

RESOLUTION ACCEPTING THE OPERATIONAL SUPPORT AGREEMENT BETWEEN THE VILLAGE OF ORWELL AND THE ASHTABULA COUNTY BOARD OF COMMISSIONERS THROUGH THE ASHTABULA COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES OF THE VILLAGE AS NEEDED

WHEREAS, Doug Starkey, Director of the Ashtabula County Department of Environmental Services, has presented an operational support agreement for the approval of the Board, to-wit:

- PARTIES:** Ashtabula County Department of Environmental Services, 36 W. Walnut St., Jefferson, OH 44047
Village of Orwell, 179 W. Main St., Orwell, Oh 44076
- SCOPE:** County provides operation, maintenance and management services for Ashtabula County potable water and wastewater systems pursuant to Chapters 6103 and 6117 of the Ohio Revised Code, respectively, as an independent operator, including: daily site checks, NPDES permit compliance services, summary reporting/updates, and as an emergency contact.
- COST:** None to the County, Orwell Village will pay the following:
Baseline operational support in the amount of \$67.50 hourly;
Services in the amount of \$250.00 Monthly Retainer Fee
Emergency Call outs (after hours) at \$75 an hour,
Includes any reimbursable costs as outlined in Appendix A
- Payment invoices will be submitted monthly to the Village, with Village paying County within 30 days of receipt
- TERM:** agreement terminates December 31, 2022

WHEREAS, this Board of Commissioners concurs with the recommendation of the Director and finds this agreement to be reasonable and necessary; now

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the agreement noted above is approved in accordance with the copy now on file in this office.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2022-350

July 26, 2022

A RESOLUTION ACCEPTING THE OPERATIONAL SUPPORT AGREEMENT BETWEEN THE VILLAGE OF ORWELL AND THE ASHTABULA COUNTY BOARD OF COMMISSIONERS THROUGH THE ASHTABULA COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES OF THE VILLAGE AS NEEDED.

Upon the motion of Kathryn L. Whittington, seconded by Casey R. Kozlowski.

VOTE:

J.P. Ducro IV

Aye

Casey R. Kozlowski

Aye

Kathryn L. Whittington

Aye

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



Lisa Hawkins, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

VILLAGE OF ORWELL OPERATIONAL SUPPORT AGREEMENT

This OPERATIONAL SUPPORT AGREEMENT ("Agreement") is made and entered into as of _____, 2022 by and between the Village of Orwell ("Village"), a municipal corporation in Ohio, and the Ashtabula County Board of Commissioners by and through the Ashtabula County Department of Environmental Services ("County").

RECITALS

WHEREAS, Village owns a permitted wastewater collection system and Ohio EPA-permitted Class II treatment plant located at 261 Sunset street Orwell, Ohio; said permit being National Pollutant Discharge Elimination System #3PB00041*ID and operated pursuant to Ohio Revised Code Chapter 729, and desires to contract for temporary assistance when lack of staffing exist for wastewater operations; and

WHEREAS, County provides operation, maintenance and management services for Ashtabula County potable water and wastewater systems pursuant to Chapters 6103 and 6117 of the Ohio Revised Code, respectively; and has agreed to provide those services for Village on the terms and conditions set forth in this Agreement; and

THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - AGREEMENT

Section 1.1 - *Agreement*. This Agreement consists of the terms and conditions set forth in the sections captioned by numbered article designations ("Articles") and the following appendices, which are incorporated and made part this Agreement by this reference and are included in any reference to this Agreement.

Appendix A – Reimbursable Costs

This Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. Neither party will be bound by or be deemed to have made any representations, warranties, commitments or other undertakings with respect to the subject matter of this Agreement that are not contained in this Agreement.

Section 1.2 - *Effective Date and Term*. This Agreement shall be effective and shall govern the rights and obligations of the parties as of _____, 2022 on a monthly basis, and shall be in full force and effect through December 31, 2022. Both parties agree to meet upon request of either party to address any concerns and change agreement that both mutually agree to during the contract period. Upon formal written notice of intent by the Village or County not less than sixty (60) days in advance, this Agreement may be terminated at the discretion of either party.

Section 1.3 - *Relationship of the Parties*. County has been retained by Village as an independent contractor to operate, maintain and manage certain facilities on behalf of Village, in accordance with pertinent requirements within EPA permits to operate said facilities. Village has delegated to County overall

responsibility for operating, maintaining and managing the wastewater facilities to ensure that said facilities are readily available for uninterrupted wastewater treatment service, and meets all requirements under pertinent permits to operate. Neither County nor any of its employees, subcontractors or agents shall be deemed to have any other status, except that County is the agent of Village to the limited extent that this Agreement expressly grants County the authority to act on behalf of Village.

