

SETTLEMENT AGREEMENT

Between the CITY OF PLATTSBURGH, a political subdivision of the State of New York having its principal office at 41 City Hall Place, Plattsburgh, NY 12901 ("**City**") and the TOWN OF PLATTSBURGH, a political subdivision of the State of New York having its principal office at 151 Banker Road, Plattsburgh, NY 12901 ("**Town**")
as of April 16, 2021 ("**Effective Date**")

WITNESSETH:

WHEREAS, the City and Town have entered into that certain "Plattsburgh Compact Between the City and the Town" dated as of April 16, 2021 (the "**Plattsburgh Compact**") whereby their respective legislative bodies have recognized the benefits of cooperation and their mutual desire to resolve outstanding grievances; and

WHEREAS, at times those grievances have resulted in litigation or threatened litigation between the City and Town; and

WHEREAS, a brief description of such litigation and potential litigation claims is beneficial; and

WHEREAS, in or around 1992, Saranac Power Partners, L.P. entered into a Payment in Lieu of Tax Agreement (PILOT) with the Clinton County Area Development Corp. and the County of Clinton Industrial Development Agency; and

WHEREAS, the City and Town entered into a separate agreement which provided that the Town would pay the City two-thirds of the monies it received pursuant to the PILOT agreement; and

WHEREAS, in 2018, the City commenced an action against the Town in Supreme Court, Clinton County, principally to enforce its interpretations of the provisions of such agreement, which action was filed under Index Number 255250 and is commonly referred to as the "**Falcon Seaboard Litigation**"; and

WHEREAS, the Town appeared in the Falcon Seaboard Litigation and raised affirmative defenses and interposed counterclaims against the City; and

WHEREAS, such litigation remains pending; and

WHEREAS, unrelated to the Falcon Seaboard Litigation, in 2019 the City began to pursue annexation of certain City-owned land located in the Town pursuant to New York State General Municipal Law Article 17 (the "**Reeves Lane Annexation**"); and

WHEREAS, the land at issue in the Reeves Lane Annexation consists of 224± acres identified by Clinton County tax map parcel numbers 220.-4-31.2 and 220.-4-32, which lands are located within the municipal boundaries of the Town but are adjoining the municipal boundaries of the City; and

WHEREAS, during the course of the municipal review process of the Reeves Lane Annexation, the Town commenced a combined declaratory judgment action and CPLR Article 78 proceeding in Supreme Court, Clinton County on or about September 1, 2020 (Index Number 2020-20563) seeking to enjoin the scheduled Reeves Lane Annexation public hearing and seeking a determination concerning public hearing requirements and limitations pursuant to COVID-19 executive orders (the “**Public Hearing Litigation**”); and

WHEREAS, following denial of the claims raised therein, the Town filed a Notice of Appeal dated October 21, 2020, bearing Supreme Court Appellate Division, Third Department docket number 532261 (“**Public Hearing Appeal**”); and

WHEREAS, the Town and City conducted a joint public hearing concerning the proposed annexation of Reeves Lane on September 24, 2020; and

WHEREAS, the Town raised a number of objections to the Reeves Lane Annexation and ultimately adopted a Determination and Order on December 17, 2020, concluding, among other things, that the Reeves Lane Annexation is not in the overall public interest; and

WHEREAS, the City adopted a Determination and Order on December 3, 2020, concluding that the Reeves Lane Annexation is in the overall public interest and the City thereafter commenced an original proceeding on or about January 18, 2021 in the Supreme Court Appellate Division, Third Department pursuant to General Municipal Law Article 17, seeking a judicial determination as to whether the Reeves Lane Annexation is in the overall public interest (“**Reeves Lane Annexation Litigation**”); and

WHEREAS, the Town made a motion to dismiss the Reeves Lane Annexation Litigation, alleging that the Reeves Lane Annexation petition was procedurally barred as a result of the City’s failure to timely commence a proceeding under CPLR Article 78 to challenge the Town’s objections to the form and content of the annexation petition; and

WHEREAS, in addition, the Town has indicated that it may commence a separate CPLR Article 78 proceeding to challenge the City’s adoption of a Negative Declaration pursuant to the State Environmental Quality Review Act (SEQRA) during its review of the Reeves Lane Annexation; and

WHEREAS, the Town and City previously entered into a separate agreement effective March 1, 2021 to toll the statute of limitations applicable to the Town’s potential SEQRA-related claims and to allow the parties the opportunity to pursue settlement (“**Tolling Agreement**”); and

WHEREAS, the City and Town wish to resolve the foregoing litigation matters through this Settlement Agreement and further wish to provide a means by which they may modify their shared municipal boundary line to effectuate their respective goals, all as set forth more fully herein.

