

**RESOLUTION TO AUTHORIZE EXECUTION  
OF THE 2015 FIVE PARTY AGREEMENT FOR THE  
TRANSFER OF SEWERAGE CAPACITY**

**WHEREAS**, the Boroughs of Bloomingdale, Butler, Kinnelon, , Riverdale and the Pequannock River Basin Regional Sewerage Authority (“The Authority”) have formulated a capacity transfer transaction under the terms of which 91,000 gpd of capacity (45,500 gpd from each of Kinnelon and Bloomingdale) will be transferred to Riverdale upon terms mutually negotiated among the municipalities; and

**WHEREAS**, the Authority has considered the terms and conditions of the Five Party Agreement and is agreeable to implementing a reallocation of capacity between and among the parties: and

**WHEREAS**, the Boroughs of Bloomingdale, Butler, Kinnelon and Riverdale are in the process of considering Resolutions to authorize execution of the Five Party Agreement: and

**WHEREAS**, the Authority has determined to approve the execution of the Five Party Agreement subject to certain conditions;


**NOW, THEREFORE, BE IT RESOLVED**, by the Pequannock River Basin Regional Sewerage Authority in the Counties of Morris and Passaic and the State of New Jersey on this 21st day of October, 2015 as follows:

1. The Authority does hereby approve and the Chairman or Vice Chairman is authorized and directed to execute the Five Party Agreement in the form reviewed by the Authority.

a copy of which is attached hereto as Exhibit A, with such minor corrections, modifications, additions or deletions which do not alter the substantive provisions thereof and which may be hereafter approved by the Chairman or Vice Chairman after consultation with the Authority Attorney.

2. This authorization is subject to the enactment of authorization of this Five Party Agreement by the respective municipal parties thereto and the execution of the 2015 Amendment to the 1987 Riverdale Service Contract by the Borough of Riverdale.
3. This Resolution shall take effect as provided by law.

Certified to be a true copy of a Resolution enacted at a duly convened public meeting of the Pequannock River Basin Regional Sewerage Authority held on October 21, 2015.



Edwin Howard, Secretary

2015

FIVE PARTY AGREEMENT

Between and Among

The Pequannock River Basin Regional Sewerage Authority

and

The Borough of Kinnelon

and

The Borough of Bloomingdale

and

The Borough of Butler

and

The Borough of Riverdale

## AGREEMENT

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

And:

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

And:

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

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 2015 Five Party 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, Kinnelon is a Participant 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, Bloomingdale is a Participant 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, Butler is a Participant 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, Riverdale is a customer of the Authority pursuant to the 1987 Service Contract, and the 2008 Amendment to the 1987 Service Contract between the Authority and Riverdale (the "Riverdale Service Contract"); and

WHEREAS, Kinnelon, Bloomingdale, Butler and Riverdale have determined that it will be advantageous to them and to residents and property owners located within their municipal borders to provide for a reallocation of the use of certain Reserve Capacity (as hereinafter defined) and the Authority is likewise agreeable to approving and facilitating the arrangements hereinafter set forth;

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. As used or referred to in this Agreement, unless a different meaning clearly appears from the context:

“Act” shall have the meaning hereinabove given to such term;

“Agreement” means this 2015 Five Party Agreement as the same shall be amended or supplemented from time to time;

“Annual Charge” shall mean the rents, rates, fees or other charges for direct or indirect connection with or the use of the System of the Authority, Butler, Bloomingdale and Kinnelon Service Contract and/or the Riverdale Service Contract;

“Articles” and “Sections” mentioned by number only are the respective Articles and Sections of the Agreement so numbered;

“Authority” shall have the meaning hereinabove given to such term;

“Bloomingdale” shall have the meaning hereinabove given to such term;

“Butler” shall have the meaning hereinabove given to such term;

“Kinnelon” shall have the meaning hereinabove given to such term;

“Participant” shall mean the Boroughs of Bloomingdale, Butler and Kinnelon as parties to the 1990 Amendment to the 1985 Service Contract with the Authority as applicable herein;

“Reserve Capacity” shall mean that the amount of capacity allocated to the municipalities pursuant to various agreements between and among the Authority, Bloomingdale, Butler and Kinnelon and/or Riverdale;

“Riverdale” shall have the meaning hereinabove given to such term;

“System” shall mean the regional sewerage system of the Authority;

“Trigger Date” shall mean the date upon which the transfer of capacity from Kinnelon and Bloomingdale to the Authority and then to Riverdale shall occur and being the same date upon which payment therefor shall be made by Riverdale to Kinnelon and to Bloomingdale as hereinafter provided. The parties contemplate that the Trigger Date shall occur on or before December 18, 2015, but no later than December 28, 2015. In the event that the Trigger Date shall not occur by December 31, 2015, then this agreement shall be null and void.

“Two Bridges Authority” or “Two Bridges” shall mean the Pequannock, Lincoln Park and Fairfield Sewerage Authority;

“Words” importing the singular number include the plural number and vice versa, words importing individual persons include firms, associations and corporations, and words importing the masculine gender include every other gender.

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

Section 201, Factual Background. The Parties make the following stipulations and factual findings by way of establishing the context and background underlying the Agreement:

1. The Authority and Two Bridges executed a service contract in 1985 under terms of which Reserve Capacity of 2.50 million gallons per day (mgd) was allocated to the Authority.

