

## MUNICIPAL COOPERATION AGREEMENT

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the Village of Medina, a municipal corporation with offices at 119 Park Avenue, Medina, New York, hereinafter referred to as the "Village", the Town of Ridgeway, a municipal corporation with offices at 410 West Avenue, Medina, New York, and the Town of Shelby, a municipal corporation with offices at 4062 Salt Works Road, Medina, New York, hereinafter referred to individually as the "Town" and/or collectively as the "Towns", the Medina Central School District, a municipal corporation with offices at 1 Mustang Drive, Medina, New York, hereinafter referred to as the "School District", and the County of Orleans, a municipal corporation with offices at 3 South Main Street, Suite 2, Albion, New York, hereinafter referred to as the "County", all of whom are hereinafter referred to collectively as the "Municipal Corporations", and the County of Orleans Industrial Development Agency ("COIDA"), an industrial development agency formed under Article 18-A of the General Municipal Law with offices at 121 North Main Street, Albion, New York 14411, which, together with the Municipal Corporations, are hereinafter referred to collectively as the "Parties."

**WHEREAS**, the Village owns, operates and maintains water mains, hydrants, and other appurtenances, a waste water treatment plant, sewer mains, and other related sewage treatment appurtenances, and performs system maintenance and repairs, and

**WHEREAS**, the Village has determined that it has the capacity and capability to provide the aforescribed services on a cooperative or contract basis subject to the contingencies set forth in this Agreement, and

**WHEREAS**, the parties believe that it will produce savings for the taxpayers of the parties by promoting industrial development in all areas of the community by making provision for the aforescribed services by the Village to development parcels outside the Village in a manner that preserves the tax base of the Town(s) while providing compensation to the Village for the provision of "joint services" as such services are defined in section 119-n (c) of the of the General Municipal Law of the State of New York, and

**WHEREAS**, pursuant to Article 5-G, section 119-o, of the General Municipal Law of the State of New York, the parties are authorized and have the power to enter into a Municipal Cooperation Agreement with respect to functions which each may legally undertake such as the subject of this Agreement,

**NOW, THEREFORE**, in consideration of the mutual premises and covenants contained herein, the parties agree as follows:

1. **DEFINITIONS.** As used in this agreement, the following terms shall have the following meanings:
  - a. Village Tax Rate. The property tax rate per thousand dollars of assessed value as set annually by the Village of Medina Board of Trustees for parcels inside the

- Village, excluding all special assessments.
- b. Town Tax Rate. The property tax rate per thousand dollars of assessed value as set annually by the Ridgeway or Shelby Town Boards (as the case may be) for parcels situated outside village boundaries, excluding assessments for fire districts, and other special district assessments. (Town Tax Rate = Townwide tax rate + Town-outside-Village tax rate.)
  - c. County Tax Rate. The property tax rate per thousand dollars of assessed value as set annually by the Orleans County Legislature, excluding the solid waste user fee, and other special district assessments.
  - d. School Tax Rate. The property tax rate per thousand dollars of assessed value as set annually by the Medina School Board of Education.
  - e. Total Adjusted Tax Rate. A theoretical tax rate per thousand dollars of assessed value which is the sum of the Village Tax Rate, the applicable Town Tax Rate, County Tax Rate, and School Tax Rate, as those terms are defined herein.
  - f. Total Annual Tax Revenue. The total revenue generated by the County, Town and School taxes from levies and assessments against development parcels outside the village which are the subject of this agreement , and actually collected by each taxing jurisdiction that is party to this agreement, whether by payment (i) pursuant to the issuance of a tax bill from the assessment unit, or (ii) received pursuant to PILOT agreement, after deducting for any infrastructure expenses related to the project, or (iii) from the County of Orleans to the town and/or the school district, representing reimbursement for taxes levied but uncollected, or (iv) from such other payments which are applied to property taxes owing against the subject development parcel. If for whatever reason a project does not pay tax, then the Village agrees to provide the services provided in this agreement notwithstanding that no tax revenue would be distributed under this agreement.
2. **JOINT SERVICES.** Subject to the terms and contingencies contained in this agreement, the Village will provide village services to parcels now or hereafter zoned industrial or light industrial in the Towns of Ridgeway and Shelby outside the Village without requiring the parcels to annex. This agreement will be limited to parcels utilized for actual industrial, light industrial, or technical and administrative services, including, without limitation, manufacturing, assembly, scientific research and design, fabricating or packaging of products for off-premises sale and distribution, agricultural product processing, data centers and machine, tool and die works, but specifically excluding any use which involves retail sales to the public from the parcel or the provision of services on the parcel to retail customers, The services provided to the parcels will include any and all public utility services offered from time to time to parcels within Village boundaries, such as water and sewer services and system maintenance and repairs, as authorized by Article 5-G of the General Municipal Law.
  3. **REVENUE SHARING: FORMULA.** For so long as the Village provides joint services pursuant to this agreement, and in consideration of the above, the parties agree to distribute the Total Annual Tax Revenue resulting from parcels subject to this agreement among each municipal entity in proportion to each municipal entity's share of the Total Adjusted Tax Rate, as follows:

