

**RESOLUTION OF THE PEQUANNOCK RIVER BASIN REGIONAL SEWERAGE
AUTHORITY AUTHORIZING THE EXECUTION AND DELIVERY OF THE 2015
AMENDMENT TO THE 1987 SERVICE CONTRACT BETWEEN THE PEQUANNOCK
RIVER BASIN REGIONAL SEWERAGE AUTHORITY AND THE BOROUGH OF
RIVERDALE**

WHEREAS, as authorized by the Act, the Pequannock River Basin Regional Sewerage Authority (the "Authority") and The Pequannock, Lincoln Park and Fairfield Sewerage Authority (the "Two Bridges Authority") entered into an agreement, dated December 20, 1985, and entitled: "1985 Service Contract Between The Pequannock, Lincoln Park and Fairfield Sewerage Authority and The Pequannock River Basin Regional Sewerage Authority", as amended by an agreement dated October 11, 1995 and by an agreement dated December 31, 2008 (collectively, the "Pequannock River/Two Bridges Agreement"), relating to the treatment and disposal of sewage; and

WHEREAS, sewage originating in the service area of the Authority is treated and disposed of by the Two Bridges Authority; and

WHEREAS, the Borough of Riverdale is a customer of the Authority pursuant to the 1987 Riverdale Service Contract between the Authority and Riverdale (the "1987 Riverdale Service Contract") as amended in 1997, 2003, 2006 and 2008; and

WHEREAS, as authorized by the Act, the Authority entered into a Service Contract with the PRBRSA Member Municipalities, dated as of December 31, 1990 and entitled: "1990 Amendment to the 1985 Service Contract Between The Pequannock River Basin Regional Sewerage Authority and Borough of Bloomingdale and Borough of Butler and the Borough of Kinnelon" (the "1990 Amendment") relating to the use of the System; and

WHEREAS, by virtue of a series of capacity allocation transfer transactions between and among the Authority, Bloomingdale, Butler and Kinnelon with the Borough of Riverdale, the capacity available to Riverdale is currently 0.409 mgd, representing 15.73% of the 2.60 mgd currently available to the Authority at the Two Bridges Authority Treatment Plant; and

WHEREAS, there is currently pending before the Authority, a 2015 Five Party Agreement under the terms of which 0.091 mgd of additional capacity would be available to Riverdale for a total of 0.500 mgd being 19.23% of the 2.60 mgd currently available to the Authority at the Two Bridges Authority Treatment Plant; and

WHEREAS, there is currently pending before the Authority, this 2015 Amendment to the 1987 Service Contract between the Authority and the Borough of Riverdale to implement the provisions of the aforesaid Five Party Agreement.

Section 1. 2015 Amendment to the 1987 Service Contract Between the Authority and the Borough of Riverdale. The substance and form of the 2015 Amendment to the 1987 Service Contract between the Authority and the Borough of Riverdale in the form reviewed by the Authority, a copy of which is attached hereto as Exhibit A, are hereby approved, adopted and agreed to by the Authority with such minor corrections or modifications, additions or deletions which do not alter the substantive provisions thereof and which may hereafter be approved by the Chairman or Vice Chairman of the Authority after consultation with counsel and bond counsel to the Authority. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and deliver the 2015 Amendment to the 1987 Service Contract between the Authority and the Borough of Riverdale and the Secretary or Assistant Secretary of the Authority is hereby authorized and directed to affix the seal of the Authority on the 2015

Amendment to the 1987 Service Contract between the Authority and the Borough of Riverdale and to attest same. The execution of the 2015 Amendment to the 1987 Service Contract between the Authority and the Borough of Riverdale by the Chairman or Vice Chairman of the Authority shall be conclusive evidence of any approval required by this Section.


Section 2. Contingent Approval. This authorization is subject to the approval of and execution and delivery to the Authority by all parties to the Five Party Agreement between and among Bloomingdale, Butler, Kinnelon, The Authority and Riverdale as shall be needed to perfect the transaction contemplated therein.