Section 1.4 - *Representatives*. Village and County shall each designate a representative ("Designated Representative") to act on its behalf in overseeing the performance of this Agreement. Village and County may change their respective Designated Representatives upon written notice to the other party given as provided in this Agreement. Designated Representatives shall be the primary means for communication and all other interactions between Village and County that are required under this Agreement. Designated Representatives shall have the power and authority to bind their respective principals under the terms of this Agreement, with any required internal approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal.

ARTICLE 2 - DEFINITIONS

Section 2.1 - *Definitions*. Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Article 2. Terms that are defined in other Articles shall have the meanings given to them in those Articles.

"Bankruptcy" means a situation in which (i) a party's actions under applicable debtor relief laws demonstrate an inability to pay its debts as they mature or a need for protection from its creditors; (ii) a court of competent jurisdiction approves a petition filed against a party, which petition sought relief for the party's creditors, and the action of the court remains in effect for an aggregated period of 60 days (whether or not consecutive); (iii) a party admits in writing its inability to pay its debts as they mature; (iv) a party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or (v) a party makes an assignment for the benefit of creditors or takes other similar action for the protection or benefit of its creditors.

"Business Day" means any day other than a Saturday, Sunday or other day on which government agencies and offices are authorized or required to close in the State of Ohio, and between normal business hours.

"Facilities" as contemplated under this Agreement shall mean, collectively, the Village of Orwell' wastewater collection system and wastewater treatment plant with all pertinent appurtenances.

"Facility Agreements" means the agreements relating to Facilities, including any Power Purchase Agreement, Interconnection Agreement, Loan Agreements, this Agreement and all other agreements applicable to Facilities, permits, and licenses required for the operation, maintenance and management of Facilities, as identified in writing by Village.

"Force Majeure Event" means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of Section 15.3 (*Force Majeure*). Subject to the foregoing, "Force Majeure Event" shall include, as to either party, explosion and fire (in either

case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of Village's facilities, which events were not pending on the date of this Agreement.

"Lender(s)" means

(i) any person that has made loans to Village, its successors or permitted assigns for the financing or refinancing of the Facilities (or any part thereof) or which loans are secured by the Facilities (or any part thereof),

(ii) the holder(s) of indebtedness evidencing any such loans or any person or entity lawfully acting on behalf of such holders, or

(iii) any person or entity that purchases Facilities in connection with a sale-leaseback or other lease arrangement in which Village is the lessee of Facilities pursuant to a net lease.

"Normal Working Hours" shall mean the time between the hours of 7:00 AM and 3:30 PM or at the discretion of the County and agreed to by the Village, Monday through Friday, except legal holidays.

"Operating Manuals" means the operating data, design drawings, specifications, vendors' manuals, warranty requirements, procedures (including those for maintenance of Facilities and environmental and safety compliance), and similar materials with respect to Facilities.

"Prudent Utility Practice" means (i) any of the practices, methods, and acts engaged in or approved by a significant portion of the wastewater utility industry in the country and geographic region where Facilities are located during the relevant time period, or (ii) practices, methods and acts that, in the exercise of reasonable judgment on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

"Reimbursable Costs" are those costs set forth in Article 5.

"Services" includes all services set forth in Article 3.

ARTICLE 3 - SERVICES

Section 3.1 – *Scope of Services*. County shall provide upon request the following services as indicated herewith.

(1) Baseline Operational Support Services

- a. Daily site checks, which shall include a walk-through of the wastewater treatment plant and pertinent process apparatus of the water distribution system during normal working hours, or routine on-demand monitoring of any telemetry-supported infrastructure; data-logging of critical pumping equipment (as needed), visual inspection of operating equipment (pumps, tanks, motors, control panels, and

miscellaneous site components), and identification of any operational anomaly and immediate troubleshooting upon detection.

