

## **STAMP WASTEWATER SERVICES MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("Memorandum") is made this 12<sup>th</sup> day of May, , 2015 ("Effective Date"), by and between the Genesee County Industrial Development Agency, doing business as the Genesee County Economic Development Center ("GCEDC"), a public benefit corporation organized under the laws of the State of New York, having an address of 99 Medtech Drive, Suite 106, Batavia, NY 14020; and the Village of Medina, New York ("Village"), a municipal corporation organized under the laws of the State of New York, having an address of 119 Park Avenue, Medina, New York 14103. The GCEDC and the Village shall hereinafter be referred to collectively as the "Parties" and individually as a "Party".

### **W I T N E S S E T H:**

**WHEREAS**, the GCEDC, in conjunction with the Genesee Gateway Local Development Corporation, has been working for the last several years on the development of the Western New York Science & Technology Advanced Manufacturing Park ("STAMP"), an advanced manufacturing campus proposed on approximately 1,250 acres of land in the Town of Alabama, New York located along the west side of New York State Highway 77/63 (north of Judge Road) approximately five miles north of the I-90/New York State Thruway ("STAMP Site"); and

**WHEREAS**, at full build out, STAMP will be a high technology campus with the potential to accommodate over 6 million square feet of advanced technology manufacturing and related uses and to create up to 10,000 jobs; and

**WHEREAS**, the GCEDC, as lead agency, prepared a Generic Environmental Impact Statement ("GEIS") and a Smart Growth Impact Statement ("SGIS") that analyzed the potential impacts of STAMP pursuant to the requirements of the State Environmental Quality Review Act and the State Smart Growth Public Information Policy Act and issued positive findings; and

**WHEREAS**, the GEIS and the SGIS contemplated construction and operation of an on-site wastewater treatment plant to treat sewage and process discharges from occupants of STAMP; and

**WHEREAS**, following completion of the GEIS and the SGIS, the GCEDC revisited this concept based on feedback from the Tonawanda Seneca Nation which owns lands immediately to the west of the STAMP Site and from the New York State Department of Environmental Conservation; and

**WHEREAS**, the Village of Medina owns a wastewater treatment plant ("Medina WWTP") which is located on Gulf Street in the Village and discharges to Oak Orchard Creek; and

**WHEREAS**, the last major upgrades at the Medina WWTP were undertaken over 30 years ago when the facility was upgraded with rehabilitation of and improvements to equipment including installation of new dewatering equipment; and

**WHEREAS**, the GCEDC completed an updated sewer feasibility study for STAMP in 2013 and identified, as a potential option, transporting wastewater from the STAMP Site to the Medina WWTP, which is located approximately twelve miles north of the STAMP Site; and

**WHEREAS**, utilizing the Medina WWTP creates many public benefits, including but not limited to, taking advantage of the excess service capabilities of the Medina WWTP to service STAMP, providing reinvestment and additional revenue sources for existing Village infrastructure, and providing cost-saving opportunities to collaborate on installation and design of additional infrastructure for the benefit of the residents of the Village; and

**WHEREAS**, the Parties wish to explore and work together on the construction and operation of a new sewer line by the GCEDC from the STAMP Site to the Medina WWTP (“Sewer Line”) to facilitate the transport of sewage and process wastewater from STAMP to the Medina WWTP for treatment prior to discharge (“Project”) and to collaborate in a beneficial manner as outlined in this Memorandum.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1. Purpose of the Memorandum.** The purpose of this Memorandum is to establish the Parties respective roles relative to the Project. This Memorandum also expresses the terms and conditions and the mutual understandings and agreements of the Parties as to the manner in which the Project shall be undertaken and completed. It is understood and acknowledged by the Parties that the specific elements of the Project will evolve as planning proceeds, and the Project and the rights and obligations of the Parties may be modified by supplemental agreements.