This treatment capacity was allocated by the Authority as follows:

Bloomingtondale	1.20	mgd
Butler	1.20	mgd
Authority (Discretionary)	<u>0.10</u>	<u>mgd</u>
	2.50	mgd

2. Under terms of the 1987 Riverdale Service Contract, the Authority utilized the 0.10 mgd discretionary gallonage to meet the initial service requirements of Riverdale as a customer as hereinafter set forth.

3. The Authority and the Participants executed the 1990 Amendment under the terms of which the 2.50 mgd Reserve Capacity allocated to it under the Agreement with Two Bridges was further reallocated as follows:

Bloomingtondale	1.05	mgd
Butler	1.05	mgd
Kinnelon	0.30	mgd
Authority (discretionary)	<u>0.10</u>	<u>mgd</u>
	2.50	mgd

4. As the result of the 1997 Agreement by the Authority, Bloomingtondale, 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 under the terms of the several Agreements, 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>
Bloomingtondale	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



5. Under the terms of all of the foregoing Agreements, the Participants remain fundamentally responsible for allocations made from their Reserve Capacity, although payments to the Authority by means of the Annual Charges to each were modified to reflect the obligation of Riverdale to make payments for the allocations made to it.

6. Riverdale has requested an additional allocation of 91,000 gpd (0.091 mgd) and Bloomingdale and Kinnelon have individually concluded that they do not need to utilize all of the Reserve 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) in accordance with the terms hereof.

### ARTICLE III

#### TRANSFER OF RESERVE CAPACITY AND PAYMENT THEREOF

Section 301. Under the terms of this 2015 Agreement, Riverdale shall have the right to the use of 500,000 gpd (0.500 mgd) (annual average) of Reserve Capacity consisting of the 409,000 gpd (0.409 mgd) allocation cumulatively made pursuant to the 1997, 2003, 2006 and 2008 Agreements and the 91,000 gpd (0.091 mgd) hereunder. The respective allocations following the successful implementation of this 2015 Five Party Agreement will be:

<u>Participant/Customer</u>	<u>MGD</u>	<u>%</u>
Bloomingdale	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 302. Riverdale shall pay to the Authority the sum of \$2,093,000.00, representing reimbursement of past debt service, fixed operations and maintenance costs paid by Bloomingdale and Kinnelon, as well as other costs negotiated between the Boroughs associated with the 91,000 gpd, the use of which is being made available hereunder. Payment of this sum is to be delivered on the Trigger Date at which time, Riverdale shall have the right to use the said capacity. The Authority shall immediately remit the sums of \$1,046,500 each to Bloomingdale and Kinnelon, no later than three (3) days after the Trigger Date.

Section 303. 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 304. Notwithstanding any other provisions of this Agreement to the contrary, with the exception of Section 303, 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.

Section 305. 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 Riverdale Service Contract. Upon receipt of payment by Riverdale, the Authority shall credit Bloomingdale and Kinnelon for the Debt Service Charge portion of the Annual Charges that would otherwise be due from them under 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.

#### ARTICLE IV

#### MISCELLANEOUS

Section 401. Collection Cost Recovery. In addition to such remedies as shall be available to the Authority under 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 401 to provide for the prompt and full payment of Annual Charges by Riverdale in accordance with the procedures established in Article IV of the Riverdale Service Contract, irrespective of any contest or controversy over the method of assessment or calculation of the Annual Charges. Any adjustment made to the Annual Charge of Riverdale as a result of negotiations or litigation shall be made administratively in subsequent billings in the manner of a credit under Section 403 of the 1987 Riverdale Service Contract and only upon the payment of all interest charges and reimbursements above set forth.

Section 402. Debt Service Annual Charge of Riverdale. The percentage of the Authority's annual debt service payable by Riverdale as Annual Charges pursuant to Section 402(B)(2) of the Riverdale Service Contract is hereby increased from 15.73 per centum (15.73%) per annum to 19.23 per centum (19.23 %) per annum.

Section 403. 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 404. Confirmation of Service Contracts. The respective parties expressly confirm the provisions of the 1987 Riverdale Service Contract and the 1990 Amendment. This agreement is not an amendment to either the 1987 Riverdale Service Contract or the 1990 Amendment and shall be construed to take into account any and all amendments to the service agreements which may be made in the future.

IN WITNESS WHEREOF, the Parties have caused their respective seals to be hereunto affixed and attested and these presents to be signed by their respective officers and officials thereunder duly authorized.

ATTEST:

\_\_\_\_\_  
Jane McCarthy, Clerk

THE BOROUGH OF BLOOMINGDALE

By: \_\_\_\_\_  
Jonathan Dunleavy, Mayor

ATTEST:

\_\_\_\_\_  
Mary O'Keefe, Clerk

BOROUGH OF BUTLER

By: \_\_\_\_\_  
Robert W. Alviene, Mayor

ATTEST:

\_\_\_\_\_  
Karen Iuele, Clerk

THE BOROUGH OF KINNELON

By: \_\_\_\_\_  
Robert W. Collins, Mayor

ATTEST:

\_\_\_\_\_  
Abubakar T. Jalloh, Clerk

THE BOROUGH OF RIVERDALE

By: \_\_\_\_\_  
William Budesheim, Mayor

ATTEST:

\_\_\_\_\_  
Edwin Howard, Secretary

THE PEQUANNOCK RIVER BASIN  
REGIONAL SEWERAGE AUTHORITY

By: \_\_\_\_\_  
Robert Voorman, Chairman