- b. NPDES Permit Compliance Services: County understands the operational procedures pertinent to the Village's Wastewater Treatment Plant and corresponding effluent limitations under NPDES Permit #3PB00041*ID. County will perform as requested the sampling and testing as prescribed in the Ohio EPA NPDES permit through the Village's contractual third-party testing laboratory. Services relative to coordination of enforcement actions by the Ohio EPA or USEPA, if any, are not inclusive of services under this Agreement.
 - c. Summary Reporting/Updates: County's Designated Representative shall provide to the Village's Designated Representative, at the request of the Village, a concise update of O&M services and recommendations for improvements as necessary.
 - d. Emergency Contact: Village shall designate itself as the primary point of contact for Village's 24/7 alert notification provider and shall remain on standby at all times to dispatch Village staff and contractor(s) to remedy any emergency situation within the Village's Facilities. Any assistance beyond the scope herein shall be defined under subsection (2) concerning Emergency Hourly Services.
- (2) Emergency Hourly Services shall be defined herein as providing management assistance to Village at its request, or acting in the capacity of the Village at its request, in coordinating any and all emergency/non-planned service work during and after normal business hours and providing courtesy notice of any unforeseen emergency occurrence to the Village's Designated Representative. It is understood that all billable services provided by third-party contractors for this work shall be invoiced directly to the Village.
- (3) Non-Emergency Hourly Services shall be defined herein as all non-emergency/planned service work as expressly requested by the Village's Designated Representative such as providing inspection services for sewer service connections within the Village's Facilities in the absence of Village personnel. In the event that the Village requests these services, they shall be submitted in writing to the County's Designated Representative not less than three (3) business days in advance for effective planning and coordination of County staffing. It is understood by both parties that this shall also include the County providing to the Village all Operator of Record services beyond normal working hours for wastewater collection and treatment on an hourly, overtime basis for weekend site checks upon the Villages request.

Section 3.2 - *Standards for Performance of the Services*. County shall perform the Services required under this Agreement, in a prudent, reasonable, and efficient manner and in accordance with (i) any applicable permits to operate wastewater Facilities at the time of execution of this Agreement, Operating Manuals, Administrative Procedures Manuals and vendor warranties, (ii) all applicable Laws, (iii) Prudent Utility Practices, (iv) the operational requirements of any Facility pursuant to Ohio law, and (v) all insurance policies specified in Article 9 of this Agreement. County shall use all reasonable efforts to optimize the useful

life of Facilities and to minimize the potential to realize any Reimbursable Costs and/or service interruption, or other unavailability.

Section 3.3 – County’s and Village’s Personnel Standards. County shall provide as reasonably necessary all labor and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned and shall meet any requirements for performance of Village personnel. All individuals employed by County to perform the Services shall be employees of the Ashtabula County Department of Environmental Services, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by County. With respect to labor matters, hiring personnel, and employment policies, County shall comply with all applicable Laws. County also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and with County’s acknowledgment (hereby given) that County has no authority to enter into any contracts with respect to labor matters that purport to bind or otherwise obligate the Village. Similarly, Village personnel shall provide as reasonably necessary all routine operational and maintenance services as required under pertinent permits to operate the Facilities and in accordance with any and all policies and procedural practices as administered by the Village.

Section 3.4 - Compliance. County shall comply with all Laws applicable to the operation, maintenance and management of the Facilities and the performance of the Services upon request. County shall provide reasonably necessary assistance to Village when requested, to secure permits, licenses, and approvals (and renewals of the same) that Village is required to obtain from or file with any governmental agency regarding the Facilities, inclusive of the NPDES Permit renewals for the wastewater treatment plant. Operator also shall file such reports, notices, and other communications as may be required by any governmental agency regarding the Facilities.

Section 3.5 - Operating Records and Reports. County shall maintain Village’s operating logs, records, and reports that document the operation and maintenance of the Facilities when requested. All in form and substance sufficient to meet Village’s reporting requirements under pertinent permits to operate the Facilities. Village shall maintain current revisions of drawings, specifications, lists, clarifications and other materials related to operation and maintenance of the Facilities provided to County by Village and vendors. County can provide Village reasonably necessary assistance in connection with Village’s compliance with reporting requirements under pertinent permits to operate the Facilities, applicable Laws or any other agreement to which the Village is a party relating to the Facilities. Such assistance shall include providing reports, records, logs and other information that Village may reasonably request as to the Facilities or their operation.

Section 3.6 - No Liens or Encumbrances. County shall maintain the Facilities free and clear of all liens and encumbrances resulting from any action of County or work done at the request of the Village, except for such liens or encumbrances that result directly from nonpayment by Village of amounts due and owing to County under this Agreement.

Section 3.7 - No Action. Except where such action is expressly permitted by this Agreement, County shall not take any action that would cause a default under any Facilities Agreement.

