

A G R E E M E N T

THIS AGREEMENT made this 21st day of October

1971 by and between the CITY OF CORTLAND, a municipal corporation, organized and existing under the laws of the State of New York, hereinafter referred to as the "CITY" and the VILLAGE OF HOMER, a municipal corporation, organized and existing under the laws of the State of New York, hereinafter referred to as the "VILLAGE."

WITNESSETH:

WHEREAS, the VILLAGE is preparing for the placement of sewer lines therein for the purpose of receiving and transporting sewage from properties within and adjacent to the VILLAGE, and

WHEREAS, it is the considered opinion of the Board of Trustees of the VILLAGE that the construction of a sewage disposal plant for purposes of processing and disposing of such sewage would not be in the best interest of the VILLAGE, and

WHEREAS, based upon previous engineering studies, it has been determined to be less costly but just as effective to have such sewage received into the CITY'S sewerage system for treatment and disposal in the proper and required manner by the CITY'S existing sewage treatment plant, said plant and trunk sewer system to be extensively altered and improved in the near future, and

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WHEREAS, the CITY is capable and agreeable to receiving the VILLAGE'S sewage into the CITY'S sewer^{age}/system for transport and ultimate treatment, said sewage to be received at the Town of Cortlandville-CITY Line on Homer Avenue, and

WHEREAS, the CITY is to receive remuneration for said services from the VILLAGE in an amount specifically ascertained in the hereinafter contained method of computation, and

WHEREAS, the proposed method of sewage transmission from the VILLAGE to the CITY, transmission within the CITY, and treatment by the CITY, is in complete accordance with past and present comprehensive regional, county and local planning and engineering studies, and

WHEREAS, the General Municipal Law, Subsection 119-o, of the State of New York, specifically authorizes a city and village to "enter into, amend, cancel and terminate agreements for the performance among themselves of their respective functions, powers and duties or for the provision of a joint service for a joint water, sewage or drainage project".

NOW, THEREFORE, BE IT MUTUALLY AGREED AS FOLLOWS:

Subject to the consent and approval of the Department of Environmental Conservation of the State of New York, and the regulations of said Department, now in existence or as they may be amended hereafter, the CITY hereby covenants and agrees to receive into its sewer^{age} system at the Town of Cortlandville-CITY boundary line on Homer Avenue, all sewage from or being discharged into the VILLAGE'S sewerage system, and to transport such sewage to, and process the same at, the CITY'S sewage treatment and disposal plant, all upon the terms and conditions hereinafter set forth; to wit:

1. Definitions. As used in this Agreement, unless otherwise modified herein, the ensuing terms shall be defined as follows:

- (a) "Sewage Treatment Plant" shall include all CITY-owned sewage treatment facilities in existence and operating as of the date of the execution of this Agreement as well as all future additions and improvements thereto.
- (b) "Operation and Maintenance Expenses" shall consist of all sewage treatment costs relating to water, chemicals, electricity, insurance, telephone, fuel, gasoline, gas, lubricating oil, grease, plant personnel salaries, plant maintenance and repair parts, and any other costs not included herein which pertain to the proper operation and maintenance of the CITY'S sewage treatment plant.
- (c) "Capital Costs" shall consist of any sewage treatment plant, interceptor sewer or trunk sewer costs incurred by the CITY for the purpose of jointly conveying and treating sewage from and within both the VILLAGE and the CITY, such facilities herein referred to as

the sewage treatment plant, Port Watson Street
interceptor sewer, North Main Street trunk sewer and
Homer Avenue trunk sewer, all such facilities to be
constructed in the immediate future by the CITY whether
all or any part of such costs shall be financed by debt
service or shall be paid by the CITY out of whatever
funds it has available, but as to the costs, if any,
paid out of available funds, an adjustment proportioned
in accordance with the schedule of payments for those
costs bonded shall be made so that the payment by the
VILLAGE to the CITY of those costs paid by the CITY
out of available funds shall be scheduled for the same
duration as the debt service costs. The same interest
rate which is established by debt service shall apply
to the monies which the CITY pays out of available funds.

