



CITY OF CORTLAND  
OFFICE OF CITY CLERK

25 COURT STREET • CORTLAND, NY 13045  
PHONE (607) 756-6521 • FAX (607) 756-4644

**SOUND DEVICE PERMIT**

DATE REQUESTED: July 12<sup>th</sup> ISSUANCE DATE: \_\_\_\_\_  
NAME: Cortland Beer Co. EXPIRATION DATE: \_\_\_\_\_  
ADDRESS: 16 Court Street TELEPHONE: 607-682-4389  
Cortland, NY 13045

TYPE OF SOUND DEVICE: Band/Jazz Times: 11:30am - 5:PM  
NON-PROFIT: \_\_\_\_\_

(\*Please check if you are a non-profit group therefore no licensing fee applies)

LICENSE FEE: Fixed Location-\$250 Mounting upon Motor Vehicle-\$500

**Fixed Location:** For the use or operation of any radio, phonograph, microphone or other device by which sounds are magnified and caused to be heard over any public street or public place from any one fixed location and not in, or mounted upon a motor vehicle, the sum of \$250 for any day or part of a day for which the applicant desires permission hereunder. (Code of Ordinances 193-5 Noise Article II Sound Devices [adopted 8-5-1969 as Ch. 12, Art. VI, of the 1969 Code of Ordinances])

**Mounting upon motor vehicle:** For the use or operation of any radio, phonograph, microphone or other device by which sounds are magnified and caused to be heard over any public street or public place to be used in, or mounted upon, a motor vehicle, the sum of \$500 for any day or part of a day for which the applicant desires permission hereunder. (Code of Ordinances 193-5 Noise Article II Sound Devices [adopted 8-5-1969 as Ch. 12, Art. VI, of the 1969 Code of Ordinances])

RESTRICTIONS, IF ANY:

  
\_\_\_\_\_  
Signature of Applicant

6/5/14  
\_\_\_\_\_  
Date

**APPLICATION MUST BE FILED AT LEAST TWO (2) WEEKS BEFORE FUNCTION TO ALLOW TIME FOR PROCESSING.**

Cortland Beer Company / Dan Cleary  
16 Court Street  
Cortland, NY 13045  
607-662-4389  
Dan@cortlandbeer.com  
May 28, 2014

Cortland City Common Council  
25 Court Street  
Cortland, NY 13045

Dear Cortland City Common Council:

Cortland Beer Company will be participating in this year's Taste of Downtown on July 12<sup>th</sup>. We have been contacted by the band *The JazzHappens Band*, who would like to perform in our parking lot on this date. We feel that live music would be great for the event and the Downtown area during the Taste of Downtown. We help support the Downtown Partnership and this event by selling the tasting glasses and tickets in The Tap Room and advertising the Taste of Downtown on social media and in-house posters while getting no profits for these sales and marketing.

We are requesting that the \$250.00 permit fee be waived for this event. While this event brings a lot of people downtown, it is more of an introduction and sampling event. Most people are in and out for the free samples. There is not a lot of income generated, considering the costs involved in putting on the event. In addition, if the weather is not cooperative we would not be able to recover the cost of the permit, even though the band will not be able to play in the parking lot. We just ask that you consider these thoughts in your decision.

Sincerely,



Cortland Beer Company / Dan Cleary

City of Cortland  
2-Unit Housing Rehabilitation Program  
CDBG Administration and Program Delivery Services

## Introduction

*Thoma Development Consultants* has a depth of familiarity in the management of CDBG Programs and can provide exceptional services to the City for its program. We have provided community development services for municipal customers for the past thirty-four years and have worked with the City of Cortland on all of its Community Development Block Grant projects, partnering with the City to foster an environment for a better tomorrow.

We have reviewed a copy of the City's Request for Proposal and believe our firm is most qualified to carry out the proper administrative tasks with respect to the City's newly awarded CDBG Grant for a City-wide 2-Unit Housing Rehabilitation Program.

Thoma will undertake the following tasks in administering the City of Cortland's CDBG Program to comply with the scope of services stated in the City's RFP:

### Task 1: Program Start Up

Thoma Development Consultants will complete the following tasks at the start up of both CDBG Grant Programs:

- Prepare the Environmental Review Record, including assisting the City in complying with the State Environmental Quality Review Act (SEQRA) and National Environmental Protection Agency (NEPA) requirements.
- Finalize with the City the program design and guidelines.
- Develop a grant accounting system and identify information needed for the City's accounting system.
- Develop a file maintenance system for the City, including preparing files for the system.
- Prepare/update the City's plans such as Fair Housing, Implementation Plan, and other plans, related to the requirements of the CDBG Program.
- Develop an Eligible Contractors List, which includes advertising for contractors.

**Task 2: Intake and Qualification of Program Participants for Rehabilitation Program**

Under Task Two, Thoma will complete the following:

- Advertise for and contact potential program participants.
- Establish a system to facilitate submission of applications.
- Perform preliminary property inspections and discuss with property owner.
- Perform work write-ups and cost estimates for selected properties.
- Conduct or contract for an EPA Lead Based Paint Risk Assessment, as required.
- Assist the property owner in contractor selection for bids.
- Prepare specifications and assist property owners in bidding work.
- Submit program participants to the City's Loan Committee.

**Task 3: Monitoring and Completion of Rehabilitation Work**

Under Task Three, Thoma will complete the following:

- Encumber funds for the approved work.
- Prepare program documents.
- Monitor the progress of work expenditures on each property.
- Assist the City with required security filings on each property.
- Inspect all approved work including final inspections.
- Conduct or contract for an EPA Lead Based Paint Clearance, as required.

#### Task 4: Grant Administrative Work

Under Task Four, Thoma will complete the following:

- Prepare all payment and drawdown documentation.
- Submit monthly reports to the City Common Council.
- Attend City Common Council meetings as necessary.
- Advise the City on matters relating to the grant program and/or the Office of Community Renewal.
- Upon approval by the City Common Council, prepare grant amendments, as needed, and prepare Conflict of Interest Waivers.
- Prepare all reports required by the OCR including status, annual performance, final reports, and close out.