**Section 2. Sewer Route.** Upon completion of a detailed routing study, the GCEDC shall evaluate and present to the Village the complete study with routing options for the Sewer Line between the STAMP Site and the Medina WWTP. Following consultation among the Parties regarding routing options, the final route will be determined by mutual agreement of the Parties. Notwithstanding the foregoing, if there is a valid Project-related need for GCEDC to proceed without a detailed routing study, then GCEDC shall present to the Village a preferred route for the Sewer Line (“Preferred Route”). The Village shall have 90 days from the receipt of notice to review the Preferred Route in consultation with its engineers and other professionals and to object to the Preferred Route, or the Village will be deemed to have consented to the Preferred Route. The final route of the Sewer Line shall follow the agreed route or the Preferred Route, as the case may be, but if the latter, may be revised by the Parties upon mutual agreement, based upon the outcome of the detailed routing study to be conducted by the GCEDC following identification of the Preferred Route. The GCEDC, its successors, or assigns, agrees to complete a review of the environmental impacts of the construction and operation of the Sewer Line and will include the Village of Medina, County of Orleans, and the Towns of Shelby and Ridgeway

in the review process. The Village shall be responsible for any review of the environmental impacts of any Additional Compatible Infrastructure (defined below).

**Section 3. Medina WWTP Capacity.**

A. The Medina WWTP has a permitted capacity of 4.5 million gallons per day (“MGD”) with average daily treatment of 2.0 MGD. The GCEDC initially seeks to discharge up to 1.5 MGD to the Medina WWTP and the Medina WWTP has adequate capacity to accept such an amount of wastewater from the Sewer Line. The GCEDC ultimately seeks to discharge up to 3.0 MGD to the Medina WWTP from the Sewer Line. In addition, the Village has expressed an interest in reserving capacity of 2.0 MGD to support development projects within Orleans County.

B. The Parties will work together to evaluate options for increasing treatment capacity at the Medina WWTP to fulfill its current average daily treatment needs, reserved capacity goal of 2.0 MGD, and the treatment needs of the STAMP site (total of 7.0 MGD), both from a technical and permitting perspective. This will include exchanging information reasonably necessary to conduct such an evaluation including any current plans by the Village for improvements to the Medina WWTP.

C. The GCEDC will reimburse the Village for reasonable engineering costs that the Village may incur in assisting with evaluating the conceptual options and conceptual plans for increasing treatment capacity at the Medina WWTP to a total of 7.0 MGD provided such costs are approved by the GCEDC before they are incurred by the Village, which consent shall not be unreasonably withheld.

**Section 4. Project Implementation; Ownership and Maintenance of the Sewer Line.**

A. The GCEDC is responsible for Project implementation including but not limited to evaluating, designing, permitting and constructing the Sewer Line (including bidding and construction over-sight). Based on preliminary engineering analysis, the GCEDC intends to install force mains (as opposed to gravity mains) from the Stamp Site to the Village limits. The Village acknowledges this intention and has no objection to the installation of force mains between the STAMP Site and Village limits. However, the Village has a strong preference for the installation of a gravity main for the portion of the Sewer Line installed within Village limits under this Memorandum. Accordingly, the GCEDC shall install a gravity main for the portion of the Sewer Line installed within the Village limits provided there is no increase in the overall cost of the construction of the Sewer Line. In the event that the installation of a gravity main for the portion of the Sewer Line installed within the Village limits results in an increase in the overall cost of the construction and operation of the Sewer Line, the GCEDC shall be permitted to install force mains within Village limits unless the Village pays for the cost increase associated with the installation of a gravity main. Connections to existing customers along the route of any such gravity main within the Village shall be permitted provided there is no cost to the GCEDC associated with such connections. Should the Village desire, the GCEDC will cooperate with the Village regarding the installation of additional compatible infrastructure (“Additional Compatible Infrastructure”) at or around the time that the GCEDC is installing the Sewer Lines.

Such Additional Compatible Infrastructure may include, but not necessarily be limited to, water mains, gas mains, electrical service, curbing, and roadway surface materials.

B. The GCEDC will require any contractors it hires to install the Sewer Line to provide a performance bond which ensures the completion of the Sewer Line. The Village shall be specifically identified as a beneficiary of any such performance bond.

C. The GCEDC, its successors, or assigns will own and be responsible for maintaining the Sewer Line. It is noted that the GCEDC is exploring various options in this regard. Such options include formation of a sewer works corporation. It is also noted that the Village has expressed an interest in contracting with the GCEDC to provide maintenance services for the Sewer Line. Any final determination regarding the structure of the ownership and/or maintenance of the Sewer Line shall be within the sole discretion of the GCEDC, and may be included as part of the wastewater treatment service and host community agreement identified in Section 5.

