Sewer Use Agreement

This Sewer Use Agreement is made as the 26 day of APRIL, 2023, by and between the City of North Adams, a municipal corporation duly organized by law and situate in Berkshire County, Massachusetts and acting through its Mayor (hereinafter "North Adams") and the Town of Clarksburg, a municipal corporation duly organized by law and situate in Berkshire County, Massachusetts and acting through it's Board of Selectmen (hereinafter "Clarksburg").

WHERE AS, North Adams and Clarksburg are abutting municipalities; and

WHERE AS, Sections 4A OF Chapter 40 of the Massachusetts General Law allows a municipality toto enter an agreement to provide services for another municipality; and

WHERE AS, North Adams and Clarksburg entered into a Sewer Service Agreement dated December 28, 1955, reciting prior provisions by North Adams of sewer services to dwellings on Wheeler Avenue, Millard Avenue, Franklin Street and Hudson Brook Road in Clarksburg and providing for the provision of sewer services for certain land adjacent to North Eagle Street in Clarksburg to a point one-half (1/2) mile north of the North Adams- Clarksburg boundary line (the "1955 Agreement"); and

WHERE AS, North Adams and Clarksburg entered into an Agreement for Joint Use of the North Adams Sewage System and Hoosac Water Quality District Treatment Facility dated June 29, 1988 (the 1988 Agreement"); and

WHERE AS, pursuant to the 1988 Agreement, Clarksburg constructed certain sewers in Clarksburg connecting to existing sewers of North Adams and

WHERE AS, on or about October 30, 2003, North Adams entered into a consent decree between and among the City of North Adams, the town of Williamstown, the Hoosac Water Quality District (hereinafter "the District"), the United States Environmental Protection Agency and the Massachusetts Department of Environmental Protection, (the Consent Decree"); and

WHERE AS, North Adams, and Clarksburg entered into a Sewer Use Agreement, dated June 29, 2005 (the "2005 agreement"); and

WHERE AS, North Adams and Clarksburg desire to enter into and memorialize a new agreement as to the use of North Adams Sewer facilities;

NOW, THEREFORE, and in consideration of the premises set forth, the agreements reciprocally entered into hereby, the mutual covenants hereinafter recited and for the other good, valuable and sufficient considerations, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. All prior agreements between North Adams and Clarksburg in relation to the subject matter hereof whether explicit or by course of dealing, including but not limited to agreements dated December 28, 1955, June 28, 1988, and June 29, 2005, are hereby supplanted and terminated, without prejudice to the effectiveness of any previous termination, by North Adams Or Clarksburg.

2. Clarksburg shall at its expense maintain working meters on River Rd. Franklin St. Middle Rd. and Houghton St.
3. Clarksburg shall, within six months of the effective date of this agreement propose a schedule and plan for the installation of additional meters to capture currently unmetered flow. This schedule and plan is subject to the approval of the North Adams department of public services. The entire Clarksburg flow shall be metered except as mutually agreed otherwise. North Adams shall allow Clarksburg to construct meter facilities within the city as necessary to accomplish the intent of this paragraph.
4. Clarksburg agrees to assume all costs associated with the installation maintenance and operation of metering and recording devices at the Clarksburg -North Adams municipal boundaries. Clarksburg's responsibility in this regard shall extend solely to those meters measuring flow from Clarksburg to North Adams
5. All meters shall be calibrated add a semi- annual basis and repaired or replaced as necessary to ensure the accuracy of the flow readings. Calibration records shall be provided to the North Adams department of public services. Flows shall be continuously recorded. North Adams reserves the right to inspect meters, recording devices and flow records at any time upon 24-hour notice to Clarksburg.
6. The accuracy of all measuring and recording devices at the Clarksburg and North Adams lines pertinent to this agreement shall be verified upon request of North Adams Department of Public services or the sewer Commission of Clarksburg. Such verification shall be carried out in a manner acceptable to the commissioner of public services of North Adams and the sewer commissioner of Clarksburg. The costs of such verification shall be born by the requesting party. In the event the devices are found to be inaccurate, Clarksburg she'll have 30 days in which to repair or replace the malfunctioning device. Failure to comply with the requirements contained herein shall subject Clarksburg to a fine of $200 per day payable to the city of North Adams until such inaccuracy is cured.
7. Clarksburg shall report all flow data on a quarterly basis to North Adams Department of Public services.

