

VILLAGE OF VICTORY,

Plaintiffs,

SETTLEMENT AGREEMENT

-against-

Index No.: 2015937

RJI No. 45-1-2015-1617

Hon. Thomas D. Nolan, Jr.

VILLAGE OF SCHUYLERVILLE,

Defendants.

This agreement (hereinafter "Agreement" or "Settlement Agreement") by and between the Village of Victory ("Victory"), plaintiff, and the Village of Schuylerville ("Schuylerville"), defendant, (collectively, "the Parties") is entered into by and between the Parties and effective upon execution in counterparts by all of the Parties.

WHEREAS, Victory filed a lawsuit against Schuylerville bearing index number 2015937 alleging, inter alia, that Schuylerville damaged a meter station located in, and owned by Victory; that such action resulted in penalties under Victory laws; that Schuylerville improperly removed improvements owned by Victory located in Schuylerville; that such action resulted in penalties under Victory laws; trespass, conversion, and inverse condemnation, resulting in alleged damages; and

WHEREAS, Schuylerville denies said claims and allegations and countersues for annual fees due and owing under a certain agreement titled "Agreement Between Village of Victory and Village of Schuylerville for Wastewater Transportation and Treatment Services" dated May 3, 1992" (the "Agreement"); for operations and maintenances expenses due from Victory under said Agreement; for capital improvements to Schuylerville's wastewater treatment system due from Victory under said Agreement; the funds of a capital reserve account; unjust enrichment, and breach of contract; and

WHEREAS, Victory denies said counterclaims by Schuylerville; and

WHEREAS, the Court has dismissed said counterclaims referring the parties to arbitration, but the parties wish to include said claims in this settlement; and

WHEREAS, the parties have met and discussed the potential settlement of all of the foregoing claims and do wish to settle same and set such settlement down in writing herein.

NOW, THEREFORE, in consideration of the promises set forth herein, the compromise and settlement of these disputes, the releases stated below, the funds and documents as described below, and other good and valuable consideration, the adequacy, sufficiency and receipt of which are hereby acknowledged, the Parties hereby voluntarily agree as follows:

1. All Parties, on behalf of themselves and their affiliates, subsidiaries, officers, directors, employees, agents, attorneys, successors and assigns, hereby discontinue *with prejudice* all claims, cross-claims, counterclaims, and third-party claims of any nature whatsoever, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether known or unknown, whether asserted or unasserted, which any Party has, had or claims to have against any or all of the Parties which relate or arise from the Agreement as amended.

2. The parties contemporaneously herewith shall enter into one or more agreements superseding the 1992 Agreement as amended.

3. With the express exception of any and all claims relating to the enforcement of the terms of this Settlement Agreement, and the agreement or agreements to supersede the 1992 Agreement, the Parties agree that they shall, and hereby do, release each other, and forever discharge each other, their respective officers and board members, employees, and agents from any and all claims, demands, liabilities, counterclaims, cross-claims, actions, rights, causes of action, suits, debts, dues, offsets, sums of money, accounts, and reckonings that were or could have been asserted in the above action, and further the Parties agree that they shall, and hereby do, release each other, and forever discharge each other, their respective officers and board members, employees, and agents from any and all claims, demands, liabilities, counterclaims, cross-claims, actions, rights, causes of action, suits, debts, dues, offsets, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, fund balances, contracts, controversies, agreements, promises, variances, trespasses, damages and judgments whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent, both in law and in equity, that any other party to this Settlement Agreement, has, had or claims to have against any party to this Settlement Agreement and the party's respective officers and board members, employees, and agents, which relate or arise from the 1992 Agreement as amended referenced above or prior to the date hereof. None of the foregoing shall limit or exclude any future enforcement or enforceability of any agreement between the parties as they may agree and as it relates to wastewater treatment services on or after the date of this Settlement Agreement.

4. That for and in consideration of the promises by the Parties above and below stated:

- a. On or before May 31, 2018 Victory shall pay to Schuylerville the sum of \$150,000. Such sum representing net compensation for all alleged unpaid past invoices or fees or charges under the 1992 Agreement as amended;
 - b. Simultaneously with said payment, Schuylerville shall pay to Victory the sum of \$150,000. Such sum representing payment for any claims by Victory against Schuylerville;
 - c. Simultaneously with the foregoing payments, Victory shall deed to Schuylerville the real property owned by Victory in Schuylerville as set forth in deed recorded in the Saratoga County Clerk's office as instrument no. 2012017603; and
 - d. Schuylerville shall have care and control over that certain capital account totaling approximately \$58,000, the proceeds of which Schuylerville shall dedicate to capital expenditures relative to the Schuylerville wastewater treatment plant.
5. Upon payment from Victory to Schuylerville and from Schuylerville to Victory set forth above, counsel for the parties will file a stipulation of discontinuance on the above action.
6. It is understood and agreed that this Settlement Agreement is a compromise of disputed claims, liability for which is expressly denied. It is not to be construed as an admission of liability or wrongdoing on the part of any of the Parties.
7. The Parties agree that this Settlement Agreement contains the final and complete understanding between the Parties and that the terms herein are contractual and that those terms supersede all prior agreements and understandings whether written or oral other than the terms of the agreement set forth in paragraph "2" above.
8. The Parties agree that the Settlement Agreement shall be construed in accordance with the laws of the State of New York, regardless of conflict of laws principles.
9. The Parties agree that if any provision of this agreement shall for any reason be held invalid or unenforceable such invalidity or unenforceability shall not affect or impair any other provision of this agreement, and the Settlement Agreement shall be construed as if any invalid or unenforceable provision had never been contained in the Settlement Agreement
10. Each party to this Settlement Agreement understands and agrees that it has not relied upon any representation or statement made by or on behalf of any other party to this Settlement Agreement not expressly and specifically set forth herein.
11. This Settlement Agreement shall not be held invalid by reason of any typographical or administrative error.

12. This Settlement Agreement has been drafted and reviewed jointly by the Parties, and no presumption of construction as to the drafting of this Settlement Agreement shall be applied against or in favor of any party.

13. The Parties hereby expressly consent to the exclusive jurisdiction of the Supreme Court of the State of New York in the County of Saratoga in the event of any disputes arising between the parties relating to, arising out of, or in any way connected with either this Settlement Agreement.

14. This Settlement Agreement may be executed by the Parties hereto in several counterparts, and each such counterpart shall be deemed to be an original and all of which constitute together but one and the same agreement. This Settlement Agreement may be executed by a signature delivered electronically by facsimile or by the use of Adobe portable document format, which shall be deemed the same as an original signature.

15. Each of the Parties to this Agreement shall bear its own costs, disbursements, attorneys' fees and any other expenses associated with the Action.

VILLAGE OF VICTORY

Dated: May 31, 2018

By: _____
Hon. Patrick Dewey, Mayor

VILLAGE OF SCHUYLERVILLE

Dated: May 31, 2018

By: _____
Hon. Dan Carpenter, Mayor

APPROVED AS TO FORM:

Dated: May 30, 2018

Mark W. Couch, Esq.
Couch Dale Marshall PC
Counsel to the Village of Victory
1187 Troy Schenectady Road
Latham, NY 12110

Dated: May 31, 2018

Matthew F. Fuller, Esq.
Meyer & Fuller, PLLC
Counsel to the Village of Schuylerville
161 Ottawa Street
Lake George, NY 12845