Section 3.8 - Emergency Action. If an emergency endangering the safety or protection of persons, Facilities, or property located near Facilities occurs, County shall promptly notify Village and take all necessary

action to attempt to prevent or mitigate any such threatened damage, injury or loss. County shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

Section 3.9 - *Action in Extraordinary Circumstances*. In the event that

(A) Facilities and/or major equipment suffers an unplanned outage (or County reasonably believes that such an occurrence is imminent), and

(B) County has made reasonable, but unsuccessful, efforts to notify and communicate with Village regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement, then County shall

- (i) take all necessary action to prevent or to mitigate such unplanned outage,
- (ii) make reasonable efforts to minimize any cost associated with such remedial action,
- (iii) continue to attempt to notify and communicate with Village regarding the occurrence and the remedial action.

ARTICLE 4 – VILLAGE RESPONSIBILITIES

Section 4.1 - *Information*. Village shall provide County with all vendor manuals, spare parts lists, Project data books and drawings which are provided to Village pursuant to any Facilities' Agreement or by any contractor responsible for construction, installation, repair or maintenance of Facilities or a part thereof. Subject to the standards of performance set forth in Section 3.2, County shall be entitled to rely upon such information in performance of the Services. Village shall also provide County with copies of all Facilities Agreements and any amendments thereto and any other documents that define Facilities' operating requirements.

Section 4.2 - *Overhaul of Major Equipment and Capital Improvements*. The cost of all equipment teardowns and overhauls and all capital improvements shall be the responsibility of the Village. County shall promptly notify Village in writing of any such teardowns and overhauls of equipment or capital improvements that County believes are necessary or advisable together with a recommended schedule for implementing such repairs or improvements. If Village has otherwise consented in writing to reimburse County for such costs, County shall restrict its services hereunder to a basis of making the recommendations as to improvement schedule.

ARTICLE 5 - COMPENSATION AND PAYMENT

Section 5.1 - *Payments*. As compensation to County for performance of the Services hereunder, Village shall pay County according to the fee schedule below:

<u>Task/Service Item Description</u>	<u>Fee</u>	<u>Billing Frequency</u>
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Baseline Operational Support Services	<u>\$67.50</u> <u>\$250.00</u>	Hourly Monthly Retainer Fee
Emergency Call Out	<u>\$75.00</u>	Hourly

Section 5.2 - *Reimbursable Costs*. The Village may elect to designate any project management and third-party billable service to the County, and shall reimburse County for all costs incurred by County above and beyond the performance of the Services, including the costs set forth in Appendix A (collectively, the "Reimbursable Costs"). It shall be understood that the Village's obligation under this provision is subject to (i) Village's express approval of the costs separately in writing, or (ii) County incurring costs in accordance with Section 3.8 (*Emergency*) and 3.9 (*Action in Extraordinary Circumstances*).

Section 5.3 - *Billing and Payment*. Within 30 days following the end of each month, County shall submit the receipts and disbursements showing Reimbursable Costs for such month in accordance with Subsection 5.2(a). Within 15 days after receipt of any such invoice, the Village shall:

(a) Pay County the sum specified in such invoice, less (i) any amounts previously deposited with County relating to such invoice, and (ii) any portion of such invoice amount that Village disputes in good faith or is permitted to offset under this Agreement; and

(b) With respect to any disputed portion of such invoice, provide County with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article 14.

ARTICLE 6 - PROCEDURES, PLANS AND REPORTING

Section 6.1 - *Operating Data and Records*. County shall monitor and record all operating data and information that (i) Village must report to any person or entity under any Facilities Agreement, (ii) Village must report to any government agency or other person or entity under applicable Laws and (iii) Village reasonably requests. County shall report required or requested operating data and information to Village as specified by Village to support monthly invoicing under Facilities Agreements, and within 15 Business Days following a request by the Village. Operating data to be reported include information from operating logs, meter and gauge readings and maintenance records.

Section 6.2 - *Litigation, Permit Lapses*. Upon obtaining knowledge thereof, County shall promptly notify Village in writing of: (i) any litigation, claims, disputes or actions, threatened or filed, concerning the Facilities or the Services; (ii) any refusal or threatened refusal to grant, renew or extend (or any action pending or threatened that might affect the granting, renewal or extension of) any license, permit, warranty, approval, authorization or consent relating to the Facilities or the Services; and (iii) any dispute with any governmental authority relating to the Facilities or the Services.