**Section 5. STAMP Service Agreement.** The GCEDC, its successors, or assigns, shall enter into a wastewater treatment service and host community agreement (hereinafter, "Service Agreement") with the Village to provide the STAMP Site with the wastewater treatment services contemplated by this Memorandum and to address associated improvements at the Medina WWTP. The Village and the GCEDC shall work in good faith on the development of a reasonable Service Agreement for the STAMP Site. Initial sewer rates in such Service Agreement will not exceed the Village's rates in place at the time of execution of the Service Agreement, unless the discharge is of higher strength of BOD and total suspended solids as to require more intensive processing. A copy of the current rate schedule is attached as *Exhibit A* to this Memorandum. In consideration of the many long-term benefits that STAMP and the Project will have upon the Village and its residents, and the investments that the GCEDC will make in Village infrastructure, discharges from the Sewer Line shall not be subject to any rate multipliers applicable to discharges from outside the Village sewer district. In addition, the Parties agree to evaluate whether the volume of discharges from the Sewer Line will result in lower operating costs at the Medina WWTP and if so, consider reducing rates under the Service Agreement to share such cost savings between Village ratepayers and dischargers to the Sewer Line. All discharges from the Sewer Line to the Medina WWTP must comply with the Village of Medina Sewer Use Ordinance, a copy of which is attached as *Exhibit B* to this Memorandum, and made a part hereof.

**Section 6. Termination.** This Memorandum will terminate in the event that the Services Agreement is not entered into between the Village and the GCEDC, its successors, or assigns within twenty-four (24) months from the Effective Date of this Memorandum. The term of this Memorandum may be extended by written consent of all Parties hereto.

**Section 7. Notices.** Any notice or communication by any Party to the other required or permitted hereunder shall be in writing and shall be deemed duly served as of (a) the date it is delivered by hand, (b) three (3) business days after having been mailed by certified mail, postage prepaid, return receipt requested, or (c) the next business day after having been sent for delivery on the next business day, shipping prepaid, by a nationally recognized overnight courier, in each case

to the receiving Party at the address set forth below, or at such other address as a Party may designate by written notice to the other Party sent in the manner set forth herein.

To the GCEDC at: 99 MedTech Drive, Suite 106  
Batavia, NY 14020  
Attn: Mark Masse, Senior Vice President of Operations

with a copy to: Phillips Lytle, LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203  
Attn: Adam Walters, Esq.

To the Village at: 119 Park Avenue  
Medina, NY 14103  
Attn: Mayor

with a copy to: Matthew Brooks, Esq.  
Jones Hogan & Brooks LLP  
76 West Avenue  
Lockport, NY 14094

Either party may change its address(s) for purposes of this paragraph by giving the other party notice of the new address in the manner set forth above.

**Section 8. Consultation and Cooperation.** The Parties recognize that it shall be necessary to enter into one or more additional agreements in order to fully effectuate the purposes set forth herein. During the term of this Memorandum, representatives of the GCEDC and the Village shall attend periodic meetings at mutually agreeable times to confer about the progress of the Parties' activities under this Memorandum. The Parties shall cooperate with one another, in good faith, to effectuate the purposes of this Memorandum, and each Party agrees to act diligently to execute and deliver to one another such documents, as one Party may reasonably request of the other, so as to carry out more effectively and completely the purposes of this Memorandum. Except as otherwise provided herein, each Party shall bear its own costs in consulting and cooperating with the other.

**Section 9. Waiver.** A waiver of any of the terms and conditions hereof shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed. No waiver of any of the terms of this Memorandum shall be valid unless in writing and designated as such. Any forbearance or delay on the part of any Party in enforcing any of its rights under this Memorandum will not be construed as a waiver of such right to enforce same for such occurrence or any other occurrence.

**Section 10. Dispute Resolution.** If a Party to this Memorandum has reasonable grounds to believe that another Party hereto has failed to perform any obligation hereunder, such Party shall promptly notify the other Party in writing of the substance of its belief. The Party receiving such

notice must respond in writing within thirty (30) days of receipt of such notice and either provide evidence of cure of such failure, or provide an explanation of why it believes that its performance is in accordance with the terms and conditions of this Memorandum, and also specify three (3) dates, all of which must be business days within sixty (60) days from the date of its response, for a meeting of the designated representatives of the Parties, each of whom shall have the authority to resolve and settle the dispute. The Party claiming failure of performance shall then select one (1) of the three (3) dates, and a dispute resolution meeting shall be held. If the Parties cannot, in good faith discussions, resolve their dispute, they shall be free to pursue all remedies allowed at law and/or in equity without prejudice.