- a. Village Share = 
$$\frac{\text{Village Tax Rate} \times \text{Total Tax Revenue}}{\text{Total Adjusted Tax Rate}}$$
- b. Town Share = 
$$\frac{\text{Town Tax Rate} \times \text{Total Tax Revenue}}{\text{Total Adjusted Tax Rate}}$$
- c. School Share = 
$$\frac{\text{School Tax Rate} \times \text{Total Tax Revenue}}{\text{Total Adjusted Tax Rate}}$$
- d. County Share = 
$$\frac{\text{County Tax Rate} \times \text{Total Tax Revenue}}{\text{Total Adjusted Tax Rate}}$$

4. **REVENUE SHARING: ANNUAL CALCULATION.** No later than April 1 of each year, the Orleans County Director of Real Property Tax Services shall calculate the amounts due the Village pursuant to this agreement for the next Village fiscal year commencing June 1, and shall forward notice of same to the appropriate officer of each party to this agreement, as each entity may from time to time designate. The property tax rates of each party to this agreement as existing on June 1 of the calendar year in which the notice is sent shall be used in making the annual revenue sharing calculation. In the event that the real property tax assessment of a parcel subject to this agreement is changed for a relevant tax year after either of the dates set forth above, the Orleans County Director of Real Property Tax Services shall adjust the amounts due to the Village on the basis of the Total Tax Revenues realized by each party based upon such changed assessment within thirty (30) days after such changed assessment becomes final and binding, and any party required by such calculation to either pay additional Total Tax Revenues to the Village, or if a refund is required from the Village of Total Tax Revenue, such payments shall be made within sixty (60) days after receipt of notice of the required adjustment.
5. **REVENUE SHARING: TIME OF PAYMENT.** Each party receiving the notice provided in Paragraph 4 shall forward the amounts due pursuant to such notice to the Village of Medina no later than 30 days after receipt of the tax revenue. With respect to any payments in lieu of taxes which might constitute a portion of Total Tax Revenue, it is acknowledged that COIDA's only obligation shall be to remit such payments to the affected tax jurisdictions (as defined in Section 854(16) of the General Municipal Law) in accordance with its agreement for payment in lieu of real estate taxes and Section 874 of the General Municipal Law, and COIDA shall not be requested or required to disburse any such payments in accordance with this agreement.
6. **FIRE DISTRICT BOUNDARIES.** This agreement will not affect fire district boundaries.
7. **EXISTING CUSTOMERS.** This agreement shall not apply to the following parcels:

- a. 4141 Bates Road, Town of Shelby, Tax ID 80.-3-15.1, titled to Orleans County IDA and consisting of building and improvements used as an ethanol production facility, commonly known as Western New York Energy, LLC; and
  - b. 3959 Bates Road, Town of Ridgeway, Tax ID 80.-1-20.1, titled to Orleans County IDA and consisting of buildings and improvements used as a manufacturing facility, commonly known as Brunner International.
8. DISTRIBUTION OF SALES TAX REVENUE. This agreement shall not affect the distribution of sales tax revenue received by the Towns of Ridgeway and Shelby.
9. UTILITIES: COST OF CONSTRUCTION AND OWNERSHIP OF INFRASTRUCTURE. Any and all utility infrastructure installed to serve single or multiple customers, such as water and sewer lines, pump stations, and meter pits, installed pursuant to this agreement shall be owned and maintained by the Village of Medina up to each individual customer's meter. All aspects of construction of same, including any meters required by the Village, shall be reviewed and approved by the Village Superintendent of Public Works. The cost of any new utility infrastructure required to serve a new customer (s) and/or any system maintenance or repairs required for an existing customer under this agreement shall be borne by the customer. The Village, in its discretion, may require the customer to post the estimated costs of construction prior to the commencement of construction.
10. UTILITIES: METERING AND BILLING. Any and all utility infrastructure installed pursuant to Paragraph 9 of this Agreement shall be metered and billed directly to the customer by the Village of Medina. The rates charged to the customer for water and sewer services shall be set at the inside-village rate, unless another rate is dictated by agreement with the Village utility providers, such as the Niagara County Water District. The Village shall not include any customer subject to this agreement in any existing or new utility district, but shall treat such customer as an out of district user (but at the in-villages rates as set forth above) subject to payment for such customer's own expenses and not any general expenses of the district. In the event a bill to an outside customer is uncollected, the Towns agree to pursue collection against the customer through Town tax levy. The customer's obligation to pay for utilities it consumes shall be in addition to its obligation to pay its property tax assessments, and no part of its utility payment shall be applied toward the Village's share of tax revenue to be allocated according to Paragraph 3 of this Agreement.
11. UTILITIES: AGREEMENT CONTINGENCIES. This agreement is expressly conditioned upon (i) the Village obtaining sufficient utility capacity to service any proposed eligible customer, (ii) the Village obtaining any necessary permits and/or approvals to extend utility infrastructure, (iii) consent by any Village utility provider necessary to extend Village utility services, (iv) technical feasibility of the proposed infrastructure extension to be determined by the Village within its reasonable discretion, and (v) the agreement and ability of the customer to pay any and all costs of the infrastructure work. Any

additional taps on utility infrastructure installed pursuant to this agreement to service new customers or expand service to existing customers shall be reviewed independently for conformity with the aforementioned terms and contingencies.

12. **APPLICABILITY:** This agreement shall apply only to parcels zoned industrial and/or light industrial and being utilized for uses provided in Paragraph 2 of this agreement at the time the project receiving joint services under this agreement is placed in service. In addition, COIDA may put the other parties on written notice of specific parcels zoned industrial and/or light industrial which COIDA is investigating and/or preparing for possible use which would qualify for services under this agreement (“Pre-Development Parcels”). Such parcels shall not be considered as covered by this agreement until they are presented by a party for consideration of the criteria in Section 2 and the facilities thereon are placed in service. If COIDA determines at any point that such Pre-Development Parcel is no longer suitable for inclusion under this agreement, it shall provide written notice to all parties withdrawing such Pre-Development Parcel from consideration. Attached hereto as Schedule I is a list of parcels which COIDA is investigating and/or preparing for possible use which would qualify for services under this agreement. Notwithstanding the foregoing, from the point in time that either Town or COIDA presents a potential project to the Village for determination of the contingencies set forth in Section 11, the Village shall not seek to annex such parcel into the Village until and unless the sponsoring entity provides notice that it no longer seeks to include the parcel in this agreement. In the event the use of any parcel being provided services under this agreement changes to a use not eligible for such services, the Village shall have the right to charge the customer a reasonable out of district user rate upon ninety (90) days written notice to the user and to all other parties to this agreement. Upon such change of use the revenue sharing provisions of the agreement for such parcel shall terminate.
13. **ILLUSTRATION: REVENUE SHARING CALCULATION.** An example of a revenue sharing calculation is set forth on Schedule II, attached hereto, for demonstration purposes only.
14. **TERM OF AGREEMENT:** This agreement shall have a term of five (5) years commencing on the date first set forth above, and shall automatically renew for seven (7) additional five (5) year periods thereafter unless a party shall notify the other parties in writing by August 1 of the fifth year of the term or of any extension term of its intent to terminate, in which event this agreement shall terminate on the next anniversary of the commencement date. However, as to any projects undertaken pursuant to and during the term of this agreement, any and all revenue sharing as set forth in this agreement shall continue on in existence for a term not to exceed the period of probable usefulness of the improvements provided under this Agreement for each such project, or such other maximum period of time as may be permitted under the laws of the State of New York. If, at the time of the sending of the termination notice, the parties have begun to proceed with efforts to include a new customer under this agreement and the work necessary to provide the agreed upon services to such customer can reasonably be completed prior to the actual expiration date of this agreement, the parties will continue