Section 6.3 - *Other Information*. County shall promptly submit to Village any material information concerning new or significant aspects of Facilities' activities and, upon Village's request, shall promptly submit any other information concerning the Facilities or the Services.

ARTICLE 7 - LIMITATIONS ON AUTHORITY

Section 7.1 - *General Limitations*. Notwithstanding any provision in this Agreement to the contrary, unless previously approved by Village in writing, County and any employee, representative, contractor or other agent of County are prohibited from taking the specified actions with respect to the matters indicated below.

(a) Disposition of Assets. Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of Village;

(b) Lawsuits and Settlements. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, Village or County, the cost of which, in the case of County, would be a Reimbursable Cost hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;

(c) Liens. Create, incur or assume any lien upon the Facilities;

(d) Transactions on Behalf of Others. Engage in any other transaction on behalf of Village or any other person or entity not expressly authorized by this Agreement or that violates applicable Laws, this Agreement or any Facilities Agreement; or

Section 7.2 - *Execution of Documents*. Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of Village) to be executed by County shall be executed by the authorized representative of County or, subject to prior written notice to Village, by such other representative of County who is authorized and empowered by County to execute such documents.

ARTICLE 8 - TERMINATION

Section 8.1 - *Termination for Cause*. Either party may terminate this Agreement with cause, upon the following conditions, by providing a written notice of default: which is not cured within thirty days from the date of receipt of such notice:

(a) Either party violates any term or condition of this Agreement

(b) Either party violates or knowingly consents to a violation of any federal, state or local law applicable to the services for the facility where the violation has or may have a material adverse effect on the maintenance or operation of the facility and the party does not cure such violation within thirty days, or if not curable within 30 days, within such period as may be reasonably necessary but in no event more than 90 days provide such violating party diligently commences such cure.

County shall be compensated for all unpaid Services Fees and Reimbursable Costs up to and including the date of such termination.

Section 8.2 - *Termination upon Notice*. Village or County may terminate this Agreement upon sixty (60) day notice for any reason. County shall be compensated for all unpaid Services Fees and Reimbursable Costs up to and including the date of such termination.

ARTICLE 9 - INSURANCE

Section 9.1 - *Coverage*.

Village and County shall obtain and maintain the insurance with limits and coverage provisions not less than the limits and coverage provisions set forth below:

(i) **General Liability Insurance:** Liability insurance with limits of \$1,000,000 each occurrence for personal injury (including bodily injury and death) and property damage.

(ii) **Automobile Liability Insurance:** Automobile liability insurance with limits of \$1,000,000 each occurrence for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable.

(iii) **Workers' Compensation Insurance:** Workers' compensation insurance as required by applicable laws, including employer's liability insurance for all employees of County.

(iv) **Excess Liability Insurance:** Excess liability insurance with limits of \$5,000,000 each occurrence made covering claims in excess of the underlying insurance described in the foregoing subsections (i), (ii) and (iii).

The amounts of insurance required in the foregoing subsections (i), (ii), (iii) and (iv) may be satisfied by purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified. Upon mutual agreement of the Parties, either Party may provide equivalent self-insurance in lieu of the requirements set forth in this Section.

All policies of liability insurance to be maintained by County or Village shall include the following:

- (A) A severability of interests or cross liability clause
- (B) Insurance shall be primary to any insurance or self-insurance maintained by the other Party or the Lenders;
- (C) Waivers of subrogation in favor of the other Party, the Lenders and such other persons as may be required by any Facilities Agreements;
- (D) The other Party, Lenders and such other persons or entities as may be required by the Facilities Agreements named as additional insureds; and
- (E) a provision that bars any cancellation or reduction in coverage in a manner that affects the interest of the other Party, without 30 days' prior written notice to the other Party, except for termination for non-payment of premium which shall require 10'days prior written notice to the other Party.

Section 9.2 - *Certificates*. On or before the date on which insurance must be provided, each party shall furnish certificates of insurance to the other party evidencing the insurance required pursuant to this Agreement. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

Section 9.3 - *Payment of Deductible Amounts*. Notwithstanding which party hereto shall have purchased, or been responsible for the purchase of, any insurance in respect of the Facilities or otherwise referred to in this Agreement, County shall promptly pay to Village any deductible amount related to any claim against or other cost to Village covered under any such insurance policy which arose due to the gross negligence of County.

ARTICLE 10 - LIABILITIES

Section 10.1 - *Environmental Liability*.

