata Share of Periodic Capital Charges, if applicable, for the immediately preceding Billing Period and each succeeding Billing Period during the term of this Agreement. Each of the Participating Municipalities shall tender such payment within forty-five (45) days of receiving the invoice for the Periodic Capital Charge, if applicable. Such payment by the Participating Municipalities shall be unconditional regardless of any actual or potential claims or causes of action which the Participating Municipalities may have or may assert against the Authority. Payments not made within forty-five (45) days of the Participating Municipalities' receipt of such invoice shall subject the Participating Municipalities to interest penalties as provided in Section 3-a of the GML. In addition, the Participating Municipalities shall be responsible for all penalties and late charges or lost interest and expenses incurred by the Authority if any of the Participating Municipalities do not pay their respective Pro Rata Share of Periodic Capital Charges in sufficient time for the Authority to make timely payment on the Authority's Notes and/or Bonds to the extent such amounts exceed the interest penalties. In the event of a default by a Participating Municipality in the payment of the Capital Charge, the Authority shall have the right to terminate the provision of Services to such defaulting municipality and to the Users located within such defaulting municipality.

13.3.2. The Parties agree that the obligation of each of the Participating Municipalities to pay their respective Pro Rata Share of Periodic Capital Charges shall apply during the term of this Agreement whether or not the Authority provides any Regional Water Storage Services, provided, however, that the debt service component of the Capital Charge associated with any outstanding Notes and/or Bonds shall end once all Notes and Bonds have been paid in full.

13.4 Responsibility For Operating Expenses: The Authority shall be responsible for Operating Expenses associated with the Authority Improvements, which for the avoidance of doubt shall include the cost of maintaining the Regional Storage Tank, and the Town of Williamson shall be responsible for Operating Expenses associated with the Town of Williamson Improvements, each in accordance with Section 9 of this Agreement.

14. Right to Audit.

14.1 At their own expense, the Participating Municipalities shall have the right to audit work done or material acquired for and with respect to the Project by designated representatives of the Participating Municipalities at any time during normal working hours during the construction of the Project upon reasonable notice to the Authority. At its own expense, the Authority shall have the right to audit work done or material acquired for and with respect to

the Williamson Improvements by designated representatives of the Authority at any time during normal working hours during the construction of the Williamson Improvements upon reasonable notice to the Town of Williamson.

- 14.2 The Authority shall maintain during the course of construction of the Authority Improvements and retain for two (2) years after Completion of the Project, complete and accurate records of all the Authority's costs which are chargeable to the Participating Municipalities pursuant to the terms of this Agreement and which are subject to audit as set forth in this Section 14. The Town of Williamson shall maintain during the course of construction of the Williamson Improvements and retain for two (2) years after Completion of the Project, complete and accurate records of all such costs of the Town of Williamson.
- 14.3 The right to audit shall extend to any and all contractors and subcontractors engaged either by the Authority or the Town of Williamson in the construction of the Project Improvements.

15. Outside Users; Private Activity Bonds.

- 15.1 The Authority understands and agrees that the Project is being undertaken and has been sized for the benefit of Users within the Participating Municipalities (including any users that are subject to the Annual Connection and Improvement Fee). Accordingly, the Authority shall not allow access to the Project Improvements to other users which are members of the public without the prior express written consent of the affected Participating Municipality. The Authority shall or may covenant and agree with the holders from time to time of the Notes and the Bonds that (i) the Project will always qualify as an essential governmental function of the Authority, (ii) the Project will not be used, nor will the payment of any Notes or Bonds, if, when and as issued, be secured by payments from any Users of the Project in such a manner which would cause the Notes or the Bonds to be characterized as "private activity bonds" as that term is defined and used in Section 141 of the Code. Each of the Participating Municipalities hereby agree to cooperate with the Authority in performing the foregoing covenants with the holders from time to time of the Notes and the Bonds in order to maintain the tax-exempt status of interest on the Notes or Bonds under applicable provisions of the Code.

16. Events of Default.

- 16.1 The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default under this Agreement:
 - 16.1.1 Failure by any of the Participating Municipalities to pay its respective Service Fee no less than (30) days prior to an interest and/or principal payment date on any Notes or Bonds, and the continuation of such failure for a period of twenty (20) days or more

after written notice of such default is given to the Participating Municipalities by the Authority.

16.1.2 Failure by the Participating Municipalities to observe or perform any other covenant, agreement or obligation of the Participating Municipalities contained in this Agreement and the continuation of such failure for a period of sixty (60) days after written notice of such failure is given by the Authority to the Participating Municipalities; provided that if such failure is other than with respect to the payment of money and is of such nature that it can be corrected but not in the applicable period, such failure shall not constitute an Event of Default so long as such Participating Municipalities institutes curative action reasonably acceptable to the Authority, such acceptability being at the sole discretion of the Authority.