NOW, THEREFORE, BE IT AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

I. PURPOSE

This Settlement Agreement is entered into by and between the City and Town in an effort to forge a more positive relationship between these neighboring communities and to encourage and pursue a more cooperative and mutually beneficial resolution to outstanding controversies.

II. RECITALS

The foregoing recitals are made a part hereof and are incorporated into this Settlement Agreement.

III. BINDING AGREEMENT

This Settlement Agreement constitutes a binding Agreement between the Town and City and each party's respective obligations set forth herein constitute valuable consideration, the sufficiency of which is hereby acknowledged by the parties. Each party has been aided by legal counsel of its choosing to negotiate and draft the terms contained herein and each is entering into this Agreement of its own volition and accord and without duress.

IV. DISCONTINUANCE AND WAIVER OF REEVES LANE ANNEXATION-RELATED LITIGATION CLAIMS

In reliance upon the covenants and conditions contained herein, the City and Town agree as follows:

A. **DISCONTINUANCE OF REEVES LANE ANNEXATION LITIGATION.** The City agrees to discontinue the Reeves Lane Annexation Litigation and the Town and City will execute a Stipulation of Discontinuance substantially similar to the Stipulation attached to and incorporated into this Settlement Agreement at "**Exhibit 1**" ("**Stipulation of Discontinuance**"). Upon the filing with and acceptance of such Stipulation of Discontinuance by the Appellate Division, Third Department, the Town's motion to dismiss the Reeves Lane Annexation Litigation will be rendered moot. The Town and City shall execute the Stipulation of Discontinuance simultaneously with this Settlement Agreement and the City shall hold such Stipulation of Discontinuance in escrow until the Town and the City approve the annexation proceeding(s) set forth in Article V. The City shall seek any necessary adjournments or extensions of time from the Appellate Division, Third Department, between the execution of this Settlement Agreement and the filing of such Stipulation of Discontinuance. The Town will consent and join in any such requests. If the Appellate Division, Third Department denies such request for an adjournment or extension of time, the City shall immediately release the Stipulation of Discontinuance from Escrow and cause it to be filed with the Court. Notwithstanding the foregoing, if the Town adopts a Determination, Order or Resolution pursuant to General Municipal Law Article 17 finding that either of the annexations contemplated in Article V(A) below would not be in the overall public interest, the Stipulation of

Discontinuance shall be released from escrow and the City may opt not to file it. In addition, the City may immediately recommence an annexation proceeding regarding the lands described in Article V(A) pursuant to General Municipal Law §703.

B. Subject to the provisions set forth in this Article V(B), the Town agrees to waive all claims that it may otherwise raise to challenge the SEQRA Negative Declaration adopted by the City in relation to the Reeves Lane Annexation. Simultaneously with execution of this Settlement Agreement, the Town shall execute a waiver and release of SEQRA-related claims substantially similar to the Waiver and Release attached to and incorporated into this Settlement Agreement at “**Exhibit 2**” (“**SEQRA Waiver and Release**”). Provided, however, the Town shall hold such SEQRA Waiver and Release in escrow until the following conditions are satisfied:

i. Upon release of the Stipulation of Discontinuance attached at Exhibit 1 and the filing and acceptance of such Stipulation of Discontinuance with the Appellate Division, Third Department, the SEQRA Waiver and Release shall be released from escrow and immediately issued to the City. While the Waiver and Release is held in escrow pursuant to this Article V(B), the Town and City agree to further toll the statute of limitation applicable to the Town’s SEQRA claims and to execute any additional tolling agreements that may be necessary to effectuate the terms of this provision.

ii. In the event that the Stipulation of Discontinuance set forth at Exhibit 1 is not filed with the Court, the SEQRA Waiver and Release need not be released from escrow. However, the Town and the City agree that any tolling agreement then in effect will be understood to require commencement of the contemplated SEQRA challenge no later than thirty days from the issuance of a Resolution, Order or Determination by the Town that either of the annexations contemplated in Article V(A) below would not be in the overall public interest.

iii. If the City adopts a Determination, Order or Resolution finding that annexation of the County Lands as described in Article V(B) is not in the overall public interest, the SEQRA Waiver and Release shall be rendered null and void and shall have no legal effect. Any tolling agreement then in place shall remain in effect and the contemplated SEQRA challenge may be commenced within the time permitted therein.