(d) "Quarterly" or "Quarterly Basis" shall mean
the calendar year quarters commencing on January 1,
April 1, July 1 and October 1, and all quarterly
payments from the VILLAGE to the CITY, as provided herein,
shall be due and payable within fifteen (15) days after
receipt of the CITY'S bill for the preceding quarterly
period.

(e) "Payments". In computing any and all payments
to be made pursuant to this Agreement by the VILLAGE,
the parties hereto specifically agree that the amount
of any private, corporate, Federal or State aid
received by the CITY to defray capital as well as
operation and maintenance costs shall be first deducted.

2. THE VILLAGE shall furnish to and file with the CITY a
general map or plan, prepared by a competent engineer, duly licensed by the
State of New York, of its proposed sewage collection and transmission facilities,
showing all outlets and the terminus and course of each proposed interceptor,
trunk and lateral sewer.

Handwritten initials

At the VILLAGE'S cost and expense, the CITY will make the necessary interim connection of the VILLAGE'S proposed trunk sewer to the CITY'S existing Homer Avenue sewer at the Town of Cortlandville-CITY boundary line and the VILLAGE shall provide and install the necessary chamber, master flow meter and other components required to measure and totalize the daily flow of sewage from the VILLAGE'S sewerage system just prior to the entering of said sewage into the CITY'S sewerage system. The CITY will, at its own cost and expense, at all times keep and maintain such master flow meter in good working order and condition, and shall at all reasonable times, in the accompaniment of a designated agent of the CITY, allow the VILLAGE access thereto, for the purpose of testing the accuracy, or verifying the reading of such master flow meter. During the period of time that such master flow meter is out of repair or not in sound working condition, the average daily flow of sewage from the VILLAGE'S sewerage system shall be assumed to be the same as during the corresponding quarterly period of operation in the most recent year that such master flow meter was in sound working order and condition. The cost of making the proposed permanent connection of the VILLAGE'S trunk sewer to the CITY'S proposed new Homer Avenue trunk sewer at the Town of Cortlandville-CITY boundary line shall be borne by the CITY and any damage to private or public property resulting therefrom shall be the sole responsibility of the CITY.

The VILLAGE agrees that in discharging sewage from its proposed sewerage system into the CITY'S sewerage system, it will at all times comply with the rules, regulations and ordinances of the CITY, a copy of which is attached hereto and made a part hereof being designated as Schedule A, now or as the same may be enacted or amended at a later date relating to the use of the CITY'S sewerage system, any rules, regulations and ordinances of the CITY only to be enacted or amended either due to legal mandate of a properly authorized governmental agency of New York State or the United State of America or by mutual written consent of the parties to this agreement but only if the later enacted or amended rules, regulations and ordinances are of a specific rather than general application, and if of a specific application apply in whole or in part to the VILLAGE including rules, regulations and ordinances governing the type, manner, nature and

strength of such substances, materials, waters or wastes to be discharged into the CITY'S sewerage system.