City of Cortland  
 2-Unit Housing Rehabilitation Program  
 CDBG Administration and Program Delivery Services

Your Cost

Cost Per Hour

Job Categories	Pay Rate	Fringe*	Overhead**	Total
Senior Consultant	\$45	\$12	\$28	\$85
Program Manager	30	9	16	55
Clerical	14	4	7	25

\* % Fringe Benefits = 25%

\*\* % Overhead = 50%

Estimated Hours

Job Categories	Total Hours		Hourly Fee		Total Cost
Senior Consultant	55	X	\$85	=	\$ 4,675
Program Manager	980	X	55	=	53,900
Clerical	400	X	25	=	10,000
				<b>TOTAL</b>	<b>\$68,575</b>

Proposed Profit Added

Total Cost		Profit	Total Proposed Cost
\$68,575	+	\$425	\$69,000

Attachments

- 1) Schedule for disbursement of fees
- 2) List of reimbursable costs and method of charging
- 3) Explanation of percent profit
- 4) Fee for Lead Based Paint Risk Assessor
- 5) Program Schedule

NAME: **BERNARD THOMA**

SIGNATURE: \_\_\_\_\_

**CITY OF CORTLAND POLICE**  
**BICYCLE SALE PROPOSAL**

Proposal for the Cortland City Police to conduct the Second Annual Bicycle Sale on or about Saturday June 28 from 8:00 AM until 12:00 PM, as of means of reducing the number of recovered bicycles currently in possession of the agency, while putting the bicycles to good use within the community. All bicycles will be sold in "AS IS" condition for \$25.00 each, with each buyer signing a waiver acknowledging the conditions of the sale. All proceeds will be donated to the Cortland Youth Bureau's Wickwire Pool Fund. (DC Paul A. Sandy)

As a reminder, the sale conducted during September 2013 resulted in 31 bicycles being sold and \$775.00 donated to the Wickwire Pool Fund.

The waiver is the same one approved by the Law Department last fall.

**CITY OF CORTLAND POLICE**  
**BICYCLE SALE WAIVER**

I, \_\_\_\_\_, being the buyer of an unclaimed bicycle from the City of Cortland Police Department, understand this bicycle is being sold "as is" with no warranty or guarantee, and it is highly likely this bicycle is not fully functional at the time of the sale and will require some degree of repair. I hold the City of Cortland Police harmless for any incidents which may arise out of my operation of this bicycle. The bicycle has been purchased on \_\_\_\_\_, for a price of \$ \_\_\_\_\_, and is described as follows:

(Make) \_\_\_\_\_

(Model) \_\_\_\_\_

(Color) \_\_\_\_\_

(Serial Number) \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

# Police bike sale benefits Wickwire Pool

By SARAH BULLOCK  
Staff Reporter

A sale of unclaimed bikes turned in to city police netted over \$300 on Saturday for the Wickwire Pool Trust fund, which aims to repair aging Wickwire Pool at Sugar Creek.

Mountain bikes, a vintage road bike with swept-back handlebars and traditional 18-speed road bikes were just a few of the 70 bikes available for \$25 at the city-owned former armory on Wheeler Avenue.

Thirteen bikes were sold, said Deputy Police Chief Paul Sandy, who ran the sale. The sale is set to continue this coming Saturday from 9 a.m. to noon. The bikes were all turned in as lost to city police, who stored them for six months to a year, waiting for someone to claim them, Sandy said.

"People don't check in with us like they should," he said, noting that about five times the number of bikes are turned in to the department than the department receives calls about missing bikes.

Saturday was the first time the department had a sale of the bicycles, Sandy said. In the past it has auctioned them with other city goods, done a separate online auction for the bikes and donated them to Cornell Cooperative Extension of Cortland County's Recycling Used Bicycles by Educat-



Chris Mowry of Cortland attempts to tow a used mountain bike he purchased Saturday from a collection of bicycles recovered by city police over the summer.

ing You program.

The program teaches children basic bicycle repair and gives bicycles to those in need.

City police donated about 70 bicycles to the program in the last two years. The program got flooded with bikes and said it could only take a few this year, Sandy said, and the department needed another way to clean out the armory where city police store the bikes.

Linda and Tom Quinlan of Virgil

Joe McInerney photograph

Chris Mowry of Cortland attempts to tow a used mountain bike he purchased Saturday from a collection of bicycles recovered by city police over the summer.

were glad to hear the proceeds of the sale would benefit the pool they used to swim in, and were happy to get an 18-speed Roadmaster bike for Linda Quinlan cheaply.

Quinlan was looking to start bicycling more for exercise, but wasn't thrilled with the bike she had.

"And I don't want to put a lot of money into it until I'm sure I want to ride it," she said. "My husband rides, so he'll have company now."

C. Michael Mowry, 38, of Cort-

land, is an avid cyclist who picked out a Genesis mountain bike Saturday to add to his collection of 11 bicycles.

"I do everything by bike," said Mowry, who pedals between 15 to 20 miles a day. "I needed something for the winter, so this will probably be my winter bike."

Mowry even rode a bicycle to the bike sale and planned on towing the additional bike behind him when he left.

John McInerney, the director of the Youth Bureau, offered Mowry a lift in his truck instead, which Mowry decided to take.

McInerney was pleased with the fundraiser, one of many in recent months for the pool that needs \$915,000 in repairs. A total of \$221,663 has been raised, said McInerney. No renovation work will begin on the pool until all the funding is secured, he said.

Yearly patch work at the pool is still planned, but how much will be needed won't be known until spring.

The Cortland Youth Bureau submitted an application for a \$500,000 grant through the state's Office of Parks, Recreation and Historic Preservation about a month ago, McInerney said, and a decision is expected sometime in December or January.