(a) County Liability. County shall not be responsible for claims directly or indirectly related to hazardous materials present, if any, at the Facilities before the date of this Agreement, except to the extent County acted with respect to such materials in a grossly negligent manner. Village shall defend, indemnify and hold the County harmless against such claims, except to the extent such claims arise from County's grossly negligent or intentional acts.

(b) Village Liability. Village shall not be responsible for claims directly related to hazardous materials, if any, at the Facilities arising out of the grossly negligent or intentional acts of County. This provision of the Agreement shall not be construed to require County to take corrective action with respect to any hazardous materials at the Facilities before the date of this Agreement.

(c) Governmental Actions. In the event of an emergency creating a serious risk to public health and safety or which seriously jeopardizes the compliance with the Village's NPDES permit, the County may after reasonable notice to Village may take action to mitigate such emergency and shall be reimbursed by the Village to the extent that the emergency was not created by errors or omissions of the County.

ARTICLE 11 - LIMITATIONS OF LIABILITY

Section 11.1 - *Limitations of Liability*.

(a) Personal Liability Limited. Village and County each understand and agree that there shall be absolutely no personal liability on the part of any of the members, partners, officers, employees, directors, agents, authorized representatives or Affiliates of Village or County for the payment of any amounts due hereunder, or performance of any obligation hereunder.

(b) Survival. The parties further agree that the waivers and disclaimers of liability, releases from liability, limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and

shall extend to members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorized representatives, and affiliates of such party.

(c) Exclusivity. The provisions of this Agreement constitute Village's and County's exclusive liability, respectively, to each other, and Village's and County's exclusive remedy, respectively, with respect to the Services to be performed hereunder and Village hereby releases County performing Services hereunder, and County hereby releases Village performing its obligations hereunder, from any further liability.

ARTICLE 12 - TITLE, DOCUMENTS AND DATA

Section 12.1 - *Materials and Equipment*. Title to all materials, equipment, tools, supplies, consumables, spare parts and other items purchased or obtained by County on a Reimbursable Cost basis hereunder shall pass immediately to and vest in Village upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect County's obligations as set forth in this Agreement.

Section 12.2 - *Documents*. All materials and documents prepared or developed by County, its employees, representatives or contractors in connection with the Facilities or performance of the Services, including all manuals, data, drawings, plans, specifications, reports and accounts, shall become Village's property when prepared, and County, its agents, employees, representatives, or contractors shall not use such materials and documents for any purpose other than performance of the Services, without Village's prior written approval. All such materials and documents, together with any materials and documents furnished to County, its agents, employees, representatives, or contractors by Village, shall be delivered to Village upon expiration or termination of this Agreement and before final payment is made to County.

Section 12.3 - *Review by Village*. All materials and documents referred to in Section 13.2 hereof shall be available for review by Village or Lenders (including their agents or advisors) at all reasonable times during development and promptly upon completion. Village's approval of materials and documents submitted by County shall not relieve County of its responsibility for the correctness thereof or of its obligation to meet all requirements of this Agreement.

Section 12.4 - *Proprietary Information*. Where materials or documents prepared or developed by County or its agents, employees, representatives or contractors contain proprietary information, systems, techniques, or know-how acquired from third parties by County or others acting on its behalf, such persons or entities shall retain all rights to use or dispose of such information, provided, however, that Village shall have the right to the same to the extent necessary for operation or maintenance of the Facilities.

ARTICLE 13 - RESOLUTION OF DISPUTES

Section 13.1 - *Resolution through Discussions*. If any dispute or difference of any kind (a "Dispute") arises between Village and County in connection with, or arising out of, this Agreement, the Village and County within 30 days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of Village and County shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within 5 Business Days, the Dispute shall be referred within 2 Business Days of the lapse of the 5 Business Day period to the responsible senior management of each party for resolution. Neither party

shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Village and County have had at least 5 Business Days to resolve the Dispute following referral of the Dispute to them.

Section 13.2 – The Courts of Ashtabula County shall retain exclusive jurisdiction to resolve any disputes between parties to the extent in which the parties cannot resolve their disputes within reasonable amount of time. This agreement does not prohibit the parties from seeking mediation before litigation.

Section 13.3 - *Continued Performance*. During the pendency of any mediation or litigation Village and County shall continue to perform their obligations under this Agreement subject to Court Order.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.1 - *Assignment*. Neither Village nor County party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto, except that this Agreement may be assigned by Village without such prior consent to any successor of Village, to a person or entity acquiring all or substantially all of the Facilities, or to a Lender or any purchaser of the Facilities upon the exercise of remedies under a Facilities Agreement by a Lender. County hereby consents to the assignment by Village of a security interest in this Agreement to Lenders. County further agrees to execute documentation to evidence such consent reasonably required by the Lenders typical for project finance. County recognizes that such consent may grant certain rights to such Lenders, which shall be fully described in the consent documents.