such efforts and work and the customer shall be entitled to the services provided for herein and the revenue sharing for such project shall continue as provided above. If, at the time of the sending of the termination notice, the parties have begun to proceed with efforts to include a new customer under this agreement and the work necessary to provide the agreed upon services to such customer cannot reasonably be completed prior to the actual expiration date of this agreement, then the costs incurred by any party up to the time the termination notice is sent (including, without limitation, any costs of acquisition of necessary property (including any option prices), any engineering, site investigation or other studies and testing, costs for SEQRA compliance, or other "soft costs" associated with development of the parcel for use under this agreement and any actual construction or installation costs) ("Development Costs") shall be payable by the party which terminated this agreement to any party who incurred such Development Costs within ninety (90) days after the any party has submitted a detailed list of Development Costs for reimbursement. In addition, COIDA shall be entitled to reimbursement of any Development Costs it has incurred for any Pre-Development Parcel which has not been removed from consideration pursuant to Section 12, which shall be payable by the party which terminated this agreement within ninety (90) days after COIDA has submitted a detailed list of such costs.

15. PROVISIONS APPLICABLE TO THE VILLAGE:

- a. Village employees utilized in connection with the provision of services are to be Village employees only and not those of any of the other parties to the Agreement. They shall be under the sole control, custody and direction of the Village. The Village is to be solely responsible and liable for the payment of any and all compensation and benefits (e.g. salaries, overtime, workers' compensation, disability, health and pension). Likewise, the Village shall be solely responsible and liable for any and all contractors and agents engaged by the Village. No person or entity which is not a party to this Agreement shall be a third party beneficiary thereof.
- b. The Village will comply, and will cause all its officers, employees, contractors and agents to comply with all applicable laws in connection with any of the services or facilities provided pursuant to the Agreement including, but not limited to, all laws applicable to the procurement of public works, goods and services.
- c. The Village shall require that all contractors or subcontractors performing any work or services under this Agreement maintain at all times commercial general liability insurance (including contractual liability insurance coverage) against any and all claims for injuries to persons or property occurring as a result of the performance of services or the provision of materials or supplies in connection with any project subject to this Agreement. Such insurance at all times shall provide coverage in an amount not less than Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. All such contractors or subcontractors shall also be required to maintain at all times Worker's Compensation insurance of at least One Million Dollars (\$1,000,000).