"Every little bit of fundraising we can do helps," he said. "It just keeps the mission alive."

## Mack Cook

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**From:** Mack Cook  
**Sent:** Thursday, June 12, 2014 4:46 AM  
**To:** Bruce Adams (badams@cortland.org); ward1 (ward1@cortland.org); ward2 (ward2@cortland.org); ward3 (ward3@cortland.org); ward4 (ward4@cortland.org); ward5; ward6 (ward6@cortland.org); ward7 (ward7@cortland.org); ward8 (ward8@cortland.org); lawdept; Bruce Adams (badams@cortland.org); Chris Bistocchi; John D. O'Connell III; Ed Poole; Nicholas Dovi  
**Subject:** Equipment transfers and purchases

Mayor and Members of Common Council;

On next Tuesday's agenda will be three resolutions connected with transferring two dump trucks from the Waste Water Department to the Water Department; replacing the two trucks with a purchase of a new truck and 2 roll-offs for sludge removal for the Waste Water plant; and equipping the two transferred trucks with plows and salt spreaders.

I will let Bruce and Chris explain the operational rational and the benefits derived. Here are the numbers and why this works.

The December 2013 fund balances in the Waste Water Fund and the Water Fund are as follows:

	Waste Water	Water
Balance at 12/31/2012	2,375,357	877,293
Increase from 2013 Operations	303,960	215,416
<u>Fund Balance at 12/31/2013</u>	<u>2,679,317</u>	<u>1,092,709</u>

The City's Fund Policy for these two funds sets aside in a Reserve for Operating Expenses an amount equal to 20% of the annual expenses including debt service. The balance remaining is reserved for Equipment and Infrastructure Replacement.

Reserve for Operating Expenses Waste Water (3,570,322 x 20%)	714,064	343,063
Equipment Reserve	<u>1,965,253</u>	<u>749,646</u>
<u>Total Fund Balance @ 12/31/13</u>	<u>2,679,317</u>	<u>1,092,709</u>

Transfer of two trucks from Waste to Water at FMV (Round #'s)	+ 98,000	- 98,000
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Purchase of new trucks and 2 roll-offs for sludge transport	- 191,000 (Round #)	
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Purchase of plows and salt spreader (25,000 per truck) (Round #'s)		- 50,000
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**City of Cortland**  
City Hall – Mayor’s Office  
Brian Tobin  
Mayor  
25 Court Street, Cortland, New York 13045  
Website: [www.cortland.org](http://www.cortland.org)

Phone: 607-758-8374

Fax: 607-756-4644

## **City of Cortland and Professional Waste Water Operations Association**

### **MEMORANDUM OF UNDERSTANDING**

The city and PWOA hereby agree that all holidays set forth in the collective Bargaining Agreement with the exception of the “Floating Holiday” shall be compensated as follows:

An employee who works a regularly schedule shift that falls on a designated holiday shall be compensated at an additional 8 hours straight time;

In addition, 8 hours shall be credited to the employee’s compensatory time bank.

Executed this \_\_\_\_\_ day of June 2014 by

\_\_\_\_\_  
Tom McCall, President

\_\_\_\_\_  
Brian Tobin, Mayor



**City of Cortland**  
**ZONING BOARD OF APPEALS COMMISSION**  
25 Court Street, Cortland, New York 13045  
Website: [www.cortland.org](http://www.cortland.org)

Phone: 607-758-8374

Fax: 607-756-4644

To: Honorable Mayor and Common Council, City of Cortland  
Subject: Resolution of Support for Full-time Zoning Officer Position  
From: City of Cortland Zoning Board of Appeals  
Date: June 11, 2014

It is the understanding of the City of Cortland Zoning Board of Appeals that the City is giving consideration to increasing the position of Zoning Officer to full-time.

Recognizing that this job is increasingly complex and demanding, it is the consensus of ZBA members that this is a desirable move because it will:

1. Provide better access for residents who have need of these services,
2. Reduce the number of different City employees who are involved in the variance process,
3. Allow the City to provide consistent information and guidance for City residents and businesses who look to improve their properties, and
4. Provide the time and expertise needed to update zoning, planning and code procedures and forms.

At its June 9, 2014 meeting, on the motion of Commissioner Place, seconded by Commissioner Dovi, the ZBA unanimously passed the following resolution:

***Resolved that the ZBA recommend that the Common Council support the position of full-time Zoning Officer.***

November 15, 2012

The Honorable Mayor Brian Tobin  
Cortland City Council Members  
City Hall  
Court Street  
Cortland, NY 13045

Dear Mayor Tobin and Council Members:

Chief Glover and Deputy Chief Knickerbocher presented information to the Commissioners about the City Fire Department's budget, in particular, the much needed full-time position for a Zone Enforcement Officer.

The Code Enforcement Office needs to be available to the public during business hours. This full-time position will incorporate duties from three different positions; the Zoning Enforcement Officer (currently only part-time), clerical support due to the additional requirements, increased workload and pending Rental Permit Program, and the unfilled position of Deputy City Clerk taking those responsibilities of receiving zoning applications, processing all applications and paperwork for the Boards (Planning, Zoning, Historic...) preparing agendas, recording proceedings and transcribing minutes.

The position would allow proactive action versus reactive. Five hundred building permits were issued, thus far, at the time of the Fire Commission's meeting date. Some money would be generated by the position with the ability to take care of business more promptly.

The Fire Commission unanimously supports the need for this position and urges the City Council members to recognize the benefits to be reaped by their support. Chief Glover is very knowledgeable and we believe he has done a superior job of leadership and moved the Cortland City Fire Department into a more cohesive unit. He knows what the needs for his department are and we trust his judgment.

Thank you!