Section 3. Capitalized Terms. Unless a different meaning is clear from the context, all capitalized words and terms used but not defined in this Resolution shall have the meanings ascribed to such words and terms, respectively, in the preambles to this Resolution.

Section 4. Effective Date. This Resolution shall take effect immediately.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Pequannock River Basin Regional Sewerage Authority at a duly convened public meeting held on October 21, 2015.

By: 
Edwin Howard, Secretary

2015 AMENDMENT
TO THE 1987 SERVICE CONTRACT
BETWEEN
THE PEQUANNOCK RIVER BASIN REGIONAL SEWERAGE AUTHORITY
AND
THE BOROUGH OF RIVERDALE

Made and dated as of the ____ day of _____, 2015 between the Pequannock River Basin Regional Sewerage Authority (the "Authority" or "PRBRSA") a public body corporate and politic of the State of New Jersey;

And:

The Borough of Riverdale ("Riverdale"), a municipal corporation of the State of New Jersey, situate in the County of Morris;

Collectively, the Parties ("Parties") to this Agreement;

WITNESSETH:

WHEREAS, the Authority is a public body organized and existing pursuant to the provisions of the Sewerage Authorities Law (N.J.S.A. 40:14A-1 et seq.), constituting Chapter 138 of the Pamphlet Laws of 1946 of the State of New Jersey (the "Act") and acts amendatory and supplemental thereto, and exercising essential governmental functions to provide for the public health and welfare with all necessary powers to construct, operate, and maintain sewerage facilities for the relief of waters in and around the service area of the Authority; and

WHEREAS, the towns of Bloomingdale, Butler, and Kinnelon are Participants in the Authority as the same is defined in the 1990 Amendment to the 1985 Service Contract (the "1990 Amendment") among and between the Authority, Bloomingdale, Butler and Kinnelon; and

WHEREAS, sewage originating in the service area of the Authority is treated and disposed of by The Pequannock, Lincoln Park and Fairfield Sewerage Authority (the "Two Bridges Authority"); and

WHEREAS, as authorized by the Act, the Authority and the Two Bridges Authority entered into an agreement, dated December 20, 1985, and entitled: "1985 Service Contract Between The Pequannock, Lincoln Park and Fairfield Sewerage Authority and The Pequannock River Basin Regional Sewerage Authority," as amended by an agreement dated October 11, 1995 (collectively, the Pequannock River Agreement"), relating to the treatment and disposal of sewage; and

WHEREAS, pursuant to Section 501(C)(3) of the Pequannock River Agreement, the Two Bridges Authority agreed to reserve 2.5 million gallons per day ("MGD") of capacity in its treatment plant (the "Existing Reserve Capacity") for the Authority; and

WHEREAS, Riverdale is a customer of the Authority pursuant to the 1987 Riverdale Service Contract between the Authority and Riverdale (the "1987 Riverdale Service Contract"); and

WHEREAS, under the terms of the 1987 Riverdale Service Contract, Riverdale was immediately entitled to an initial reserve capacity of 0.10 MGD and the Authority allocated 0.10 MGD discretionary gallonage to Riverdale; and

WHEREAS, under Section 307 of the 1987 Riverdale Service Contract, Riverdale had the right to exercise certain options between 1988 and 1993 for incremental increases to additional reserve capacity; and

WHEREAS, Riverdale did not exercise the option for any incremental additional reserve capacity under Section 307 of the 1987 Riverdale Service Contract, with the last option expiring in 1993; and

WHEREAS, as the result of the 1997 Agreement by the Authority, Bloomingdale, Kinnelon and Riverdale; the 2003 Agreement by the Authority, Butler and Riverdale; the 2006 Agreement by the Authority, Butler and Riverdale; the 2008 PRBRSA –TBSA – TBSA Participants Agreement and the 2008 Agreement by the Authority, Lincoln Park and Riverdale transfers of capacity were made to PRBRSA and Riverdale, such that 2.60 mgd of capacity is currently available and allocated as follows:

<u>Participant/Customer</u>	<u>MGD</u>	<u>%</u>
Bloomingdale	0.950	36.54
Butler	0.991	38.11
Kinnelon	0.250	9.62
Riverdale	<u>0.409</u>	<u>15.73</u>
	2.600	100.00

WHEREAS, Riverdale has requested an allocation from the Authority of 91,000 gpd (0.091 mgd) and Bloomingdale and Kinnelon have individually concluded that they do not need to use all of the capacity held respectively by them pursuant to the 1990 Amendment to the Service Contract with the Authority and are in a position to permit Riverdale to use 91,000 gpd (0.091 mgd) of Reserve Capacity (45,500 gpd, 0.0455 mgd each): and

WHEREAS, the Authority is agreeable to approving and facilitating a reallocation of Reserve Capacity in the amount of 91,000 gpd (0.091 mgd) from Kinnelon and Bloomingdale to the Authority for allocation to Riverdale in accordance with the terms of the 2015 Agreement between and among the Pequannock River Basin Regional Sewerage Authority, the Borough of Kinnelon, the Borough of Bloomingdale and the Borough of Riverdale hereinafter the “2015 Five Party Agreement”.

NOW, THEREFORE, in consideration of these premises, of the mutual covenants and agreements herein set forth, and the undertakings of each party to the other, the parties each

binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions. All capitalized words and terms used but not defined in this 2015 Amendment to the 1987 Riverdale Service Contract shall have the meanings ascribed to such words and terms, respectively, in the recitals hereto or, if not defined in the recitals hereto, in the 1987 Riverdale Service Agreement as amended to date.

Section 102. Severability of Invalid Provision. If any one or more of the covenants or agreements provided in the Agreement, should be contrary to law, then such covenant or covenants, agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the provisions of the Agreement.

ARTICLE II

TRANSFER OF RESERVE CAPACITY AND PAYMENT THEREOF

Section 201. Upon the implementation of the terms of the 2015 Five Party Agreement, including payment therefor, Kinnelon and Bloomingdale will each transfer to the Authority 45,500 gpd (0.0455 mgd) of Reserve Capacity for reallocation to Riverdale in accordance with the terms of the aforesaid Five Party Agreement and this 2015 Amendment to the Riverdale Service Contract. The respective allocations following implementation of the 2015 Five Party Agreement will be:

<u>Participant/Customer</u>	<u>MGD</u>	<u>%</u>
Bloomingtondale	0.9045	34.79
Butler	0.9910*	38.11*
Kinnelon	0.2045	7.87
Riverdale	<u>0.5000</u>	<u>19.23</u>
	2.6000	100.00
*Unchanged		

Section 202. Upon the occurrence of the Trigger Date as defined in the 2015 Five Party Agreement, the Authority will allocate 91,000 gpd (0.091 mgd) of additional Reserve Capacity to Riverdale.

Section 203. Beginning the first day of the month following the Trigger Date, Riverdale shall be charged by the Authority for the use of the additional 91,000 gpd (0.091 mgd) Reserve Capacity in accordance with the terms of the 1987 Riverdale Service Contract. As of the Trigger Date, the Authority shall credit Bloomingtondale and Kinnelon for the Debt Service Charge portion of the Annual Charges that would otherwise be due from them under the 2008 Amendment to the 1990 Amendment with respect to the 91,000 gpd (0.091 mgd) Reserve Capacity. The Operating Charge portion of the Annual Charge shall continue to be billed on the basis of the 1990 Amendment and the 1987 Riverdale Service Contract.

Section 204. It is expressly understood and agreed that notwithstanding the provisions of this Agreement and the allocation of capacity to, and payments by Riverdale for the sewer service provided hereby, that the Reserve Capacity allocations under the 1990 Amendment remain unaffected hereby and that the financial responsibility under the 1990 Amendment related thereto is unchanged.