16.2 Upon the occurrence and continuation of an Event of Default, the Authority may pursue any available remedy including the suspension or termination of Services, as authorized by its enabling legislation and consistent with applicable law, to enforce payment of Service Fees or the observance and performance of any other covenant, agreement and obligation of the Participating Municipalities under this Agreement.

17. Insurance.

17.1 Liability Insurance: The Authority and the Participating Municipalities shall each maintain commercial general liability insurance covering their respective property and activities under this Agreement in at least the following amounts: \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$1,000,000 excess liability each occurrence. Except as the parties may otherwise agree, the Authority shall add the Participating Municipalities as additional insureds on its policy covering the Facilities and the Project. Each of the Participating Municipalities shall add the Authority as additional insureds on its liability policy. Each of the Authority and the Participating Municipalities shall provide the others with a certificate of insurance evidencing such coverage on an annual basis. Such limits shall be reviewed on an annual basis and revised, as necessary, to conform with the reasonable requirements of the Parties based on the advice of their respective outside risk managers.

17.2 The Authority shall be responsible for obtaining and maintaining insurances related to its employees, including statutory worker's compensation and disability insurance and unemployment insurance.

- 17.3 The Authority shall maintain property insurance and, if recommended by the Authority's outside risk manager, environmental liability insurance on the Authority Improvements.
- 17.4 The Town of Williamson shall maintain property insurance on the Williamson Improvements.
18. Indemnification and Related Matters.
- 18.1 Indemnification by the Authority: Subject to the limitations set forth in Sections 9.1.12, 18.3 and 18.4 of this Agreement, the Authority agrees, to the fullest extent permitted by applicable law, to indemnify, defend and hold harmless each of the Participating Municipalities and the Participating Municipalities Indemnified Parties from and against any and all actions, claims, losses and expenses (including reasonable attorneys' fees and expenses) for the acts, omissions or decisions of the Authority, its officers, directors, agents, employees, invitees, and those under its control (collectively, "Authority Indemnified Parties"), while performing its contractual responsibilities under this Agreement, except to the extent that such losses are the result of the negligence or willful misconduct of any Participating Municipality Indemnified Party.
- 18.2 Indemnification by the Participating Municipalities: Subject to the limitations set forth in Sections 18.3 and 18.4 of this Agreement, each of the Participating Municipalities agrees, to the fullest extent permitted by applicable law, to indemnify, defend, and hold harmless the Authority and Authority Indemnified Parties from and against any and all actions, claims, losses and expenses (including reasonable attorneys' fees and expenses) for the acts, omissions or decisions of such Participating Municipality, its respective officers, agents, employees, invitees, and those under its control (collectively, "Participating Municipality Indemnified Parties"), in connection with the Transferred Property Assets of such Participating Municipality or while performing their respective contractual responsibilities under this Agreement, except to the extent that such losses are the result of the negligence or willful misconduct of any Authority Indemnified Party.
- 18.3 Waiver of Subrogation: The Authority and each of the Participating Municipalities agree to have included in all policies of property insurance respectively obtained by them with respect to the Facilities a waiver by the insurer of all right of subrogation against the other (and against the additional insureds) in connection with any loss or damage to real or personal property insured against even if such loss or damage shall have been caused by the fault or negligence of the other Party, or anyone for whom such Party may be responsible. However, this release shall apply only if the releasor's insurance policy contains a clause or endorsement providing that any such release shall not adversely affect or impair such policy or prejudice the right of the releasor to recover thereunder. The Authority and each of the Participating Municipalities agree that any property insurance

policies carried by each of them respectively and covering the Facilities or their contents will include such clauses or endorsements as long as the same shall be obtainable and, if extra cost shall be charged therefore, so long as the other Party pays such extra cost. Notwithstanding any other provisions in this Agreement, to the fullest extent permitted by applicable law, the Participating Municipalities and the Authority, and all parties claiming under them, each hereby waives all right of recovery against the other and releases and discharges the other from all claims and liabilities for loss or damage to the extent such loss or damage is covered by insurance even if such loss or damage shall have been caused by the fault or negligence of the other Party or anyone for whom such Party may be responsible.

- 18.4 Consequential Damages: It is specifically agreed and understood that no Party will be responsible to any other Party for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement or anything done in connection herewith, in contract or in tort (including negligence), under any warranty, or otherwise. This Section 18.4 shall apply whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise.