Section 14.2 - *Access to Facilities*.

(a) Village. Village, Lenders and their respective agents and representatives shall have access at all times to the Facilities and any documents, materials and records and accounts relating to Facilities' operations for purposes of inspection and review. Upon the request of Village, Lender or their respective agents and representatives, County shall make available to such persons or entities and provide them with access to any operating data and all operating logs.

(b) Cooperation. During any such inspection or review of the Facilities, each of Village, Lender and their respective agents and representatives shall use its reasonable commercial efforts to cause authorized visitors to comply with County's safety and security procedures and to conduct such inspection and review in a manner which causes minimal interference with County's activities. County agrees to cooperate fully with Village, Lender and their respective agents and representatives in providing requested information and documentation for the support of any financial or legal transactions associated with the Facilities.

Section 14.3 - *Force Majeure*. If either Village or County is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is

necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

Section 14.4 - *Amendments*. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

Section 14.5 - *Survival*. Notwithstanding any provisions herein to the contrary, the obligations and limitations of liabilities set forth herein, shall survive in full force despite the expiration or termination of this Agreement.

Section 14.6 - *No Waiver*. It is understood and agreed that any delay, waiver or omission by Village or County with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by Village or County of any subsequent breach or default of the same or other required performance on the part of Village or County.

Section 14.7 - *Notices*. All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address, email or fax number set forth in this Section 14.7 or at such other address, email or fax number as hereafter specified as provided in this Section 14.7. All Notices shall be (i) delivered personally or (ii) sent by fax, electronic mail, registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to given (A) when transmitted if sent by fax, electronic mail, or telegraph (provided the transmittal is confirmed), or (B) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

To Operator:

**Ashtabula County Department of Environmental Services (ACDES)
P.O. Box 520, 36 West Walnut Street, Jefferson, OH 44047**

ATTN: Noah Pierce

Tel: (440) 576-3098

Cell: (440) 969-4928

ATTN: Mr. Douglas Starkey, Director

Tel: (440) 576-3722

Cell: (440) 969-4926

Fax: (440) 576-3781

E-Mail: dgstarkey@ashtabulacounty.us

To Village:

The Village of Orwell, Ohio

Address 179 West Main St.

P. O. Box 56 Orwell, OH 44076

ATTN: Tami Pentek, Village Manager

Tel: (440) 437-6450
Fax: (440) 437-1055
E-Mail: tpentek@orwellvillage.org

Section 14.8 - *Fines and Penalties*. If during the term of this Agreement any governmental or regulatory authority or agency assesses or levies any fines or penalties against Village or County arising from this Agreement or the operations of the wastewater treatment system;

- (a) The County shall be responsible for any such fines or penalties arising from the County's errors or omissions.
- (b) The Village shall be responsible for any such fines or penalties arising from the Village's errors or omissions.
- (c)

Section 14.9 - *Representations and Warranties*. Each party represents and warrants to the other party that:

(a) such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;

(b) to the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; and

(c) there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

Section 14.10 - *Counterparts*. The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

Section 14.11 - *Governing Law*. This Agreement is executed and intended to be performed in the State of Ohio and the laws of the State of Ohio shall govern its construction, interpretation and effect.

Section 14.12 - *Partial Invalidity*. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

Section 14.13 - *Captions*. Titles or captions of Sections contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

Section 14.14 - *Dollar Amounts*. All amounts of money in this Agreement are denominated in U.S. currency.

Section 14.15 - *Vendor's Warranties*. For Village's benefit, County shall obtain from sellers of equipment, material, or third-party services, warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable, and, to the extent of any such warranties actually obtained, Village releases County from any further liability arising in respect of such equipment, material or services (other than the Services) to the extent such liability is covered by any such warranty. County itself shall not be liable for any such warranties, or for any defects or damage caused by such equipment, material or services (other than the Services). Upon Village's request, County agrees to take such steps as are necessary, short of litigation, to enforce said warranties. Each such warranty shall be enforceable by Village for Village's benefit or assignable by County to Village without any further action or consent by or on the part of any third party. Unless otherwise requested, County shall administer such warranties and immediately notify Village of any defects discovered or suspected that may be covered by such warranties. When requested, County shall assign any such warranty to Village and assist Village with the administration and enforcement of such warranty, or, if such warranty is not assignable to Village, assist Village with the administration and enforcement of such warranty throughout the term of this Agreement.