C. The Town agrees to waive and forever forego its Public Hearing Appeal. To effectuate this provision, the Town will submit a letter to the Supreme Court Appellate Division, Third Department affirmatively withdrawing its Notice of Appeal within 14 days of the parties’ execution of this Settlement Agreement.

V. FURTHER ANNEXATION PROCEEDINGS

The City and Town are considering reconfiguration of their shared municipal boundaries whereby certain land now a part of the Town would become part of the City and lands now part of the City would become part of the Town.

A. ANNEXATION FROM THE TOWN TO THE CITY - The Town and City hereby agree to comply with the provisions of General Municipal Law §706(2) in reference to annexation of the following lands and all City Council authorizations necessary to pursue such annexations are hereby granted:

1. **"Second Reeves Lane Annexation"** – The City currently owns 224± acres of land identified by Clinton County tax map parcel numbers 220.-4-31.2 and 220.-4-32, which lands are currently located within the Town but are adjoining the Municipal Boundaries of the City (**"Reeves Lane Lands"**). The Reeves Lane Lands are the same lands at issue in the Reeves Land Annexation Litigation.
2. **"Sharron Avenue Annexation"** - The City currently owns 2.8± acres of land identified by Clinton County tax map parcel number 233.7-1-14, which lands are currently located within the Town but are adjoining the Municipal Boundaries of the City (**"Sharron Avenue Lands"**).

B. ANNEXATION FROM THE CITY TO THE TOWN - Clinton County is the record owner of approximately 18.05± acres of land located along LeMay Drive in the City, which lands are more particularly identified by Clinton County tax map parcel number 233.6-1-2.1 (**"County Lands"**). In the event Clinton County submits an annexation petition to the City pursuant to General Municipal Law Article 17 seeking to annex the County Lands, the Town and City agree to conduct a joint Public Hearing at a mutually convenient time and day to be held at a mutually agreeable location. In addition, and provided that conducting such a Public Hearing remotely using a videoconferencing platform is lawful at the time the Public Hearing is conducted, the Town and City agree that neither will object to allowing remote participation during such Public Hearing.

C. In reference to the annexation proceedings set forth in Article V(A), the Town agrees to employ reasonable efforts to begin such proceedings within 30 days of execution of this Settlement Agreement. In reference to the annexation proceedings set forth in Article V(B), the City and Town agree to work together in order to avoid any unnecessary delays in the scheduling of the requisite joint Public Hearing and/or the making of any necessary determinations.

D. Upon (i) Town approval of the Second Reeves Lane Annexation and the Sharron Avenue Annexation, and (ii) City approval of Town annexation of the County Lands, the Reeves Lane Annexation Litigation Stipulation of Discontinuance (Exhibit 1), if not already released and filed, shall be released from escrow and the City shall immediately cause that Stipulation of Discontinuance to be filed with Supreme Court Appellate Division, Third Department and the SEQRA Waiver and

Release (Exhibit 2) shall be released from escrow and immediately provided to the City.

E. Each of the annexation proceedings contemplated herein constitutes a separate Action for SEQRA purposes and will be subject to its own separate SEQRA review prior to the adoption of any final determination concerning annexation. As the Town is the only SEQRA Involved Agency that will be reviewing annexation of the Sharron Avenue Lands pursuant to this Settlement Agreement, the City hereby waives any objection it may otherwise have to the Town conducting SEQRA review of such Action. The Town hereby waives any objection it may otherwise have to the City conducting SEQRA review in reference to annexation of the County Lands. This provision is not contingent upon the ultimate outcome of the respective annexation proceedings.