16. **MUTUAL INDEMNIFICATION:** Each party shall indemnify the other parties from and against any and all liabilities, claims or damages arising out of the actions of such party or its agents, servants, employees, contractors or subcontractors under this Agreement or its performance of any services thereunder except to the extent the same arises out of the negligence or willful misconduct of another party to the Agreement.
17. **NOTICES:** All notices under this agreement shall be in writing and shall be sent or given by U. S. Postal Service, postage prepaid, hand delivery, certified or registered mail, return receipt requested, or by a nationally recognized overnight courier service that obtains a receipt upon delivery. Notice may also be given and received by receipted facsimile if followed by one of the methods listed in the preceding sentence. All notices hereunder shall be deemed to have been received on the delivery date endorsed by the Postal Service on the return receipt or as shown on the records of such courier service, except that any notice which is (according to the terms of this Section 33.01) correctly addressed for delivery but which is returned by the Postal Service or such courier service as undeliverable, shall be deemed to have been received on the earliest date on which the Postal Service or such courier service attempted delivery, as indicated by the Postal Service endorsement on the return receipt form or as indicated by such courier service's records. Such notices shall be directed to the Supervisor of either Town, the Mayor of the Village, the Chief Administrative Officer of the County, the Superintendent of the School District and the Chief Executive Officer of COIDA.
18. **DISPUTE RESOLUTION:** In the event of any dispute among any of the parties with respect to the interpretation of or performance of a party under this agreement, such dispute shall be settled by binding arbitration. The parties shall collectively select a single arbitrator who shall conduct the arbitration in Orleans County, with any costs of the arbitration to be borne equally by the parties. The determination of the arbitrator shall be binding. In the event the parties cannot agree upon an arbitrator, any party may commence a proceeding under CPLR Article 75 in the Orleans County Supreme Court requesting the Court to designate the arbitrator.
19. **COUNTERPARTS:** This agreement may be executed in any number of counterparts, each of which individually and all of which collectively shall be considered an original. This agreement shall not be binding on the parties until all parties have executed it.

**IN WITNESS WHEREOF,** this agreement is signed and bears an effective date as set forth above.

*Signatures continue on succeeding page.*

Date:

**VILLAGE OF MEDINA**

By: \_\_\_\_\_  
Andrew W. Meier, Mayor

Date:

**TOWN OF RIDGEWAY**

By: \_\_\_\_\_  
Brian Napoli, Supervisor

Date:

**TOWN OF SHELBY**

By: \_\_\_\_\_  
Merle L. Draper, Supervisor

Date:

**MEDINA CENTRAL SCHOOL DISTRICT**

By: \_\_\_\_\_  
Maureen Blackburn, President Board of  
Education

Date:

**COUNTY OF ORLEANS**

By: \_\_\_\_\_  
David B. Callard, Chairman  
Orleans County Legislature

Date:

**COUNTY OF ORLEANS INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
James Whipple, Chief Executive Officer



## SCHEDULE I

### Existing Pre-Development Parcels Under Consideration by COIDA

1. Those portions of tax parcels 91.00-1-6.2 and 91.00-1-7.1 lying north of Sanderson Road and currently owned by Philip and Dawn Keppler.

## SCHEDULE II

### ILLUSTRATION OF REVENUE SHARING CALCULATION

The following illustration is set forth as a PILOT in force example only.

XYZ Development, Inc. Medina, New  
York Assessment: \$1,000,000

Assumed Tax rates:

|                             |                         |
|-----------------------------|-------------------------|
| Village Tax Rate:           | \$15 per thousand       |
| County Tax Rate:            | \$9 per thousand        |
| School Tax Rate:            | \$23 per thousand       |
| <u>Town Tax Rate:</u> _____ | <u>\$5 per thousand</u> |

Adjusted Tax Rate: **\$52 per thousand**

Total Tax Revenue Calculation:

For this example the net PILOT revenue to actually be distributed: \$20,000<sup>1</sup>  
Total Tax Revenue = **\$20,000**

Tax Revenue Sharing Calculation:

|                 |                    |                  |
|-----------------|--------------------|------------------|
| Village Share = | 15/52 x \$20,000 = | <b>\$5,769.2</b> |
| County Share =  | 9/52 x \$20,000 =  | <b>\$3,461.5</b> |
| School Share =  | 23/52 x \$20,000 = | <b>\$8,846.1</b> |
| Town Share =    | 5/52 x \$20,000 =  | <b>\$1,923.0</b> |

---

<sup>1</sup> Consistent with Paragraph 1 (Definitions) of this Agreement, where a PILOT agreement is not in place, the Total Tax Revenue shall be determined by reference to Paragraph 1(f), (i),(iii),(iv).