

September 4, 2012

Motion Made By Mr. Plochocki

RESOLUTION NO. 143

AUTHORIZING THE ACCEPTANCE OF THE WESTFIELD TRUNK SEWER FROM THE VILLAGE OF MANLIUS FOR AND ON BEHALF OF THE ONONDAGA COUNTY SANITARY DISTRICT; AND AUTHORIZING THE COUNTY EXECUTIVE TO ENTER INTO ANY AND ALL AGREEMENTS NECESSARY TO EXECUTE THE TRANSFER

WHEREAS, the Westfield Trunk Sewer, originally constructed in 1965 as part of the Lower Academy Hills subdivision in the Village of Manlius, New York, a trunk sewer to carry sanitary flows from both the Town and Village of Manlius; and

WHEREAS, the Village of Manlius has requested the County take over operation and maintenance of the trunk sewer as part of the reconfiguration of the Village's sewer system; and

WHEREAS, the Commissioner of the Department of Water Environment Protection held a hearing on October 30, 2011 and has duly filed his Report dated October 30, 2011, recommending improvements to the Onondaga County Sanitary District, consisting of the acquisition from the Village of Manlius, New York, 3,450 +/- linear foot sewer, known as the Westfield Trunk Sewer, beginning at the municipal boundary between the Village of Manlius and the Town of Manlius, New York on Woodbridge Drive and terminating at the Pleasant Street Trunk Sewer located on New York State Route 173 for a fee of \$1.00 (payment waived); and

WHEREAS, by resolution adopted July 3, 2012, this County Legislature called for a public hearing on the foregoing matter to be held in the Legislative Chambers in the County Court House, in Syracuse, New York, on August 7, 2012 at 12:55 p.m.; Prevailing Time; and

WHEREAS, said public hearing was duly held at the time and place aforesaid, at which all persons interested were heard; and

WHEREAS, this County Legislature has given due consideration to the aforesaid Report and Recommendations of the Commissioner of the Department of Water Environment Protection and the evidence given at said public hearing; now, therefore be it

RESOLVED, that this County Legislature hereby authorizes the acceptance of the property known as and described herein as the Westfield Trunk Sewer for \$1.00, (payment waived); and, be it further

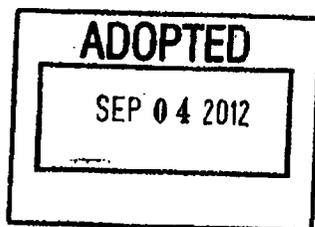
RESOLVED, that the County Legislature hereby accept the determination of the Village of Manlius that the proposed action is a Type II Action under SEQRA with a finding of no significant impact; and, be it further

RESOLVED, that the County Executive is hereby authorized to execute agreements to implement the intent of this resolution.

TR/mg
kam

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ONONDAGA COUNTY
CLERK'S OFFICE
100 N. STATE ST.
SYRACUSE, NY 13202



I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF LEGISLATION DULY ADOPTED BY THE COUNTY LEGISLATURE OF ONONDAGA COUNTY ON THE

4th DAY OF September, 2012.

Deborah A. Maturo

CLERK, COUNTY LEGISLATURE
ONONDAGA COUNTY, NEW YORK

Agreement of Sale

This Agreement of Sale ("Agreement") is made and entered into this 12th day of October, 2012, by and between, the VILLAGE OF MANLIUS, a municipal corporation of the State of New York, with its offices at One Arkie Albanese Avenue, Manlius, New York (hereinafter referred to as the "VILLAGE"); and the COUNTY OF ONONDAGA, a municipal corporation of the State of New York, with its offices at 421 Montgomery Street, Syracuse, New York (hereinafter referred to as the "COUNTY").