19. Annual Connection and Improvement Fee.

- 19.1 Each of the Towns of Arcadia, Huron and Sodus shall have the right to assess and impose an Annual Connection and Improvement Fee during the term of this Agreement. The Annual Connection and Improvement Fee shall be in the amount of five-hundred forty (\$540) dollars per EDU, as specified in the Map, Plan and Report, and shall be payable for a term of thirty-eight (38) years. Connections shall be limited to Users fronting on Authority Transmission Improvements within the Towns of Arcadia, Huron and/or Sodus, other than on a case-by-case basis with the consent of the affected Participating Municipality and the Authority. Permission to connect would be subject in each case to (i) compliance with applicable Lateral Restrictions; (ii) payment by the User to the Participating Municipality of annual per EDU Capital Charges; (iii) payment by the User to the Authority of applicable connection charges and fees as provided for in the Authority's Rules & Regulations, as amended; and (iv) the consent of the Authority and the affected Participating Municipality. Such consent by the Participating Municipality is intended to include the requirement that users requesting permission to connect would be required to enter into an "out-of-district" user agreement in a form prescribed by the affected Participating Municipality obligating the user to pay capital costs of any newly formed water districts that would encompass the user's property in the future in lieu of paying ongoing Annual Connection and Improvement Fees. The Participating Municipalities may utilize the Annual Connection and Improvement Fees to pay existing debt service of such supporting water district.

20. Miscellaneous.

- 20.1 Assignment. This Agreement is assignable in whole or in part only with the prior written consent of each of the other Parties hereto, provided, however that no such consent shall be required in the event of an assignment by the Authority to another public benefit corporation created by the New York State Legislature with similar powers to provide water services, provided, further such other public benefit corporation enforceably assumes all of the Authority's obligations under this Agreement.
- 20.2 Amendment. This Agreement may be amended or modified only by a subsequent written document executed by all Parties hereto.
- 20.3 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.
- 20.4 Authorization. Each Party hereby represents and warrants to the others that its respective signatures set forth below have been and are on the date of this Agreement duly authorized by all necessary and appropriate corporate and municipal action to execute this Agreement.
- 20.5 Entire Agreement. This Agreement constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof, and supersedes all previous discussions, representations, understandings, and agreements including specifically, for avoidance of doubt, the IMA; but not including the Williamson Supply Agreement which shall continue in full force and effect in accordance with its terms unaffected by this Agreement.
- 20.6 Force Majeure. If performance of any non-monetary obligations under this Agreement by any of the Parties hereto is prevented or delayed by reason of any acts of God, acts of the public enemy, wars, blockages, insurrection, riots, mob violence, sabotage, epidemics, pandemics, or other declarations of public health emergency, quarantine restrictions, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, restraints of ruler and peoples, civil disturbances, explosions, strikes, the binding order of any court or government authority which has been resisted in good faith by any reasonable legal means, failure or want of any necessary supplies, utilities or products not within the control of such Party, or any other cause beyond the control of the Party affected, and which cannot be overcome by reasonable due diligence, such affected Party shall be excused from such performance to the extent that it is necessarily prevented or delayed thereby, during the period of any such cause, provided, however, for the avoidance of doubt, in no event shall any *force majeure* event excuse any Party's monetary obligations, including the obligation of each Participating Municipality to timely pay to the Authority Capital Charges as a component of the Service Fee.

- 20.7 Survival. The following provisions shall survive termination of this Agreement: Section 2, Representations; Section 3, Term; Section 17, Insurance; Section 18, Indemnification and Related Matters; and this Section 20, Miscellaneous.
- 20.8 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without consideration of the conflicts of laws principles thereof. The sole and exclusive forum for the determination of any question of law or fact to be determined in any judicial proceeding relating to this Agreement shall be the Supreme Court of the State of New York sitting in Wayne County, New York or the federal district court having jurisdiction for Wayne County, New York.
- 20.9 Severability. If any provision of this Agreement is held to be unenforceable under then current laws, the enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such unenforceable provision the Parties shall negotiate to add a provision as similar in terms to such unenforceable provision as may be possible.
- 20.10 Independent Contractor. The Parties hereto shall each act as independent contractors and nothing herein shall be construed to make any Party, or any of their employees, officers, directors or representatives, the agent, employee, partner or servant of any other Party or otherwise as expressly provided herein.
- 20.11 Non-Waiver. Failure by any Party at any time to require strict performance of any of the provisions herein shall not waive or diminish a Party's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any obligation, term or condition of this Agreement shall not be deemed as any further or continuing waiver of any other term, provision or condition of this Agreement. A Party shall not be deemed to have waived any rights hereunder unless such waiver is in writing and signed by a duly authorized representative of the Party making such waiver.
- 20.12 Integration. This Agreement may not be amended or modified except by written agreement, executed by the Parties herein, and no oral statements, representations, or prior written materials pertaining to the subjects set forth herein, not contained within this Agreement, shall have any force or effect except as expressly authorized by this Agreement.
- 20.13 Executory Clause. Anything in this Agreement to the contrary notwithstanding, this Agreement, including the obligation of the Participating Municipalities to pay their respective Pro Rata Shares of the Capital Charge component of the Service Fee shall be deemed executory only to the extent of the funds appropriated and available for the purposes of this Agreement, and no liability on account thereof shall be incurred by any of the Participating Municipalities beyond the amount of such monies.