The CITY shall have the right, power and privilege of inspecting at any reasonable time, only in the complany of an appropriate official or designated agent of the VILLAGE, any conduit, main, service pipe or attachment in the VILLAGE'S proposed sewerage system in order to determine whether an actual, or the means for a potential violation of the CITY'S said rules, regulations and ordinances exists, or, whether there has been any breach of the other terms and provisions of this Agreement relating to the VILLAGE'S proposed sewerage system. If after such inspection, the CITY shall determine in the exercise of reasonable and prudent judgment based upon sound and competent professional sanitary engineering standards and advice, that an actual or potential means for violation of such CITY rules, regulations and ordinances exists, or, that there has been a breach of any of the other terms or provisions of this Agreement, relating to the VILLAGE'S proposed sewerage system, the CITY shall give written notice thereof to the VILLAGE. In determining whether an actual, or the means for a potential violation of the CITY'S said rules, regulations and ordinances exists, or whether there has been any breach of the other terms and provisions of this Agreement, relating to the VILLAGE'S proposed sewerage system, the concurrence of the VILLAGE must be obtained. The VILLAGE shall base its decision on the inspection of the herein mentioned appropriate official or designated agent of the VILLAGE in the exercise of reasonable and prudent judgment based upon sound and competent professional engineering standards and advice. If the VILLAGE disputes the findings of the CITY that an actual, or, the means for a potential violation of the CITY'S rules, regulations and ordinances exists, or whether there has been any breach of the other terms and provisions of this Agreement relating to the VILLAGE'S proposed sewerage system, then, expert opinion of a third party mutually agreeable to both parties shall be sought. The findings of the third party shall be binding on both the CITY and the VILLAGE and whatever costs or expenses are incurred in obtaining, determining and rendering of the expert opinion of the third party shall be borne and paid solely by that party to this Agreement whose prior decision, as to the existence or non-existence, whichever, of an actual, or the means for a potential violation of the CITY'S rules, regulations and ordinance exists, or whether there has been any breach of the other terms and provisions of

this agreement, has been determined against by the third party. Payment of any fine to the CITY by the VILLAGE due to a violation of the CITY'S rules, regulations and ordinances, now or as the same may be enacted or amended at a later date, relating to the use of the CITY'S sewerage system including rules, regulations and ordinances governing the type, manner, nature and strength of such substances, materials, waters or wastes to be discharged into the CITY'S sewerage system, if such a violation may be prosecuted, does not in any way negate the VILLAGE'S liability to the CITY for any expenses, loss or damage incurred by the CITY as a result of such violation, and it is agreed to herein, that the VILLAGE shall indemnify the CITY for any expenses, loss or damage to either CITY or private property resulting therefrom whether said violation occurred prior to, during, or following the ninety (90) day corrective action grace period provided by the CITY in its Sewer Use Ordinance.

The CITY agrees at all times to provide for and maintain proper and adequate treatment and disposal of all sewage received at its sewage treatment plant, as required by the New York State Commissioner of Environmental Conservation and upon the terms herein set forth, but the CITY shall not be liable for any deficiency, interruption or failure to provide and maintain such services and facilities provided for herein as the result of an act of God, national emergency, system failure, or negligence, misconduct or default on the part of persons beyond its reasonable control.

3. In consideration for providing the necessary sewage treatment and transmission facilities within the CITY to meet the sewage disposal needs of the VILLAGE and its immediate tributary environs, the VILLAGE agrees and covenants to defray its fair share of the annual original capital costs incurred by the CITY on a calendar year quarterly basis, such payments to be made by the VILLAGE to the CITY no later than fifteen (15) days following receipt of the CITY'S quarterly bill, said payments being necessary to help finance the cost of the proposed CITY'S new sewage treatment plant and applicable interceptor and trunk sewers as defined in Paragraph 1 (c) hereof. Such quarterly payments shall continue until the CITY'S bonded indebtedness for such conveyance and treatment facilities is entirely repaid. The City hereby agrees that it will pay the bonded indebtedness for such conveyance

and treatment facilities in accordance with the schedule which is established in the bonding documents.

The VILLAGE shall also be obligated to the CITY to defray its fair share of the present depreciated replacement work of the CITY'S existing sewage treatment facilities, such present depreciated replacement worth being established at Four Hundred Thousand Dollars (\$400,000.00), the capital amount corresponding to equal annual payments of Sixteen Thousand Eight Hundred Seventy Six Dollars (\$16,876.00) per year for thirty (30) years at an interest rate of 1.6 per centum. The VILLAGE agrees and covenants to pay to the CITY its fair share of the annual payment on a quarterly basis for thirty(30) years, the amount to be paid by the VILLAGE to the CITY no later than fifteen (15) days following receipt of the CITY'S quarterly bill.