WHEREAS, VILLAGE owns a 3,450 +/- linear foot trunk sewer line, known as the Westfield Trunk Sewer, beginning at the municipal boundary between the VILLAGE and the Town of Manlius on Woodbridge Drive and terminating at the Pleasant Street Trunk Sewer located on New York State Route 173 ("Westfield Trunk Sewer");

WHEREAS, the Westfield Trunk Sewer serves both VILLAGE and Town of Manlius residents, and is therefore an appropriate component of the VILLAGE sewer system to be turned over to the COUNTY;

WHEREAS, Onondaga County Legislature passed Resolution No. 143 on September 4, 2012 authorizing the acceptance of the Westfield Trunk Sewer from the VILLAGE for and on behalf of the Onondaga County Sanitary District; and authorizing the County Executive to enter into any and all agreements necessary to execute the transfer; and,

WHEREAS, subject to the terms and conditions set forth herein, VILLAGE desires to sell, and COUNTY desires to purchase, the Westfield Trunk Sewer;

NOW THEREFORE, in consideration of the mutual covenants, warranties, representations and agreements set forth herein, and intending to be legally bound, VILLAGE and COUNTY (collectively referred to as the "Parties") agree as follows:

ARTICLE 1. THE TRANSACTION

1.1 Incorporation of Recitals

The recitals set forth above are incorporated herein by reference and are a part of this Agreement.

1.2 Sale and Transfer of Assets

Subject to the terms and conditions of this Agreement, VILLAGE shall sell, assign, transfer, deliver and convey to COUNTY and COUNTY shall purchase the Assets (as defined in Section 1.3 of this Agreement) for the Purchase Price (as defined in Section 1.7 of this Agreement).

1.3 Description of Assets

The term "Assets" means all of VILLAGE's right, title and interest in, under and to all of the assets, properties and rights related to the Westfield Trunk Sewer of every kind, nature and description existing on the date this Agreement is executed, wherever such assets, properties and rights are located and whether such assets, properties and rights are real, personal or mixed, tangible or intangible. Subject to the terms and conditions of this Agreement, the Assets are being sold in their "AS-IS" and "WHERE-IS" condition, including environmental condition, operating condition and condition of repair. COUNTY may not rely on any representation made by VILLAGE in connection therewith, except for representations and warranties contained in this Agreement.

Without limiting the generality of the foregoing, the Assets shall include the following:

- a) all land and real property, sewer facility easements and rights-of-way, rights of use, licenses, permits, privileges and other appurtenances belonging or related to the Westfield Trunk Sewer;
- b) all sewer lines, service lines, meters, man holes, valves, fittings, and all appurtenances along with other tangible personal property related to the Water Westfield Trunk Sewer;
- c) to the extent transferable, all of VILLAGE's rights under any written or oral contract, agreement, lease, plan, instrument, registration, license, sub-license, permit, certificate, document, commitment, arrangement, undertaking, practice, authorization or approval of any nature relating to the Westfield Trunk Sewer and entered into in the ordinary course of business consistent with past practice; and
- d) all information, books, records, ledgers, files, documents, correspondence, data, plans, maps, engineering records, mylars, planning, studies, architectural plans, drawings and specifications, records of operations, quality control records and procedures, equipment maintenance records, manual and warranty information relating to the Westfield Trunk Sewer.

1.4 Retention and Assumption of Liabilities

- a) VILLAGE shall retain and discharge all the liabilities and obligations arising out of the ownership, operation or use of the Assets or Westfield Trunk Sewer prior to the effective date of this Agreement ("Effective Date").
- b) COUNTY shall assume and agree to pay or discharge all the liabilities and obligations arising out of the ownership, operation or use of the Assets or Westfield Trunk Sewer after the Effective Date.

1.5 Purchase Price

The total purchase price for the Assets to be paid by COUNTY to VILLAGE is the amount of One Dollar (\$1.00), payment of which is waived ("Purchase Price").

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of VILLAGE

VILLAGE represents and warrants to COUNTY as follows:

a) **Organization and Good Standing.** VILLAGE is a municipal corporation duly organized, validly existing and in good standing under the laws of the New York State.

b) **Authorization and Enforceability.** VILLAGE has the full power and lawful authority to execute this Agreement and to perform its obligations contemplated hereby and has duly and validly authorized the execution of this Agreement (including such other necessary agreements, instruments and documents in connection herewith) and all necessary proceedings.