Sincerely,

Bonnie Ann Heath, Chair  
Cortland City Fire Commissioners



# CORTLAND YOUTH BUREAU

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35 Port Watson Street • Cortland, NY 13045 • (607) 753-3021 • Fax: (607) 753-3023

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TO: Mayor Brian Tobin  
Members of the City Council  
Mack Cook, Director of Administration and Finance  
Lori Crompton, Finance Department

FROM: John McNerney, Youth Bureau Director

RE: Cortland Youth Bureau donations

DATE: June 2<sup>nd</sup>, 2014

I would like to ask the common council to pass the following resolution on June 17<sup>th</sup>, 2014.

*Consideration of a resolution to approve donations and deposit funds into the Cortland Youth Bureau Budget/Trust Funds. Donated funds will be added to the following budget lines or Trust Funds outlined below:*

<b><i>Donation</i></b>	<b><i>Amount</i></b>	<b><i>Budget Line</i></b>
<i>JM McDonald Foundation, Inc.</i>	<i>\$50,000.00</i>	<i>Wickwire Pool Trust Fund</i>
<i>Cortland Community Foundation</i>	<i>\$25,000.00</i>	<i>Wickwire Pool Trust Fund</i>
<i>United Presbyterian Church</i>	<i>\$1,000.00</i>	<i>Wickwire Pool Trust Fund</i>
<i>Edward J. Feiman</i>	<i>\$1,000.00</i>	<i>Wickwire Pool Trust Fund</i>
<i>Richard Coats</i>	<i>\$140.00</i>	<i>Wickwire Pool Trust Fund</i>
<i>Friends of Greg Partigianoni (Angie G. Partigianoni)</i>	<i>\$43,000.00</i>	<i>Beaudry Park Building Project</i>
<i>Todd &amp; Michelle Funk</i>	<i>\$500.00</i>	<i>A7330.5400</i>
<b><i>TOTAL =</i></b>	<b><i>\$120,640.00</i></b>	

See the attached copies of checks and notes relating to the donations. I would like to give a special thank you to the donors for their generous donations to the City of Cortland Youth Bureau. Feel free to contact me with any questions at 753-3021 ext.23.



**AGREEMENT TO PROVIDE ADMINISTRATIVE FUNDS BETWEEN  
THE CITY OF CORTLAND AND ACCESS TO INDEPENDENCE OF CORTLAND COUNTY, INC.**

**FUNDING SOURCE: NYS OCR PROGRAM INCOME**

AGREEMENT made this \_\_\_\_ day of June 2014 by and between the City of Cortland being a Municipal Corporation of the State of New York with offices at 25 Court Street, Cortland, NY, (the "City") and Access to Independence of Cortland County, Inc., ("ATI") being a not-for-profit corporation with offices at 26 North Main Street, Cortland, NY.

WHEREAS, the City has heretofore made application to the New York State Office for Community Renewal (OCR) for grants under Title I of the federal Housing and Community Development Act of 1974 (Public Law 93-383), as amended, through the Small Cities Community Development Block Grant Program (CDBG) (the "Grants"); and

WHEREAS, the Grants have been awarded the City and used by the City in accordance with CDBG Program guidelines and federal regulations allowing the accumulation of Program Income and the subsequent use of the accumulated Program Income for Community Development eligible activities; and

WHEREAS, the City has submitted a Program Income Plan to the OCR as required that allows for the use of Program Income for housing assistance to low-to-moderate income individuals who both own and occupy units in the City of Cortland, and in particular those who are disabled; and

WHEREAS, one of the purposes of the CDBG Program is the removal of architectural barriers from owner-occupied homes or units to facilitate the accessibility of living units and to enhance the livability for persons with disabilities; and

WHEREAS, Access to Independence of Cortland County, Inc. is a not-for-profit corporation that provides assistance to and programs for the disabled, including a Program known as Access to Home (the "Program") that provides funding for the rehabilitation of owner-occupied homes or tenanted units where one or more of the household members are disabled and in need of assistance to remove architectural barriers and/or modifications to the home or unit that will enable a disabled person(s) to remain in or return to the home/unit; and

WHEREAS, the City wishes to enter into this Agreement to Provide Administrative Funds ("Agreement") between the City and ATI for purposes of providing funds for the administration of the Program as requested in a letter from ATI's Executive Director dated April 28, 2014 (included herein by reference); and

WHEREAS, pursuant to Article 5, Section 99-h of the General Municipal Law of the State of New York, the City has the power to accept and expend funds made available by the federal Government to administer and conduct programs with such State and/or federal assistance related to the general welfare of inhabitants of the City, where the City has received approval of its CDBG Program as required by law;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS AGREEMENT WITNESSETH THAT THE PARTIES HEREBY AGREE AS FOLLOWS;

**ARTICLE I  
DEFINITIONS**

Section 1.1

Definitions: For the purpose of this Agreement, the following words and terms shall have the respective meanings set forth as follows:

"Agreement" means this Agreement to Provide Administrative Funds to ATI.

"City's Representative" means, for the purpose of this Agreement, Thoma Development Consultants ("Thoma"), which is retained by the City to administer programs using Program Income funds.

"Grants" means certain grants awarded the City by the U.S. Department of Housing and Urban Development (HUD) and/or the NYS Office of Community Renewal (OCR) on behalf of HUD, from which monies are or were generated to assist the City in continuing its Community Development Programs, and in particular Programs to assist disabled, low-to-moderate income persons/households with the removal of architectural barriers.

"Grant Agreements" means certain agreements between the City and HUD and/or the City and the NYS OCR setting forth the terms and conditions upon which the Grant or Grants were awarded and providing for the disbursement of the proceeds of the Grant or Grants.

"HUD" means the United States Department of Housing and Urban Development.

"Low-to-moderate income person(s)" means a person(s) that resides in a Census tract where not less than 70% of the residents are low and moderate income persons, or a person(s) that is part of a household where the household's income is at or below 80% of County median income as determined by HUD and as adjusted for household size. Certification that a household's income is at or below HUD's median income will be determined by ATI in accordance with a review of all sources of household income.