IN WITNESS THEREOF, the parties hereto have executed or approved this Agreement on the dates below their respective signatures.

**WAYNE COUNTY WATER AND
SEWER AUTHORITY**

By: _____
Martin J. Aman, Executive Director

Dated: October __, 2020

TOWN OF ARCADIA,
on its own behalf and on behalf of all existing
water districts and new water
districts/improvement areas to be formed
utilizing the Services

By: _____
Jon C. Verkey, Supervisor

Dated: October __, 2020

Michael Diamond, Councilperson

Dated: October __, 2020

Richard VanLaeken, Councilperson

Dated: October __, 2020

Dawn L. Piscioti, Councilperson

Dated: October __, 2020

David Greco, Councilperson

Dated: October __, 2020

TOWN OF HURON,
on its own behalf and on behalf of all existing
water districts and new water
districts/improvement areas to be formed
utilizing the Services

By: Philip W. Eygnor
Philip Eygnor, Supervisor

Dated: November __, 2020

David Buisch
David Buisch, Councilperson

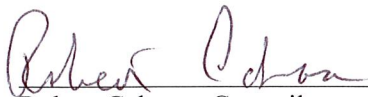
Dated: November __, 2020

Richard Reyn
Richard Reyn, Councilperson

Dated: November __, 2020

Russell H. Teeple
Russell Teeple, Councilperson

Dated: November __, 2020


Robert Cahoon, Councilperson

Dated: ~~November~~ ^{December} 1, 2020

TOWN OF MARION,

on its own behalf and on behalf of all existing
water districts and new water
districts/improvement areas to be formed
utilizing the Services

By: _____
Jolene Bender, Supervisor

Dated: November __, 2020

Laverne Bliet, Councilperson

Dated: November __, 2020

Deb Smith, Councilperson

Dated: November __, 2020

Joan Fisher, Councilperson

Dated: November __, 2020

Ron Lonneville, Councilperson

Dated: November __, 2020

TOWN OF LYONS,

on its own behalf and on behalf of all existing
water districts and new water
districts/improvement areas to be formed
utilizing the Services

By: _____
Jake Emmel, Supervisor

Dated: October __, 2020

Jim Brady, Councilperson

Dated: October __, 2020

Ralph D'Amato, Councilperson

Dated: October __, 2020

Joanne Greco, Councilperson

Dated: October __, 2020

John Paliotti, Councilperson

Dated: October __, 2020

TOWN OF SODUS,

on its own behalf and on behalf of all existing
water districts and new water
districts/improvement areas to be formed
utilizing the Services

By: _____
Scott Johnson, Supervisor

Dated: November __, 2020

Dave LeRoy, Councilperson

Dated: November __, 2020

Chris Tertinek, Councilperson

Dated: November __, 2020

Don Ross, Councilperson

Dated: November __, 2020

John Faulks, Councilperson

Dated: November __, 2020

TOWN OF WILLIAMSON,

on its own behalf and on behalf of all existing
water districts and new water
districts/improvement areas to be formed
utilizing the Services

By: _____
Anthony Verno, Supervisor

Dated: October __, 2020

Mike Bixby, Councilperson

Dated: October __, 2020

Gary Orbaker, Councilperson

Dated: October __, 2020

Nancy Gowan, Councilperson

Dated: October r __, 2020

Abram Moll, Councilperson

Dated: October r __, 2020

EXHIBIT “A”
Common Definition of EDU

EXHIBIT “B”
Map Showing Location of the Facilities

EXHIBIT “C”
Pro Rata Share for Initial Year

EXHIBIT “D”

Example of Adjusted Service Fee Calculation

EXHIBIT “E”

Maps Showing Location of Transferred Property Assets

“None/Intentionally Omitted”