This Agreement constitutes the legal, valid and binding obligation of VILLAGE, enforceable against VILLAGE in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization or affecting creditor's rights generally.

c) **Noncontravention.** VILLAGE's performance of its obligations contemplated hereby, as of the Effective Date, shall not (i) require any further approvals or consents from any other party; (ii) violate any law, ordinance or regulation; or, (iii) conflict with or result in a breach of, or constitute a default under, any contract, lease, permit or other agreement or commitment to which VILLAGE is a Party.

d) **No Pending Litigation or Proceeding.** To the best of VILLAGE's knowledge, there is no action, claim, litigation, arbitration, proceeding, judgment, injunction, audit or legal, administrative or governmental investigation pending or threatened against VILLAGE which could reasonably be expected to have a Material Adverse Effect on the Assets and the Westfield Trunk Sewer or the transaction contemplated by this Agreement.

e) **Compliance with Law.** To the best of VILLAGE's knowledge, the Westfield Trunk Sewer is operated by VILLAGE in substantial compliance with all applicable laws (including zoning, building and similar laws and environmental laws), rules, regulations, ordinances, codes, judgments and orders, except for such failures to comply which do not individually or in the aggregate have a Material Adverse Effect.

- f) **Condition of Assets.** To the best of VILLAGE's knowledge, all of the improvements and other tangible assets of the Westfield Trunk Sewer, which are included in the Assets, are being sold in working condition, normal wear and tear excepted.

2.2 Representations and Warranties of COUNTY

COUNTY represents and warrants to VILLAGE as follows:

- a) **Organization and Good Standing.** COUNTY is a municipal corporation duly organized and validly existing and in good standing under the laws of the State of New York.
- b) **Authorization and Enforceability.** COUNTY has the full power and lawful authority to execute this Agreement and to perform its obligations contemplated hereby and has duly and validly authorized the execution of this Agreement (including such other necessary agreements, instruments and documents in connection herewith) and all necessary proceedings.

This Agreement constitutes the legal, valid and binding obligation of COUNTY, enforceable against COUNTY in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization or affecting creditor's generally.

- c) **Noncontravention.** COUNTY's performance of its obligations contemplated hereby, as of the Effective Date, shall not (i) require any further approvals or consents from any other party; (ii) violate any law, ordinance or regulation; and, (iii) conflict with or result in a breach of any contract, lease or permit to which COUNTY is a party.
- d) **No Pending Litigation or Proceedings.** To the best of COUNTY's knowledge, there is no claim, litigation, arbitration, proceeding, judgment, injunction, audit or governmental investigation pending or threatened against COUNTY which could reasonably be expected to have a Material Adverse Effect on the transaction contemplated by this Agreement.
- e) **Condition of Assets.** COUNTY is purchasing the Assets in their "AS-IS" condition, including their environmental condition, operating condition and condition of repair, and is not relying on any representation of VILLAGE in connection therewith except for representations and warranties contained in this Agreement.

ARTICLE 3. COVENANTS

3.1 Mutual Covenants of VILLAGE and COUNTY

The Parties mutually covenant and agree that, except as otherwise approved by the other party in advance and in writing:

- a) **Cooperation**. The Parties shall cooperate and shall cause their respective officers, employees, agents and representatives to cooperate to ensure the orderly transition of the Assets from VILLAGE to COUNTY and to minimize any disruption to the customers of the Westfield Trunk Sewer from the transactions contemplated by this Agreement.

The Parties shall furnish to the other party any necessary information or reasonable assistance as the other party may request in connection with the consent, approval or authorization of, or registration with or filing or submission to any third party (including any governmental or regulatory agency).

- b) **Further Assurances**. The Parties shall cooperate and deliver such instruments and take such action as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.
- c) **Expenses**. The Parties shall each bear their own respective accounting, legal and other expenses incurred in connection with the transactions contemplated by this Agreement.