"OCR" means the New York State Office of Community Renewal, a State entity under the New York State Homes and Community Renewal that administers the federal CDBG Program for HUD in the State of New York and which oversees the use of Program Income pursuant to a Plan submitted to the OCR by the State.

"Premises" means any owner-occupied home located in the City of Cortland that is determined to be in need of and eligible for assistance under ATI's Access to Home Program, which is both owned and occupied by an income-eligible individual(s) pursuant to the CDBG Small Cities Program income limits.

"Program Income" means funds that return to the City as repayments of loans or grants made under eligible activities or funds that are recaptured under terms of certain Community Development Activities operated by the City and that can be retained by the City for the purpose of undertaking other Community Development eligible activities as defined by the NYS OCR and/or HUD.

"Project" means the provision of Access to Home funds for the purpose of removing architectural barriers and/or providing modifications/improvements that will make an owner-occupied home located in the City, accessible for a disabled person/household and which will facilitate continued occupancy by the disabled person/household or allow the

person to return to the home. Pursuant to HUD requirements, the home must be owned and occupied by a household/person that meets the HUD definition of low-to-moderate income.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

### **Section 2.1**

#### **Representations by the City:**

The City represents that:

1. It is a Municipal Corporation of the State of New York and has full power and authority to consummate all transactions contemplated by this Agreement;
2. The use of the Program Income to support the Access to Home Program to be administered by ATI is an authorized use of Program income;
3. The City has heretofore made application to the United States Department of Housing and Urban Development and/or the New York State Office of Community Renewal under Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended, for various grants which have been awarded the City and which have been used for Community Development eligible activities, such as economic development or housing loans, generating funds from the loan repayments thereon called Program Income, which is then available for other Community Development eligible activities.

### **Section 2.2**

#### **Representations by the Borrower:**

The Borrower represents that:

1. ATI is a not-for-profit corporation, validly existing and in good standing under the laws of the State of New York;
2. ATI is an organization that advocates and provides programs for the disabled in Cortland County and has received funding under the Access to Home Program to undertake such activities but has disclosed to the City a need for administrative funds in order to carry out the activities as outlined in its application for the Program funds;
3. All Projects for which ATI will voucher the City under this Agreement will be designed in compliance with all applicable federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety, environmental quality, and historic preservation; that ATI will verify that its responsible contractor has secured a building permit; and that ATI will perform all inspections for all activities as required;
4. ATI understands and agrees that the funds to be provided hereunder will be used for administrative purposes for Projects located in the City of Cortland only and for which ATI has qualified, confirmed and certified that the occupants of the home to be assisted meets the low-to-moderate income criteria as set forth under the CDBG definition of low-to-moderate income person stipulated above, the occupant both lives in and owns the home to be assisted and all other requirement of the Access to Home Program are met by the project.

5. ATI will not use City assistance for any tenant occupied property.

**ARTICLE III  
PROVISIONS FOR ASSISTANCE**

**Section 3.1**

**Scope of Services:** ATI will provide all administrative and program delivery services for Access to Home Projects for qualified applicants/participants that live in and own a home in the City of Cortland. The scope of services for Projects for which City funds are sought will include, but not be limited to, (1) marketing the Program, (2) providing intake of applicants who own and occupy single family homes in the City of Cortland, (3) securing all necessary paperwork/information/documents and maintaining same in a filing system that documents qualification of applicants/participants for projects for which funds are sought, (4) preparing work write-ups and costs estimates, (5) providing any and all environmental assessments or energy audits if required under the Program, including but not limited to lead paint assessments and undertaking requisite action as a result of any environmental assessment or audit or energy audit (6) submitting all Projects for approval to the New York State Office of Historic Preservation (SHPO) prior to construction start; (7) assisting applicants/participants with or providing bidding documents and bidding the Project on behalf of the applicants/participants, (8) preparing contracts for execution by the appropriate parties, (9) providing oversight for all construction work undertaken on a Project, (10) inspecting and approving all construction work undertaken on a Project, and/or working with contractors to insure that work identified by ATI as substandard is repaired in a manner satisfactory to the Project owner, (11) preparing payment requests and making payments for all Projects pursuant to the contracts executed, (12) submitting paperwork to the Access to Home funding source to close-out Projects, (13) preparing vouchers for City payment on completed Projects that will include, at a minimum (A) a City voucher, (B) copy of the Program participant's application for whom administrative funds are sought, (C) certification that the Program participant met all Program requirements, and (D) a brief summary of the scope of the work for the Project for which funds are sought.

**Section 3.2**

**Compensation and Disbursement of Funds:** The City will provide \$1,100 in administrative funds to ATI upon completion of each "owner-occupied" Project located in the City to be performed under the 2013 Access to Home Program, up to a maximum of \$5,5000. The fee for each project will be as follows:

Application/Intake/Selection Process	\$ 300
Work write-up/SHPO Submission/Bidding and Contracts	300
Construction and Closeout	<u>500</u>
Maximum Fee per City eligible project	\$1,100

The administrative fee will be provided to ATI only for Projects that are completed and will be paid upon completion and closeout after submission of all paperwork requested by the City noted above. No funds will be disbursed for Projects that were not completed. ATI will certify in its request for funds that the Project(s) for which funds are sought have been completed and close-out documents have been submitted to the Access to Home funding source.

### Section 3.3

Time and Performance: Services for which ATI can voucher shall commence upon execution of a contract with the Access to Home funding source, after execution of this Agreement. This Agreement shall remain in force until the \$150,000 in 2013 Access to Home funds awarded to ATI are exhausted or until the City has disbursed \$5,500 for the 2013 Access to Home Program, whichever comes first. The City is under no obligation to disburse the full \$5,500 provided hereunder if 2013 Access to Home funds are depleted prior to disbursement of the \$5,500 or if there are not adequate City owner-occupied project on which to disburse the administrative funds. Further, the City is under no obligation to disburse in excess of the \$5,500 provided hereunder if the full \$5,500 is disbursed, but 2013 Access to Home funds remain and additional Projects in the City are identified.