F. Nothing contained herein shall require either the Town Board or the City Council to make any particular finding in relation to SEQRA and/or any future annexation proceeding described in this Settlement Agreement. However, if the Town adopts a Determination, Order or Resolution pursuant to General Municipal Law Article 17 finding that either the Second Reeves Lane Annexation or the Sharron Avenue Annexation would not be in the overall public interest, the City may immediately recommence/commence an annexation proceeding regarding the Reeves Lane or Sharron Avenue Lands pursuant to General Municipal Law §703. Similarly, if the City adopts a Determination, Order or Resolution finding that annexation of the County Lands is not in the overall public interest, the Town may pursue any rights it has to commence a proceeding in the Supreme Court, Clinton County and/or Appellate Division, Third Department pursuant to the provisions of General Municipal Law Article 17.

VI. REEVES LANE TOWN DISTRICT PROTECTION PROGRAM

A. The City and Town acknowledge that annexation of the Reeves Lane Lands may have an unexpected initial impact upon Town taxpayers. In 2021, the City's total tax liability to the Town was \$10,754.07 and such sum would approximate future City tax liability if such lands were to remain within the Town. To mitigate any unintended effects upon Town taxpayers and to provide the Town sufficient time to prepare for the loss of such revenue, the Town and City hereby agree to create the Reeves Lane District Protection Program, effective upon Town approval of the Reeves Lane and Sharron Avenue annexations described in Article V.

B. Pursuant to the Reeves Lane Town District Protection Program, the City will continue to make payments to the Town for a period of five years, which shall be due and payable consistent with the Town's tax billing cycle, as if such payments constituted real property taxes. The districts include: Highway, Consolidated Ambulance District, Fire District #3, Consolidated Lighting General, Consolidated Sewer District Special/General/Gen Capital, and Consolidated Water District Special/General/Gen Capital. The first Town District Protection payment shall be

made in the year directly following the year in which annexation of the Reeves Lane land is accomplished and payments shall be made as follows:

Year 1	Year 2	Year 3	Year 4	Year 5
100%	100%	100%	50%	25%
\$10,754.07	\$10,754.07	\$10,754.07	\$5377.04	\$2688.52

C. The provisions in this Article VI shall not apply in the event that the Second Reeves Lane Annexation and/or the Sharron Avenue Annexation is/are not accomplished or if either is accomplished over the objections of the Town.

VII. FALCON SEABOARD LITIGATION DISCONTINUANCE

A. The City and Town hereby mutually agree to discontinue all claims and counter-claims raised in the Falcon Seaboard Litigation by executing the Stipulation of Discontinuance attached to and incorporated into this Settlement Agreement at “**Exhibit 3**” (“**Falcon Seaboard Stipulation**”).

B. The City shall hold this Falcon Seaboard Stipulation in escrow pending Town approval of the Reeves Lane and Sharron Avenue annexation proceedings at which time the City shall cause this Falcon Seaboard Stipulation to be filed with Supreme Court, Clinton County. If the Town adopts a Determination, Order or Resolution finding that either the Second Reeves Lane Annexation or Sharron Avenue annexations would not be in the overall public interest, the Falcon Seaboard Stipulation shall be released from escrow and the City may opt not to file it.

VIII. NO ADMISSIONS

This Settlement Agreement does not constitute nor shall it be construed to be an admission of liability by any party with respect to the asserted or potential legal claims referenced in this Settlement Agreement. Except as expressly set forth herein, no party is waiving any rights, claims or defenses it may otherwise have.

IX. CHOICE OF LAW AND VENUE

This Settlement Agreement shall be governed by the laws of the State of New York. In the event any proceeding between the Town and City is commenced which arises out of or in connection with this Settlement Agreement or its terms, such proceeding shall be venued in Supreme Court, Clinton County. The terms of this Settlement Agreement shall be afforded their plain and fair meaning without regard to which party caused the same to be drafted or revised.

X. NO THIRD PARTY BENEFICIARIES

This Settlement Agreement is intended for the exclusive benefit of the parties hereto and shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

XI. COUNTERPARTS

This Settlement Agreement may be signed in counterparts, using scanned, facsimile, or digital signatures, each of which together will constitute the agreement.

XII. ENTIRE AGREEMENT

The City and Town are in the process of resolving a number of outstanding issues and controversies, a portion of which are addressed herein. However, this Settlement Agreement contains the entire agreement between the parties at it pertains to the matters set forth herein and the terms of this Agreement are not contingent upon any occurrences not expressly set forth herein.