8. All costs associated with maintenance of the sewer system located within the territory of Clarksburg shall we born by Clarksburg and all costs associated with maintenance of the sewer system located within the territory of North Adams shall be borne by North Adams. It is expressively understood that North Adams may furnish any labor or equipment on behalf of Clarksburg at a cost paid to North Adams by Clarksburg of time and materials plus 10%.

9. Clarksburg shall pay sewer fees as follows for fiscal year 2024:

One family house	$637 per year
Two- family house	$1.190 per year
Three- family house	$ 1,387 per year
More than three families	$2,216 per year
School	$5,500 per year
Entrance Fee	$1,000 per year

Beginning in fiscal year 2024, the household fee schedule may be adjusted each fiscal year by the North Adams Department of Public services if notice is made to Clarksburg 60 days prior to the start of the fiscal year. For the balance of the fiscal years covered by this agreement the annual adjustments shall not exceed 10% of the preceding year's fee. Clarksburg shall pay the one-time entrance fee once authorization to connect to the North Adams sewer has been obtained from the Hoosac Water Quality District and the North Adams City Council. The one-time entrance fee shall be adjusted no more than annually but without limitation as to the percent of the increase.

10. In addition to the fees contained in paragraph 10 above, Clarksburg shall pay 13% of the annual capital costs as contained in the North Adams certified assessment from the Hoosac Water Quality District. Connections permitted in Clarksburg above and beyond the number specified in section 16 herein may result in an adjustment to the percentage specified herein. The parties hereto shall mutually agree and such an adjustment prior to approval of the connection. The City of North Adams shall provide to the Town of Clarksburg a copy of the annual certified capital costs to be incurred by the Hoosac Quality Water District 60 days prior to the beginning of the new fiscal year.

11. The city of North Adams agrees to allow Clarksburg to discharge sewage into North Adams sewer system in an amount not to exceed an average daily flow of .082 mgd based upon a consecutive 12 month period and a peak hourly flow of .325 mgd. The peak hourly flow shall be determined as the sum of the peak hourly flows at each of Clarksburg's metering stations with an added allowance of 35% for unmetered flow. The figures contained herein represent allowable flow from the 354 metered accounts. The parties shall enter discussions to modify this paragraph once Clarksburg has installed additional meters pursuant to paragraph 4 above.

12. Clarksburg shall pay to North Adams a fee of $0.0005 per gallon of metered sewage flows and access of the above. Excess flow if any shall be determined and calculated on a quarterly basis.

13. Clarksburg shall require, and its rules and regulations shall so provide that any proposed new sewer connection shall first obtain permission to connect from the North Adams City Council and the mayor of North Adams. Permits shall also be obtained as required from the Hoosac Water Quality District (HWQD). A penalty of $5000 shall be assessed against Clarksburg for failure to comply with any part of this paragraph. North Adams is permitted at its convenience to make sewer connections to any sewers owned by North Adams. Connections permitted in Clarksburg above and beyond the number specified and section 16 Herein shall result in an adjustment to the limits established in section 12 herein the amount of 250 gpd for each single-family residential connection.

14. Clarksburg agrees that no industrial or other non-residential entity shall be allowed to connect into the sewage system or discharge into the same until such time as the nature, quality,

quantity and cost, if any, of the proposed effluent has been determined by North Adams to be acceptable, permission has been obtained from North Adams and a permit has been issued by the District.