### Section 3.4

#### Method of Billing and Payment:

ATI will submit for payment only upon completion of a Project in the City. Requests for funding will be submitted on a periodic basis but not more than monthly.

Requests for payment will include a City voucher signed by the Executive Director of ATI, an invoice from ATI, a copy of the application(s) for the Project(s) completed, certification from ATI that (1) the participant met all Program requirements, and (2) the Project has been completed in accordance with Program requirements and submitted for close-out, and a summary of the scope of work provided by ATI and other documents that the City's representative, Thoma Development, may request.

It is expressly agreed and understood that the fees provided for hereunder and the payments to be made to ATI is compensation for services actually performed, and payment becomes due ATI only by virtue of the services performed during the payment period. Any payment made for services that were not actually performed or Projects that were not actually completed will be returned to the City immediately upon request by the City's representative.

### Section 3.5

Termination: Either ATI or the City, upon 30 days written notice, may terminate this Agreement prior to the completion of all activities contemplated hereunder or prior to the disbursement of the full \$5,500 as provided hereunder. Notice shall be in writing and delivered to:

For the City: Office of Community Development  
25 Court Street  
Cortland, New York 13045

ATTENTION: Thoma Development Consultants

For ATI: Mary Ewing, Executive Director  
Access to Independence of Cortland County, Inc.  
26 North Main Street  
Cortland, New York 13045

This Agreement shall become effective upon its execution and delivery by the parties hereto, shall remain in full force from the date hereof, and its term shall be in accordance with Sections 3.3 and 3.5 above.

#### **ARTICLE IV COVENANTS OF THE CITY**

##### Section 4.1

Compliance with HUD Grants: The City agrees that it shall comply with all the terms and conditions contained in the Grant Agreements with the U.S. Department of HUD, the NYS OCR, and the rules and regulations of the Secretary of HUD concerning any and all HUD and NYS OCR CDBG Grants.

#### **ARTICLE V COVENANTS OF ATI OF CORTLAND COUNTY, INC.**

##### Section 5.1

A. Compliance with Access to Home Grants: ATI agrees that it shall comply with all the terms and conditions contained in the Grant Agreement with the funding source for the Access to Home grant for which the administrative funds are sought.

B. Assignment of Funds: ATI agrees that it shall not transfer or assign the obligations of this Agreement to any other person, party, partnership, corporation or other entity without written approval of the City.

C. Assurances of Governmental Approvals: ATI agrees to obtain all federal, state, and local governmental approvals and permits required by law to be obtained in carrying out any Project.

D. Conflict of Interest: ATI understands and agrees that no member, officer or employee of the City or ATI, or its designees, or agents, no consultant, no member of the governing body or other public official of the City or ATI who exercises or has exercised any functions or responsibilities with respect to any of the Projects assisted with the funds hereunder during his or her tenure, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with any of the Projects assisted with the funds hereunder or in any activity, or benefit therefrom, which is part of this Access to Home Program.

E. Suspension of Commitment: When reasonable grounds for insecurity arise with respect to the performance of ATI, the City may in writing demand adequate assurance of due performance, and until the City receives such assurance, the City may suspend any performance of its obligations hereunder.

##### Section 5.2

Compliance with HUD Requirements as they relate to the State CDBG Program administration: ATI agrees to comply with all of the following requirements:

A. The regulations of the CDBG Program at 24 CFR, Part 570, Subpart I.

B. All requirements imposed by Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations related to equal opportunity (24 CFR, Part 570.601). No person in the United States shall, on the ground of race, color, creed, religion, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any project assisted with CDBG funds;

C. The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Act of 1973 (Public Law 93-234);

D. The regulations, policies, guidelines, and requirements of OMB Circular A-102 Revised (Handbook 1300.17), which relates to the acceptance and use of federal funds;

E. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112), as amended and implementing regulations. No person (employee or applicant for employment) shall be discriminated against because of a physical or mental disability with regard to any position for which the employee or applicant is qualified;

F. Provisions of the Age Discrimination Act of 1975, as amended (Public Law 94-135);

G. Requests from HUD, the City, the Comptroller General, the NYS Housing Trust Fund Corporation or any of its agencies or representatives, or any authorized representatives of the City for access to and the right to examine all records, books, papers or documents related to the Program for which these funds are sought and providing information to the City to meet CDBG audit requirements, if applicable;

H. The American with Disabilities Act of 1990 as amended.

I. Section 3 of the Act as amended and implementing regulations at 24 CFR, Part 135 requiring that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the Program be awarded to eligible business concerns which are located in or owned in substantial part by persons residing in the area of the Program.

J. Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 and as supplemented in U.S. Department of Labor regulations (41 CFR part 60).

K. Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in U.S. Department of Labor regulations (29 CFR, part 3), which provides that the ATI shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up part of the compensation to which he is otherwise entitled.

### Section 5.3

**Indemnification:** To the fullest extent permitted by law, ATI shall defend, indemnify and hold harmless the New York State Housing Trust Fund Corporation, NYS OCR, the City of Cortland, their agents and employees (collectively "Indemnified Party"), from and against any and all claims, actions, damages, losses, expenses and costs of every nature and kind, including reasonable attorneys' fees, incurred by or asserted or imposed against the Indemnified Party, arising out of ATI's or ATI's contractors or agents negligent performance

of work in connection with the Projects for which these funds are sought. All money expended by the Indemnified Party as a result of such claims, actions, damages, losses, expenses and costs, together with interest at a rate not to exceed the maximum interest rate permitted by law, shall be immediately and without notice due and payable by ATI to the Indemnified Party.

**ARTICLE VI  
MISCELLANEOUS**

**Section 6.1**

**Amendments and Adjustments:** This Agreement may be amended only in writing with the prior written consent of the City and ATI or their duly authorized agents.