**Section 11. Obligations of The GCEDC.** The obligations and agreements of the GCEDC contained in this Memorandum and in any other document or instrument executed in connection with this Memorandum, and any other document or instrument supplemental thereto or hereto, shall be deemed the obligations and agreements the GCEDC, and not of any member, officer, agent, servant or employee of the GCEDC in his individual capacity, and the members, officers, agents, servants and employees, past, present and future, of the GCEDC shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the GCEDC contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the County of Genesee and the State of New York and the County of Genesee shall not be liable hereon or thereon.

**Section 12. Entire Agreement.** Each Party acknowledges that it has read this Memorandum, understands it, and agrees to be bound by its terms. This Memorandum (including all appendices, schedules, exhibits, or addenda attached hereto) constitutes the entire agreement and understanding of the Parties and supersedes all prior and contemporaneous proposals, agreements, and understandings, oral and written, relating to the subject matter of this Memorandum, provided, however, that the Parties may enter into subsequent written agreements to further define or modify the scope of the Project or the rights and obligations of the Parties with respect to the Project, and such subsequent written agreements shall be considered part of this Memorandum.

**Section 13. Applicable Law.** This Memorandum shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to principles of conflicts of law.

**Section 14. Successors and Assigns.** This Memorandum shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. This Memorandum may not be assigned without the prior written consent of the Parties except, however, it is acknowledged and agreed that the GCEDC may form a sewer works corporation pursuant to Article 10 of the Transportation Corporation Law to assume the GCEDC's rights and/or obligations hereunder and the GCEDC may assign its rights and obligations under this Memorandum to such sewer works corporation without Village approval. The GCEDC shall provide the Village with notice of any such assignment. Upon assignment of its rights and obligations under this Memorandum to an entity formed to own and operate water infrastructure associated with STAMP, the GCEDC shall have no obligations or liability to the Village under this Memorandum and, upon such assignment, the Village hereby waives and releases the

GCEDC, its officers, directors, representatives, employees, servants, agents, and affiliates from any and all liability, claims, actions, losses, damages, judgments, costs and expenses of any kind, whether caused by carelessness, negligence, gross negligence, negligent omissions, fault, want of due care, breach of contract, breach of warranty, or otherwise of GCEDC or any of the above persons, arising out of or in connection with this Memorandum.

**Section 15. Severability.** If any provision of this Memorandum shall be held by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be of no force and effect, and such invalidity, illegality, or unenforceability shall have no effect upon, and shall not impair the enforceability of, any other provision of this Memorandum.

**Section 16. Force Majeure.** Neither Party hereto shall be liable to the other for default or delay in the performance of any of its obligations hereunder due to act of God; accident; fire; flood; storm; riot; war; act of terrorism; sabotage; explosion; strike; concerted acts of workers; national defense requirements; governmental law; ordinance; rule or regulation (whether valid or invalid); act of any non-Party governmental body (including any delay in decisions regarding permits, authorizations or funding, or delays in funding, by any governmental authority), extraordinary failure of equipment or apparatus; inability to obtain electricity or other type of energy, feedstock, raw or finished material from normal sources of supply, labor, equipment, transportation, permits, or licenses; or any similar or different contingency beyond its reasonable control which would prevent or delay performance or make performance commercially impracticable.

**Section 17. Modifications.** No modification of this Memorandum shall bind any Party unless expressly set forth in writing and manually signed and accepted by an authorized representative of the Party sought to be bound by such writing.

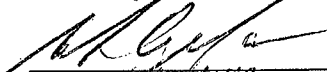
**Section 18. Word Usage.** As used in this Memorandum, the word "including" and variations thereof shall be deemed to be followed by the words "without limitation".

**Section 19. Counterparts.** This Memorandum may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument, and any of the Parties or signatories hereto may execute this Memorandum by signing any such counterpart.

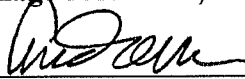
**Section 20. Headings and Drafting of Agreement.** Any headings contained in this Memorandum are used only as a matter of convenience and reference and are in no way intended to define, limit, expand, or describe the scope of this Memorandum. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Memorandum.

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed by its duly authorized officials as of the date first above written.

**Genesee County Economic Development Center**

By:   
Name: Mark J. Kesse  
Title: SP VP of Operations  
Date: May 12, 2015

**The Village of Medina, New York**

By:   
Name: MAYOR  
Title: MAYOR  
Date: May 19, 2015

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