15. Approved sewer connections as of the date of this agreement are listed on attachment A. North Adams may from time to time prohibit any and all new connections to the sewage system from Clarksburg without similarly prohibiting sewer connections within North Adams.

16. Clarksburg agrees to immediately take any action necessary to suffer any connection to the sewage system for which North Adams has not given approval and or the district has not issued a permit. Clarksburg further agrees to prevent any discharge of material into the system which may adversely impact the operation of the treatment facility run by the District or contravene the consent decree. Clarksburg shall take action to sever such connections immediately upon learning of such occurrence. Should Clarksburg fail to take corrective measures as contained herein or fails to enforce it's sewer rules and regulations, North Adams may terminate this agreement in accordance with section 22 herein.

17. Clarksburg shall perform all measures necessary to achieve and maintain compliance with the Clean Water Act, Massachusetts act, the Districts Permit, the consent decree, and any applicable federal and state regulations.

18. Costs attributable to a failure by Clarksburg to meet its responsibilities under this agreement, including but not limited to fines imposed under the Consent Decree which are attributable to Clarksburg, shall be assessed solely to Clarksburg. Clarksburg shall not be accountable for any liability or penalties imposed upon North Adams as a result of North Adams' failure to comply with its responsibilities pursuant to the terms of the Consent Decree.

19. North Adams shall invoice Clarksburg at the beginning of each fiscal year and quarterly payments shall be made on or before September 30th, December 31st, , March 31st and June 30th of the year.

20. The term of this agreement shall be ten years from the date of acceptance.

21. This agreement may be terminated by either party in the event of a material breach of this agreement by the non- terminating party, provided the terminating party provides at least 30 days' notice of intent to terminate and such notice of intent to terminate has first been sent to the non- terminating party into the non- terminating party has been afforded a reasonable opportunity to cure the breach. Material breach shall mean failure by a party to comply with the terms of this agreement, failure to pay amounts due or assessed in accordance with the terms of the agreement or failure to enforce the provisions of rules and regulations adopted by the parties as provided herein.

22. In case North Adams determines without any of the sewers herein referred to or any other sewer in North Adams being jointly used by North Adams and Clarksburg if surcharged at any time, the following shall apply:

    a) Clarksburg agrees that at North Adams request it will promptly investigate discharges into its sewers caused by inclusion of storm water, foundation drainage, unpolluted cooling waters, and infiltration from any and all sources, and if said excessive drainage is so found, to initiate and complete corrective action to the extent deemed necessary fulfilling the terms of this contract and complying with the terms of the Consent Decree. Costs for corrective action in each municipality shall be borne by the municipality in which the respective correction action is undertaken.
    b) If discharges caused by inflow and infiltration including but not limited to inclusion of storm water, foundation drainage, unpolluted cooling waters and infiltration from any and all sources are not found, or if methods of removing surcharges, subject to the requirements of the Consent Decree, Clarksburg will be required to regulate the entry of sewage into the sewers up North Adams by the installation of one or more holding tanks or other devices with the means to withhold discharge until the hours of normally lower flows in North Adams, or in such manner as to prevent surcharging.
    c) If, however, surcharging of sewers in North Adams jointly used by Clarksburg is caused entirely by additional flows from within North Adams, and would have occurred regardless of the entry of sewage from Clarksburg, then Clarksburg shall not be responsible for such construction and associated costs.

23. North Adams should not be responsible to Clarksburg or any person or entity in Clarksburg for any deficiency in sewer services from any cause whatsoever.