In addition, ATI for and in consideration of the funds to be provided hereunder, will, if requested by the City, cooperate and adjust for clerical errors, execute or re-execute this Agreement if deemed necessary or desirable in the reasonable discretion of the City.

**Section 6.2**

**Assignment:** This Agreement shall not be assigned by the City or ATI without the written consent of the City and ATI or their duly authorized agents in writing. Any purported assignment without the consents required by this Section 7.2 shall be void and of no effect.

**Section 6.3**

**Notices:** All notices, certificates or other communications hereunder shall be sufficiently given and deemed given when delivered or mailed by registered or certified mail, postage prepaid addressed as follows to the addresses provided in Section 3.5:

**Section 6.4**

**Prior Agreements Superseded:** This Agreement shall completely supersede all other prior understandings or agreements both written and/or oral between the City and ATI.

**Section 6.5**

**Execution in Counterparts:** This Agreement may be executed simultaneously in several counterparts each of which shall be an original and all of which shall constitute but one in the same instrument.

**IN WITNESS WHEREOF,** the City and ATI have caused this Agreement to be executed as of the date first noted above.

\_\_\_\_\_

Brian Tobin, Mayor, CITY OF CORTLAND

**ATTEST:**

\_\_\_\_\_  
Mary E. Ewing, Executive Director,  
ATI OF CORTLAND COUNTY, INC.:

**ATTEST:** \_\_\_\_\_

WHEY TREATMENT AND SUPPLY CONTRACT

BETWEEN

C'VILLE YOGHURT, INC.

AND

CITY OF CORTLAND, NEW YORK

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THIS AGREEMENT ("the Agreement") is made and dated June 1, 2014 ("Effective Date") by and between C'Ville Yoghurt, Inc. (hereinafter "C'Ville"), which is the operator of a dairy facility located at 3156Byrne Hollow Crossing, Cortland, New York 13045, and the City of Cortland, Cortland County, New York, whose principal offices are located at 25 Court Street, Cortland, New York 13045 (hereinafter the "City").

#### Recitals

- A. WHEREAS, the City owns and operates a wastewater treatment facility ("WWTP") in the City of Cortland, Cortland County, New York;
- B. WHEREAS, C'Ville plans to operate a dairy facility at 3156 Byrne Hollow Crossing, Cortland, New York 13045 (the "Dairy") where it has proposed to produce yogurt and cheese;
- C. WHEREAS, the Dairy will produce, as a byproduct of its production process, the following two waste streams: whey waste and dissolved air flotation (DAF) waste;
- D. WHEREAS, the Dairy estimates that it will generate on average between 10,000 and 30,000 gallons per day (gpd) of whey, which will contain approximately 32,000 mg/l of biological oxygen demand (BOD);
- E. WHEREAS, the City's wastewater treatment facility has agreed to accept and treat both process and sanitary wastewater from the Dairy up to 150,000 gpd. In accordance with the terms of the City's sewer use ordinance, the Dairy will be classified as a significant industrial user and will be governed by a significant industrial user discharge permit and the sewer rate structure set forth in the sewer ordinance;
- F. WHEREAS, the City has submitted a proposal to treat the whey produced by the Dairy via a digester, gas conditioning system, whey equalization process, and engine generator set, to generate electricity and heat recovery (hereinafter "Digester Project");
- G. WHEREAS, the City's engineer estimates that the electricity generated from combusting gas derived from an average supply of 15,000 gpd of whey, containing approximately 32,000 mg/l of BOD, from the Dairy, at least 340 days per year, would provide an offset equal to or exceeding the cost of debt service and operational costs for the proposed Digester Project, assuming an estimated 11 cent/kWhr electricity cost;
- H. WHEREAS, the City is willing to invest in the Digester Project provided there is a long-term commitment from the Dairy to provide a sufficient amount of whey to hold harmless the City and its ratepayers for the cost of the Digester Project (the "Cost Neutral Objective");

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, C'Ville Yoghurt, Inc. and the City of Cortland agree as follows:

1. The City agrees to undertake the Digester Project as set forth in Exhibit A (the "Conceptual Plan"). It is anticipated that the Digester Project will be completed within 18 months of the City undertaking the Project. The Conceptual Plan identifies the components of the Digester Project, those components and cost that are attributable to C'Ville being \$1,190,000 (the "C'Ville Costs"), the anticipated debt service (funding terms), the anticipated operating costs, the anticipated annual repair/replacement costs, miscellaneous overhead costs and anticipated schedule for design, permitting, construction and operation (the "Schedule").
2. C'Ville's responsibilities:
  - a. Prior to the City's completion and startup of the Digester Project, upon being notified by the City that it can accept whey, C'Ville will send no more than 15,000 gpd (daily maximum), or such greater amount as determined by the City, of whey, containing approximately 32,000 mg/l BOD, to the City's wastewater treatment plant. C'Ville agrees to compensate the City for the costs incurred by the City to properly treat, manage, store, recycle and/or dispose of said whey, including but not limited to general overhead, administration, engineering, disposal, etc (hereinafter "Interim Whey Treatment Cost"). The City will bill its costs in monthly increments and payment is due within 30 days of receipt. The fee will be \$0.03/gallon; and
  - b. C'Ville will support and provide cooperation in the City of Cortland's application to the New York State Energy Research and Development Authority (NYSERDA) to obtain funding for the Digester Project. At the City's timely request, C'Ville will provide representation at meetings regarding the Digester Project and will otherwise lend its support to the project (including providing any information required by NYSERDA) when needed; and
  - c. Once the Digester Project commences operation, C'Ville agrees to provide the City of Cortland wastewater treatment plant with, at minimum, a monthly average of 15,000 gpd of whey, containing approximately 32,000 mg/l BOD. The whey will meet the criteria set forth in Exhibit B. Unless otherwise agreed to by the City in writing, C'Ville shall not exceed the daily whey limit of 40,000 gpd, or the maximum monthly whey average of 30,000 gpd; and
  - d. In order to properly operate the completed Digester Project, the City will need to maintain a constant feed of whey into the Digester. Therefore, while equalization will be available at the WWTP, the amount of whey supplied by C'Ville shall, to the extent practical, be consistent from day to day and C'Ville shall maintain equalization/storage capacity at its Dairy to assist making the flow consistent from day to day; and