The formula to be used in allocating the VILLAGE'S share of quarterly capital costs associated with the proposed new and existing sewage treatment facilities and Port Watson Street interceptor sewer shall be:

$$\frac{Q_H}{(0.8 Q_c + Q_H + Q_i)} \times (A+B+C)$$

in which:

A-one quarter (1/4) of the annual capital cost associated with construction of the proposed new CITY sewage treatment facilities.

B-one quarter (1/4) of the annual payment covering the replacement worth of the existing CITY sewage treatment facilities - \$4,219.00

C-one quarter (1/4) of the annual capital cost associated with construction of the proposed new Port Watson Street interceptor sewer.

Q_c - Total quarterly sewage flow (gallons) attributable to the CITY, based upon the total quarterly flow metered at the CITY'S sewage treatment plant less the total quarterly flow attributable to all other metered sources of sewage outside of the CITY but tributary to the CITY'S sewerage system.

Q_H - Total quarterly sewage flow (gallons) attributable to or conveyed by the VILLAGE'S sewerage system, as metered at the Town of Portlandville-CITY boundary on Homer Avenue.

Q - Total quarterly metered sewage flow (gallons)
 1 attributable to all other municipalities, sewer districts, industries, commercial establishments, etc., outside of the CITY but tributary to the CITY'S sewerage system, exclusive of the VILLAGE system.

The formula to be used in allocating the VILLAGE'S share of the quarterly capital costs associated with the proposed new CITY North Main Street and Homer Avenue trunk sewers shall be:

$$\frac{Q_H}{(0.155 Q_c + Q_H)} \times (D)$$

in which:

D—one quarter of the annual capital costs associated with construction of the proposed new North Main Street and Homer Avenue trunk sewers within the CITY.

Q_c - as previously defined

Q_H - as previously defined.

The VILLAGE further agrees and covenants to defray its fair share of the operation and maintenance costs associated with the CITY'S existing and proposed new sewage treatment facilities, with payments to be made to the CITY on a calendar year quarterly basis, such payments to be made by the VILLAGE to the CITY no later than fifteen (15) days following receipt of the CITY'S quarterly bill. For the purpose of deriving the necessary operating revenues, the projected year's sewage treatment plant operation and maintenance budget shall be assessed against all parties concerned on a quarterly basis, with one-quarter (1/4) of the total annual budget allocated equally to each of the first three quarters of the calendar year, the fourth and final quarterly allocation being adjusted to balance actual income and expenses as determined by a certified year-end audit. It is further agreed that no projected quarterly operation and maintenance budget may exceed the previous year's audited quarterly expenses by more than twenty-five percent (25%) with the exception of the fourth quarter, such quarter's expenses

being subject to the aforementioned annual audit prior to billing.

The formula to be used in determining the VILLAGE'S share of the quarterly operation and maintenance expenses associated with the proposed new and existing CITY sewage treatment plant shall be:

$$\frac{Q_H}{(0.8 Q_c + Q_H + Q_i)} \times (O \& M)$$

in which:

O & M - the appropriate quarterly budget allocation or audited expense, as hereinbefore defined, for operation and maintenance of the CITY'S sewage treatment plant.

Q_c - As previously defined

Q_H - As previously defined

Q_i - As previously defined

In consideration of the VILLAGE'S participation in defraying a portion of the construction capital costs associated with the proposed new North Main Street and Homer Avenue trunk sewers within the CITY and because said sewers have been designed with sufficient capacity to serve the drainage area north of the northern CITY boundary line and its westward extension, west of the west branch of the Tioughnioga River and east of the divide between Blue Creek and Factory Brook and their tributaries, and because the CITY has represented the same to State and Federal authorities in applying for construction grants for said sewers, the CITY further agrees to accept sewage from any part of the foregoing area and to accept such sewage only through the VILLAGE'S intermunicipal trunk sewer and pumping station system which terminates at the Town of Cortlandville-CITY boundary line on Homer Avenue. In that the VILLAGE'S intermunicipal trunk sewer system also has been designed with sufficient capacity to serve the aforementioned area and because the VILLAGE has also represented the same to State and Federal authorities in applying for construction grants for said system, the VILLAGE also agrees to accept sewage from any part of the aforementioned area through its intermunicipal trunk sewer system, subject only to reaching an appropriate mutual agreement between the VILLAGE and any third parties concerned.