Section 14.16 – *Binding agreement/non-assignability* This agreement is binding upon shall inure to the benefit of, the parties, their assigns and successors in interest. The County shall not assign any interest in this agreement to a third party without the prior written consent of the village.

[SIGNATURES ON NEXT PAGE]

Appendix A - REIMBURSABLE COSTS

At the discretion of the Village in delegating responsibility to the County as to coordination of any project, improvement or provide additional staffing and bearing cost for any such work, Reimbursable Cost items shall be paid to County in accordance with the requirements of this Agreement. Reimbursable Costs include:

1. Labor costs
 2. Spare and replacement parts
 3. All material, tools and equipment necessary to operate and maintain the Project
 4. Chemicals
 5. Lubricants (including proper disposal costs)
 6. Specialized instrumentation and calibration equipment
 7. Rigging and handling equipment
 8. Consumables and general supplies
 9. Cleaning Supplies
 10. Shop equipment installed in Project
 11. Authorized leased equipment
 12. Specialized test and calibration equipment
 13. Major equipment overhauls
 14. Building repairs and maintenance (not caused by contractors under the Project Agreements)
 15. Insurance costs
 17. Taxes (excluding income) required to be paid by County
 18. Costs related to training of plant personnel
 19. Consultants' fees and expenses if approved (in advance) by Village.
 19. Contract Services, if approved (in advance) by Village.
 20. Vehicles and equipment to be billed utilizing the FEMA schedule of rates
- B. The following will be Reimbursable Costs when specifically related to Facilities' support:
1. Office supplies
 2. Office equipment and furniture
 3. Telephone and other communication service charges
 4. Freight and express mail charges
 5. Janitorial, cleaning, and groundskeeping services

All Services by County that support Facilities' activities and all Reimbursable Costs shall include a three (3%) administrative fee and be approved by the Village, prior to implementation by County.

Appendix B – Contractor Call Out List

RESOLUTION NO. 22-07-01R

A RESOLUTION ACCEPTING THE OPERATIONAL SUPPORT AGREEMENT BETWEEN THE VILLAGE OF ORWELL AND THE ASHTABULA COUNTY BOARD OF COMMISSIONERS THROUGH THE ASHTABULA COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES FOR OPERATION, MAINTENANCE AND MANAGEMENT SERVICES OF THE VILLAGE AS NEEDED.

WHEREAS, the Village council has determined it will best suit the needs of the village to accept the Operation Support Agreement with the Ashtabula County Board of Commissioners through the Ashtabula County Department of Environmental Services for as needed, operation, maintenance and management services for the Ashtabula County potable water and wastewater system.

NOW, THEREFORE, be it resolved by the council of the Village of Orwell, County of Ashtabula, and State of Ohio, that:

Section 1. It is hereby determined that the Operational Support Agreement is satisfactory and will best suit the needs of the village, and is hereby accepted and the manager and clerk-fiscal officer are hereby authorized and directed to enter into an agreement in accordance with the terms of said agreement.

Section 2. This resolution was passed in accordance with Ohio Revised Code, in open session and meeting to the public, having council waived its three (3) reading requirements.

Wherefore, this resolution shall take effect and be in full force from and immediately after its passage.

Passed: July 19, 2022

Approved:

Attest:


Clerk-Fiscal Officer



Manager



President of Council

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

VILLAGE OF ORWELL, OHIO (VILLAGE)

By: Tami Pentek
Tami Pentek, Village Manager

Date: 7-19-22

Approved as to Legal Form Only:

By: Chris Newcomb
Chris Newcomb, Village Solicitor

Ordinance of Village Council No. _____, adopted on ___/___/___

ASHTABULA COUNTY BOARD OF COMMISSIONERS (COUNTY)

Board Resolution No. 2022-350 SEWA, adopted on 7 / 26 / 22

By: J. P. Ducro IV
J. P. Ducro IV, President

Date: 7/26/22

By: Casey R. Kozlowski
Casey R. Kozlowski, Vice-President

Date: 7/26/22

By: Kathryn L. Whittington
Kathryn L. Whittington, Commissioner

Date: 7/26/22

Approved as to Legal Form Only:

By: Colleen M. O'Toole
Colleen M. O'Toole, Esq., Prosecuting Attorney
MAH 7/21/22