XIII. MODIFICATIONS IN WRITING

This Settlement Agreement shall not be modified unless the modification is in writing and signed by each party.

XIV. DULY AUTHORIZED REPRESENTATIVES

Each of the undersigned Officials certifies that he has been duly authorized by his respective Board to enter into this Settlement Agreement and to execute and bind such party to the terms, covenants, conditions, acknowledgments and assertions contained herein.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the Effective Date first set forth above.

TOWN OF PLATTSBURGH

By: _____
Michael S. Cashman, Supervisor

Approved as to form:

By: _____
James Coffey, Esq.
Town Attorney for the Town
of Plattsburgh

CITY OF PLATTSBURGH

By: _____
Christopher C. Rosenquest, Mayor

Approved as to form:

By: _____
Dean C. Schneller, Esq.
Corporation Counsel for the
City of Plattsburgh

EXHIBIT 1

To Settlement Agreement Between the City of Plattsburgh and the Town of Plattsburgh

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

In the Matter of a Special Proceeding

CITY OF PLATTSBURGH,

Petitioner,

-against-

STIPULATION OF

DISCONTINUANCE

TOWN OF PLATTSBURGH

Docket No.: 532792

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys of record for the respective parties herein, that whereas no party is an infant, incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above captioned action be and the same is hereby discontinued with prejudice and without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.

DATED:

Dean C. Schneller, Esq.
Corporation Counsel for the
City of Plattsburgh
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EXHIBIT 2

To Settlement Agreement Between the City of Plattsburgh and the Town of Plattsburgh

WAIVER AND RELEASE OF CLAIMS

WHEREAS, the Town of Plattsburgh is a political subdivision of the State of New York having its principal office at 151 Banker Road, Plattsburgh, NY 12901 (“Town”); and

WHEREAS, the City of Plattsburgh is a political subdivision of the State of New York having its principal office at 41 City Hall Place, Plattsburgh, NY 12901 (“City”); and

WHEREAS, on or about August 4, 2020, the City filed a certain annexation petition with the Town pursuant to General Municipal Law Article 17 seeking to annex properties identified by Clinton County tax map parcel numbers 220.-4-31.2 and 220.-4-32 (“the Annexation”); and

WHEREAS, pursuant to the State Environmental Quality Review Act (SEQRA), annexation constitutes an Action subject to SEQRA review; and

WHEREAS, the City conducted SEQRA review in its capacity as Lead Agency, which resulted in City adoption of a SEQRA Negative Declaration on May 28, 2020 which Declaration was further amended and adopted on December 3, 2020; and

WHEREAS, the Town has raised certain objections to the City’s adoption of a SEQRA Negative Declaration in relation to the Annexation; and

WHEREAS, the Town has contemplated commencement of a proceeding to challenge the City’s SEQRA review effort and/or its findings and determinations; and

WHEREAS, the City and Town entered into a Tolling Agreement effective March 1, 2021 to permit the parties an opportunity to pursue settlement of such controversies; and

WHEREAS, the City and Town have since reached certain agreements concerning these potential SEQRA-related claims.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS OF THE PARTIES:

The Town hereby forever waives and releases all legal claims it may otherwise have concerning, relating to or in any way arising from the SEQRA review effort undertaken by the City in relation to the Annexation. This includes any and all claims that the Town could raise in an effort to invalidate the City’s SEQRA Negative Declaration. It is the Town’s intention that this Waiver and Release supersede the terms of the parties’ previous Tolling Agreement.

DATED:

TOWN OF PLATTSBURGH

By: _____
Michael S. Cashman, Supervisor

EXHIBIT 3

To Settlement Agreement Between the City of Plattsburgh and the Town of Plattsburgh

STATE OF NEW YORK

SUPREME COURT

CLINTON COUNTY

CITY OF PLATTSBURGH,

Plaintiff,

-against-

STIPULATION OF

DISCONTINUANCE

TOWN OF PLATTSBURGH

Docket No.: 255120

Defendant.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys of record for the respective parties herein, that whereas no party is an infant, incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above captioned action, including all claims and counterclaims raised herein shall be and the same is hereby discontinued with prejudice and without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.

DATED:

William L. Owens, Esq.
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