The appropriate mutual agreement between the VILLAGE and the other party thereto concerned shall set forth the same terms and conditions of this agreement differing only as to those specific items which necessarily must vary due to the existence of different sewerage systems being involved in the mutual agreement from this agreement it, however, always to be understood in the mutual agreement, as it is in this agreement, that the VILLAGE shall demand as payment in the mutual agreement from the other party thereto only its fair share of the expenses incurred by the VILLAGE due to the transmitting of the sewage from the other party through the VILLAGE'S sewerage system into the CITY'S sewerage system, its fair share of the payments from the VILLAGE to the CITY under the terms and conditions of this agreement, and its fair share of the original or subsequent capital costs incurred by the VILLAGE in providing sewerage facilities of sufficient capacity to serve the other party.

5. In the event of default of the payments provided for herein for a period of thirty (30) days after written notice and demand, the CITY may at its own discretion, institute a surcharge on the unpaid balance equal to the current interest rate paid by savings banks in the CITY plus an additional one half percent ($\frac{1}{2}\%$).

6. The parties hereto specifically agree that each quarterly demand by the CITY for payment of capital costs and operation and maintenance expenses, pursuant to Paragraph 3 hereof, shall include a detailed certified statement of the total quarterly flows metered at the CITY'S sewage treatment plant, at the master meter on Homer Avenue at the Town of Cortlandville-CITY line, and at all other points metering sewage that originates outside of the CITY. The parties hereto also specifically agree that the demand by the CITY for payment of fourth-quarter sewage treatment plant operations and maintenance expenses, pursuant to Paragraph 3 hereof, shall include a detailed certified statement of the final verified operation and maintenance expenses associated with the sewage treatment for that year, as outlined or inferred hereinbefore. The parties hereto also specifically agree that the demand by the CITY for payment of fourth quarter capital costs pursuant to Paragraph 3 herein, shall also include a detailed certified statement of the annual capital costs associated with each of the CITY'S applicable sewerage projects, as outlined or inferred hereinbefore.

7. The VILLAGE shall save and hold harmless the CITY from and against all suits or claims that may be based upon any alleged injury to any person or property in the course of the performance of this Agreement by the VILLAGE, whether such claims shall be made by an employee of the VILLAGE or by a third person, and whether or not it shall be claimed that the alleged injury was caused through a negligent act or omission of the VILLAGE, and the VILLAGE shall, at its own cost and expense, pay all charges of attorneys and all costs and other expenses arising therefrom, or incurred in connection therewith; and any judgments that shall be rendered against the CITY in any such action or actions, the VILLAGE shall, at its own cost and expense, satisfy and discharge the same. The CITY shall save and hold harmless the VILLAGE from and against all suits or claims that may be based upon any alleged injury to any person or property in the course of the performance of this Agreement by the CITY, whether such claims shall be made by an employee of the CITY, or by a third person, and whether or not it shall be claimed that the alleged injury was caused through a negligent act or omission of the CITY, and the CITY shall, at its own cost and expense, pay all charges of attorneys and all costs and other expenses arising therefrom, or incurred in connection therewith; and any judgments that shall be rendered against the VILLAGE in any such action or actions, the CITY shall, at its own cost and expense, satisfy and discharge the same.

Further, the CITY shall not be responsible for any damages resulting from any failure to supply sewage treatment and disposal or for interruption of the sewage service furnished hereunder. The VILLAGE agrees to save and keep harmless the CITY from all damage to real and personal property occasioned or caused by the making of the interim connection to the existing Homer Avenue trunk sewer referred to in Paragraph 2.

8. This Agreement, including this Paragraph, may be amended, modified, cancelled or extended by mutual agreement of the parties hereto by an Agreement in writing executed by them; but no such amendment, modification, cancellation or extension shall be effective until fully executed and approved.