24. Clarksburg shall not contribute or permit to be contributed, directly or indirectly, any pollutant, material or wastewater which will interfere with the operation of or performance up North Adams sewer system or the Districts treatment facilities prohibited items include, but are not limited to, the following substances:

    a. Any liquids, solid or gases which by reason of their nature or quantity are, or may be, sufficient wither alone or by interaction with other substances to cause fire or explosion or be injurious in any way to the sewer system or treatment facilities or to the operation of the treatment facilities. At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five per cent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, sulfides and any other substance which North Adams, the District, the Commonwealth, or EPA has identified as a fire hazard or hazard to the system.

b. Solid or viscous substances which may cause interference with the operation of the North Adams sewer or wastewater treatment facilities such as, but not limited to: animal guts or tissues, paunch manure, bones, hair, hides or fleshing's, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding polishing wastes.

c. Any waste having corrosive property capable of causing damage or hazard to structures, equipment or personnel of the North Adams sewer system or the District.

d. Any wastes containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the treatment facilities, or to exceed the limitation set forth in a Categorical Pretreatment Standard. Toxic pollutants shall include but not be limited to any pollutant identified pursuant to section 307 (a) of the federal water pollution Control Act.

e. Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life.

f. Any substance which may cause the Districts effluent or any other product of the District such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged into the district's treatment facilities cause the District to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under section 405 of the Federal Water Pollution Control Act; any criteria, guidelines, regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.

g. Any substance which will cause the Water Quality District to violate either its NPDES or State Disposal System Permit, the Consent Decree or the receiving water quality standards.

h. Any waste with objectionable color not removed in the treatment process.

i. Any waste having a temperature which will inhibit biological activity in the District's treatment plant resulting in interference, but in any case, wastes with a temperature at the introduction into the Hoosac Water Quality District treatment plant which exceeds 40 degrees C (104 degrees F) as demonstrated by North Adams at North Adams expense.

j. Any pollutants, including oxygen demanding pollutants, released at a flow rate or pollutant concentration which Clarksburg knows or should have known will cause interference to the treatment process at the District.

k. Any waste containing any radioactive waste or isotopes of such half life or concentration as may exceed limits established by the District Chief in compliance with applicable State or Federal regulations.

l. Any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or other waters.

m. Any wastewater which causes a hazard to human life or creates a public nuisance.

25. Not withstanding anything contained herein to the contrary, Clarksburg shall in all respects conform to and take no action inconsistent with the Consent Decree and shall pay any costs or fines arising from any violation thereof by North Adams or the District attributable to Clarksburg.
26. Clarksburg shall not permit any storm water, cellar drains, sump pump or roof leaders to be connected in any way to the sewer system. Clarksburg shall have seven (7) days to eliminate such illegal connections and, if violations are not corrected within seven (7) days, shall be assessed a penalty of $500 per day for each violation of this paragraph until such time as the impermissible connection is eliminated. Any violation of this condition shall be cause for North Adams to discontinue service to the offending property.
27. Clarksburg agrees that it shall not permit any extension of any sewer lines intended to discharge into North Adams sewer system and ultimately into the District's treatment facility without North Adams's express written approval for the particular extension, the grant of which North Adams may, in its sole discretion, deny,
28. Clarksburg, prior to the effective date of this agreement, shall adopt such rules and regulations for the use of the sewers and for the enforcement of said rules and regulations as required by this agreement and approved by North Adams. Clarksburg shall from time to time thereafter within 60 days of written request adopt such amendments, revisions and/ or additions to such rules and regulations as North Adams request when necessary to comply with a consent decree, NPDES permit modifications shall be accomplished at no additional cost to North Adams.
29. In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution with a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules. Judgement on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
30. If any term or condition of this Agreement shall to any extent be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby.

IN WITNESS WHEROF the two parties have caused their legal corporate signatures and seals to be hereunto affixed by their proper officers, thereunto duly authorized this 26th Day of APRIL, 2023.

Authorized by Town Meeting Vote

TOWN OF CLARKSBURG
BY: SELECTBOARD

Approved as to form and
Manner of execution

TOWN COUNSIL

Authorized by the City of North Adams
The Approval of the Mayor
CITY OF NORTH ADAMS

Approved as to form and

Manner of Execution

City Solicitor

By:

Jennifer A. Macksey, Mayor