3.2 Covenants of VILLAGE

VILLAGE hereby covenants and agrees that, except as otherwise approved in advance in writing by COUNTY:

- a) **Continuation of Operation**. VILLAGE shall operate the Westfield Trunk Sewer until the Effective Date in the ordinary course of business, consistent with past practice.
- b) **Continuation of Insurance**. VILLAGE shall keep in existence all policies of insurance insuring the Assets and the Westfield Trunk Sewer against liability and property damage, fire and other casualty through the Effective Date, consistent with the policies in effect on the date first written above.
- c) **Contractual Consents**. VILLAGE shall, at all times, use its best efforts and diligently pursue all approvals, authorizations and consents of transfer to all material transferable or assignable contracts, agreements, licenses and permits to the extent specifically required by the terms of such contracts, agreements, licenses or permits.

3.3 Covenants of COUNTY

COUNTY hereby covenants and agrees that, except as otherwise approved in advance in writing by VILLAGE:

- a) **Regulatory Consents**. COUNTY shall, at all times, use its best efforts and diligently pursue all approvals, authorizations, consents and permits required to be obtained to consummate the transaction contemplated by this Agreement, including,

without limitation, the approval of every regulatory agency of federal, state or local government that may be required.

COUNTY shall (i) as promptly as practicable, make or cause to be made such filings and submissions under laws, rules and regulations applicable to it as may be required to consummate the terms of this Agreement; and, (ii) keep VILLAGE apprised of the status of any filing or submission to any governmental or regulatory agency.

ARTICLE 4. INDEMNIFICATION

4.1 Definition of Damages

For purposes of this Agreement, "Damages" means the aggregate amount of all damages, claims, losses, obligations, liabilities (including any governmental penalty, fines or punitive damages), deficiencies, interest, costs and expenses arising out of or relating to a matter and any actions, judgments, costs and expenses (including reasonable attorney's fees and all other expenses incurred in investigating, preparing, or defending any litigation or proceeding, commenced or threatened) incident to such matter or to the enforcement of this Agreement.

4.2 Indemnification by VILLAGE

To the extent permitted by New York law, VILLAGE agrees to indemnify, defend and hold harmless COUNTY, and its affiliates, and their respective officers, directors and agents from and against any and all Damages arising out of or resulting from:

- a) any misrepresentation, breach of warranty, or non-fulfillment of any covenant or agreement made by VILLAGE in this Agreement; and
- b) any liabilities of VILLAGE existing prior to the Effective Date.

4.3 Indemnification by COUNTY

COUNTY agrees to indemnify, defend and hold harmless VILLAGE and its respective officers, council and agents from and against any and all Damages arising out of or resulting from:

- a) any misrepresentation, breach of warranty, or non-fulfillment of any covenant or agreement made by COUNTY in this Agreement; and
- b) the ownership, operation or use of the Assets or Westfield Trunk Sewer on or after the Effective Date, excepting only liabilities resulting from breaches by VILLAGE of covenants, warranties, representations and agreements hereunder.

ARTICLE 5. MISCELLANEOUS

5.1 Entire Agreement

This Agreement constitutes the entire agreement between the Parties concerning the sale and transfer of the Assets, and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the Parties on the subject matter hereof.

5.2 Amendment

This Agreement may be amended or modified only by a writing executed by all of the Parties.

5.3 Extension or Waiver of Performance

Either VILLAGE or COUNTY may extend the time for or waive the performance of any of the obligations of the other, waive any inaccuracies in the warranties or representations by the other, or waive compliance by the other with any of the covenants, conditions or agreements contained in this Agreement, provided that any such extension or waiver shall be in writing and signed by the waiving party in the case of a waiver, or by both VILLAGE and COUNTY in the case of an extension.

5.4 Assignment or Delegation

The Parties shall not assign, delegate or otherwise transfer any of their duties, rights or obligations under this Agreement without the prior written consent of the other party.

5.5 Successors and Assigns; Binding Effect

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

5.6 Governing Law

This Agreement shall be governed by and construed under the laws of the State of New York.