Section 205. Notwithstanding any other provisions of this 2015 Amendment to the 1987 Riverdale Service Contract to the contrary, with the exception of Section 204, for three

years from the date hereof, Riverdale is guaranteed the ability to have TWA applications approved by PRBRSA for ultimate connection to the System totaling 51,000 gpd beyond the 91,000 gpd being permanently acquired hereunder to bring its Reserve Capacity allocation to 500,000 gpd.

- a) If, within this three year period, Riverdale's flows exceed, on an annual average basis, its then available allocation of 500,000 gpd by 51,000 gpd or less, Bloomingdale and Kinnelon shall be responsible for the corresponding reduction in their available Reserve Capacity in equal shares. No reduction in available Reserve Capacity shall be allocated to Butler, thereby holding Butler harmless as to such overage.
- b) If, within this three year period where Riverdale's flows exceed, on an annual average basis, its then available allocation of 500,000 gpd by 51,000 gpd or less, Riverdale shall pay to the Authority the additional Debt Service Charge in accordance with current Service Agreement provisions which are associated with this overage, which amount shall be credited in equal shares to Bloomingdale and Kinnelon in the Authority's billing to them.
- c) If, within this three year period, Riverdale's flows exceed its then available 500,000 gpd allocation by greater than the 51,000 gpd, Riverdale will pay the additional Debt Service Charge to PRBRSA in accordance with current service contract provisions. The Debt Service Charge for any exceedance beyond 551,000 gpd (500,000 gpd plus 51,000 gpd) to be paid by Riverdale to PRBRSA will be credited by PRBRSA among Bloomingdale, Butler and Kinnelon in proportion to their then available reserve capacity allocations.

The Debt Service Charge charge for flows equal to or less than 551,000 gpd shall be distributed to Bloomingdale and to Kinnelon in accordance with subsection b) above.

- d) Following the expiration of the three year period, the rights and obligations of the parties shall revert to those pre-existing pursuant to the 1990 Amendment to the Service Agreement and the 1987 Riverdale Service Contract, as amended from time to time, and pursuant to the various subsidiary Reserve Capacity Transfer Agreements to that date, and to the extent that Riverdale's flows, on an average annual basis, exceed 500,000 gpd, it shall be obligated to acquire additional gallonage, in at least the amount of such overage, equally from Bloomingdale and Kinnelon on the same basis as negotiated between the parties in this current Agreement, being \$23.00 per gpd (gallon) within 120 days.

ARTICLE III

MISCELLANEOUS

Section 301. Collection Cost Recovery. In addition to such remedies as shall be available to the Authority in accordance with law including, but not limited to the terms of the Riverdale Service Contract and N.J.S.A 40:14A-21, Riverdale shall reimburse the Authority for any and all costs incurred by the Authority for legal, administrative, financial, and engineering services in aid of collection of any delinquent Annual Charges pursuant to the Riverdale Service Contract and/or this Agreement in circumstances where Riverdale has withheld payment from the Authority. Further, in the event that any delinquency in the payment of Annual Charges shall make it necessary for the Participants to make payments to the Authority to make up for any such deficiency, then Riverdale shall pay interest to each Participant at the rate calculated in

accordance with N.J.S.A. 40:14A-21 on any and all sums advanced by them on account of Riverdale's default. The interest due to the participants shall be in addition to the interest due to the Authority pursuant to the said statute by reason of late payment. It is the intention of this Section 301 to provide for the prompt and full payment of Annual Charges by Riverdale in accordance with the procedures established in Article IV of the 1987 Riverdale Service Contract, irrespective of any contest or controversy over the method of assessment or calculation of the Annual Charges.