9. No officer, official or agent of the CITY has the power to amend, modify or alter this Agreement or waive any of its conditions or provisions or to bind the CITY by making any promise or representation not contained herein. No officer, official or agent of the VILLAGE has the

power to amend, modify or alter this Agreement or waive any of its conditions or provisions or to bind the VILLAGE by making any promise or representation not contained herein.

10. Neither party hereto shall assign, transfer or convey this Agreement or any part hereof, or any interest herein, without the consent in writing of the other.

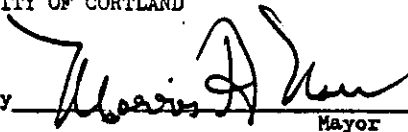
11. The VILLAGE hereby agrees to comply with all the rules and regulations of the State Commissioner of Environmental Conservation pertaining to sewage collection and transmission. The CITY hereby agrees to comply with all the rules and regulations of the State Commissioner of Environmental Conservation pertaining to sewage collection, transmission, treatment and disposal.

12. This agreement shall be for a term of thirty (30) years, and so much longer as the CITY utilizes that part of its sewerage system which is to receive and transport the sewage of the VILLAGE, and the sewage treatment and disposal plant of the CITY without any capital alteration to either that part of the sewerage system which is to receive and transport the VILLAGE'S sewage or to the sewage treatment and disposal plant, and thereafter, in the event any capital expenditure to that part of the sewerage system which is to receive and transport the sewage of the VILLAGE or the sewage treatment and disposal plant of the CITY, is legally mandated by a properly authorized governmental agency of New York State or the United States of America, this agreement shall continue so long as the VILLAGE pays its fair share of the capital expense incurred by the CITY. This agreement shall commence and become effective upon the completion and readiness for operational use of the proposed VILLAGE sewerage system and its connection to the CITY'S sewerage system as herein provided. The connection shall be made on an interim basis to the existing Homer Avenue sewer within the CITY boundary until the time as the proposed new Homer Avenue trunk sewer within the CITY is made operational, the permanent connection to the sewer being made by the CITY at that time.

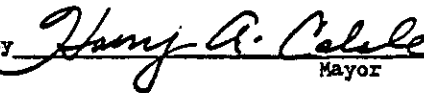
13. If any section, subdivision, paragraph, sentence, clause, or provision of this Agreement shall be unconstitutional, unlawful or ineffective, in whole or in part, to the extent that it is not unconstitutional, unlawful or ineffective it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid and ineffective.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective duly authorized officers and their corporate seals to be affixed the day and year hereinbefore written.

CITY OF CORTLAND

By 
Mayor

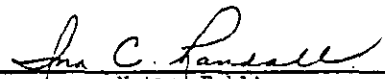
VILLAGE OF HOMER

By 
Mayor

STATE OF NEW YORK :
COUNTY OF CORTLAND :

ss:

On this 21st day of October, 1971, before me personally came MORRIS A. NOSS to me known, who by me duly sworn did depose and say that he resides at 11 Morrisville Drive, City of Cortland, New York; that he is the ~~Mayor~~ ^{the President} of the City of Cortland, the Corporation, and authorized agency, described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order in his official capacity as such.

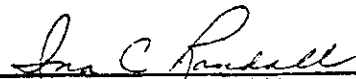


Notary Public
INA C. RANDALL No. 12-3202400
Notary Public, State of New York
Qualified in Cortland County
My Commission Expires March 30, 1973

STATE OF NEW YORK :
COUNTY OF CORTLAND :

ss:

On this 21st day of October, 1971, before me personally came HARRY A. CALALE to me known, who by me duly sworn did depose and say that he resides at 2 Sunset Drive, Village of Homer, New York; that he is the Mayor of the Village of Homer, the Corporation, and authorized agency described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order in his official capacity as such.



Notary Public
INA C. RANDALL No. 12-3202400
Notary Public, State of New York
Qualified in Cortland County
My Commission Expires March 30, 1973