5.7 Notices

All notices provided for in this Agreement shall be in writing, addressed to VILLAGE or COUNTY, as the case may be, at the addresses set forth in this Paragraph and may be (a) delivered in person; (b) sent by United States registered or certified mail, return receipt requested; (c) sent by Federal Express or any other nationally recognized overnight courier or delivery service from which a receipt may be obtained; or, (d) sent by facsimile or telefax

transmission during regular business hours (9:00 a.m. to 5:00 p.m., Monday-Friday, excluding holidays):

To VILLAGE: Mark-Paul Serafin, Mayor
Village of Manlius
One Arkie Albanese Drive
Manlius, NY 13104
Tel: 315-682-9171

To COUNTY: Joanne M. Mahoney, County Executive
County of Onondaga
421 Montgomery Street
Syracuse, NY 13202
Tel: 315-435-8582

5.8 Captions

The headings and captions used with the subsections, sections and articles of this Agreement are for convenience or reference only and shall not be deemed to modify or limit the provisions of this Agreement.

5.9 Construction

In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Any reference to any federal, state, local or foreign statute shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context may require. The word "including" means included, without limitation.

"Material Adverse Effect" means a change or effect (or series of related changes or effects) which has or is reasonably likely to have a material adverse change in or effect upon the business, assets, condition (financial or otherwise), or results of operations of the Westfield Trunk Sewer or Assets, taken as a whole, provided, however, that none of the following, either alone or in combination, shall be considered in determining whether there has been a "Material Adverse Effect": (i) events, circumstances, changes or effects that generally affect similarly situated sewer lines; (ii) general economic or political conditions or events, circumstances, changes or effects affecting the financial, securities, lending or commodities markets or other market conditions generally; (iii) changes arising from the consummation of the transactions contemplated by, or the announcement of, this Agreement; (iv) changes caused by a material worsening of current conditions caused by acts of terrorism or war (whether or not declared) occurring after the date of this Agreement; (v) any existing circumstance, event or occurrence with respect to which the COUNTY has knowledge as of the date of this Agreement; and (vi)

any adverse circumstance, change or effect that is cured by VILLAGE or COUNTY prior to the Effective Date in accordance with this Agreement.

5.10 No Waiver

Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy; nor shall it be construed as a waiver of or acquiescence in any such breach or default, or any similar breach or default occurring later; nor shall any waiver of a single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

5.11 Time of the Essence

Time is of the essence of this Agreement.

5.12 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

[Signatures Appear on Next Page]

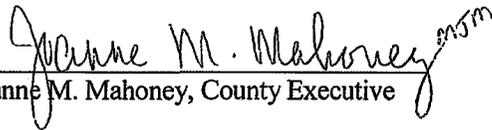
WHEREFORE, in consideration of the foregoing and intending to be legally bound by the terms herein, the Parties have caused this Agreement to be executed as set forth below.

Dated this 12th day of October, 2012.

VILLAGE OF MANLIUS

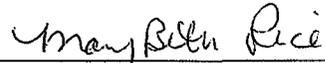
BY: 
Mark-Paul Serafin, Mayor

COUNTY OF ONONDAGA

BY: 
Joanne M. Mahoney, County Executive

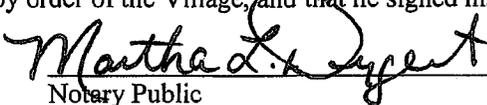
STATE OF NEW YORK) ss.
COUNTY OF ONONDAGA)

On this 9th day of November 2012, before me came Joanne M. Mahoney to me personally known, who, being by me duly sworn, did depose and say that she is the County Executive of the County of Onondaga, the municipal corporation described in and which executed the foregoing instrument that she knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the County, and that she signed his name thereto by like order.


Notary Public
MARY BETH RICE
Notary Public, State of New York
No. 4775559
Qualified in Onondaga County 14
Commission Expires June 30, 2014

STATE OF NEW YORK) ss.
COUNTY OF ONONDAGA)

On this 12th day of October 2012, before me came Mark-Paul Serafin to me personally known, who, being by me duly sworn, did depose and say that he is the Mayor of the Village of Manlius, the municipal corporation described in and which executed the foregoing instrument that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the Village, and that he signed his name thereto by like order.


Notary Public

MARTHA L. DYGERT
Notary Public, State of New York
No. 6066133
Qualified in Seneca County
My Commission Expires November 8, 2013