Section 302. Debt Service Annual Charge of Riverdale. Upon the 91,000 gpd (0.091 mgd) Reserve Capacity transfer to Riverdale, the percentage of the Authority's annual debt service payable by Riverdale as Annual Charges pursuant to Section 402(B)(2) of the 1987 Riverdale Service Contract is hereby increased from the current 15.73 per centum (15.73 %) per annum to 19.23 per centum (19.23%) per annum.

Section 303. Surcharge. In any year when the volume of sewage delivered to the System by Riverdale exceeds the Reserve Capacity for Riverdale, and as adjusted from time to time, then in that event Riverdale shall be charged a surcharge in its subsequent Annual Charge to account for such excess. The surcharge shall be calculated by multiplying the amount of that year's Debt Service Charge of Riverdale plus 25% (without giving effect to this Paragraph) by a fraction of which the numerator is the number of gallons in excess of the Reserve Capacity of Riverdale and the denominator is the Reserve Capacity of Riverdale in effect that year. The purpose of this provision is to encourage Riverdale to plan and to operate its respective Local Sewerage System within the gallonage allocations provided for herein. In the event, however, that Riverdale's use of the System exceeds its Reserve Capacity due to force majeure circumstances including but not limited to fire, flood, or other unusual and unforeseeable

catastrophic event, the Authority shall waive the surcharge aforesaid. The surcharge provisions set forth herein are identical to the surcharge provisions that apply to the Participants pursuant to the 1990 Amendment to the 1985 Service Contract between the Authority and the Boroughs of Bloomingdale, Butler and Kinnelon.

Section 304. Service Contracts. The 1987 Riverdale Service Contract, and all Agreements amending the same, including this 2015 Amendment to the 1987 Riverdale Service Contract are expressly confirmed to be in full force and effect. To the extent that the obligations set forth in this 2015 Amendment are inconsistent with the 1987 Riverdale Service Contract, this 2015 Amendment to the 1987 Riverdale Service Contract shall prevail.

Section 305. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be executed by the parties, and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

Section 306. Law of New Jersey to Govern. This 2015 Amendment to the 1987 Riverdale Service Contract shall be deemed to be a contract made under the laws of the State of New Jersey, and for all purposes shall be construed in accordance with the laws of the State of New Jersey.

Section 307. Effective Date. This 2015 Amendment to the 1987 Riverdale Service Contract shall be in full force and effect and be legally binding upon the Authority and Riverdale on the date hereof, subject to execution of the 2015 Five Party Agreement by the respective parties thereto.

Section 308. Legality. In case any provision in this 2015 Amendment to the 1987 Riverdale Service Contract shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this 2015 Amendment to the 1987 Riverdale

Service Contract shall not in any way be affected or impaired thereby.

Section 309. Date for Identification Purposes Only. The date of this 2015 Amendment to the 1987 Riverdale Service Contract shall be for identification purposes only and it shall not be construed that this 2015 Amendment to the 1987 Riverdale Service Contract was executed as of any date other than the respective dates of execution by the parties hereto.

Section 310. Successors. All the covenants, stipulations, promises and agreements in this 2015 Amendment to the 1987 Riverdale Service Contract contained by or in behalf of the Authority and the Borough of Riverdale shall bind their respective successors and assigns.

IN WITNESS WHEREOF, the Authority and the Borough of Riverdale have caused their respective corporate seals to be hereunto affixed and attested and these presents to be signed by their respective officers thereunto duly authorized and this 2015 Amendment to the 1987 Riverdale Service Contract to be dated as of the day and year first written above.

**THE PEQUANNOCK RIVER BASIN
REGIONAL SEWERAGE AUTHORITY**

(SEAL)

ATTEST:

Name: Edwin Howard
Title: Secretary

By _____
Name: Robert Voorman
Title: Chairman

THE BOROUGH OF RIVERDALE

(SEAL)

ATTEST:

Name: Abubakar T. Jalloh
Title: Borough Clerk

By _____
Name: William Budenheim
Title: Mayor