- e. Further, C'Ville will notify the City of any plant shut downs, prolonged low volumes, high-content spills, product changes, raw material changes, water content, BOD content, unusually low strength or other conditions which may impact the City's supply of whey and/or impact the City's ability to process the whey; and
- f. At C'Ville's expense, C'Ville shall conduct regular sampling of the whey as follows: TWICE PER WEEK: chemical oxygen demand (COD), pH, total dissolved solids (TDS) and total suspended solids (TSS); MONTHLY: FOG.
- g. The sampling results will be reported in a monthly report to the City which identifies trends, upsets, and changes to the whey. The City reserves the right to require more intensive monitoring, to be discussed and agreed upon between the parties, to address operational issues being experienced at the Digester.

3. The City's responsibilities:

- a. The City will make a good faith effort to advance the Digester Project in a timely manner including securing necessary funding, obtaining necessary approvals, construction, testing, maintenance, and all other required steps needed to bring the project to completion in accordance with the Schedule. The City will keep C'Ville apprised of the status of the Digester Project, and will notify C'Ville of any prolonged delays, major project changes, or other matters which will substantially impact this Agreement and/or the Schedule. If due to circumstance beyond the reasonable control of the City, the City determines that the Digester Project cannot be completed consistent with the Cost Neutral Objective, the City will provide C'Ville with notice of its intent to terminate this Agreement and terminate its effort to complete the Digester Project. Additionally, in the event the City has not reached substantial completion of the Digester Project by June 1, 2016, the parties shall meet and use good faith efforts to determine whether it is in the best interest of the parties to continue with the Digester Project. If the parties cannot agree a plan/modification to salvage the Digester Project, this Agreement will terminate and each party releases the other party from any further obligations hereunder.
- b. The City will use good faith efforts to investigate methods for processing C'Ville's DAF float waste from the pretreatment plant for eventual use in the Digester Project; and
- c. The City will also notify C'Ville at least 90 days before the anticipated start of operations of the Digester Project to indicate when C'Ville's obligation to supply a monthly average of 15,000 gpd of whey will begin; and
- d. The City will provide C'Ville with 24-hour access to a dumping point at the wastewater treatment facility where trucks can deliver the whey. Further, the City

will develop a record-keeping mechanism to track the amount, date, and time of deliveries, monitor access to the site, and address any problems which may arise at the City's facility.

4. Billing.

- a. For each month in which C'Ville provides the City with an average of at least 15,000 gpd of whey, containing approximately 32,000 mg/l BOD, there will be no additional charge assessed to C'Ville for that month; and
- b. For each 1 gpd less than the agreed-upon 15,000 gpd monthly average provided by C'Ville to the City, C'Ville will be charged \$0.33 per gallon per month ("Monthly Rent"); and
- c. The City will perform billing on a monthly basis and will issue bills on the 20<sup>th</sup> of the following month. Billing will be based on average monthly records. C'Ville will notify the City with any concerns regarding bills issued within 20 days of the receipt of a bill; and
- d. C'Ville will have 60 days to pay any bills from the date issued. After 60 days, any past due bills will accrue interest at a rate of 9% per annum. In any action to commence fees due under this Agreement, the City will be allowed to collect from C'Ville its reasonable attorney's fees incurred in pursuing payment.

5. Equipment Malfunction or Failure. The City will take all reasonable steps to properly operate, repair, and maintain the Digester Project. In the event the Digester Project is unable to accept whey from C'Ville for a period of more than 48 hours through no fault of C'Ville, such period will be excluded from the calculation of C'Ville's obligation to provide a minimum monthly average of 15,000 gpd of whey as required by Section 2(c) hereof. In the event of malfunction or failure of the Digester equipment caused by the failure of C'Ville to comply with its obligation under this Agreement, including but not limited to malfunction due to contaminated whey, C'Ville will be responsible for the cost of any remediation and corrective action. Such charge will be added to the Monthly Rent and will be due with payment of the Monthly Rent in accordance with Section 4.d.

6. Duration. It is the intent of the parties that this Agreement will remain in effect for the duration of the municipal debt obligations undertaken by the City to finance this Digester Project (the "Obligation"). Accordingly, this Agreement shall terminate upon the earlier of i) the satisfaction of the Obligation, or ii) twenty-five (25) years after the effective date hereof. Should the Obligation be satisfied before 25 years have elapsed, the parties will meet and discuss in good faith the options to renew, modify, or cancel this Agreement. Between the expiration of the Term of this Agreement and the good faith meeting, unless otherwise notified by the other party to this Agreement, this Agreement will be extended on a month-to-month basis until the date of such good faith meeting. Nothing herein shall obligate C'Ville to continue with this Agreement beyond the Term.

7. Termination/Modification.

- a. In the event that C'Ville determines during the term of this Agreement that another use of whey is available and wishes to cease providing whey to the City in accordance with this Agreement, C'Ville will be responsible for first obtaining a Third Party Supplier to assist in meeting the supply requirements under this Agreement. However, C'Ville will remain a guarantor of the Third Party Supplier's performance under this Agreement until the Obligation has been satisfied. In the event the Third Party Supplier defaults on its obligations, the City retains the right to compensation from C'Ville for any amounts still owing under this Agreement including the Monthly Rent under Section 4 for the remaining duration of this Agreement. Nothing in this subparagraph shall prohibit C'Ville from utilizing its whey in any other fashion provided C'Ville continues to provide the City with a minimum of 15,000 gpd as set forth in Section 2(b) hereof; and
- b. Alternatively, C'Ville may terminate this agreement by providing to the City a payment equal to the remaining C'Ville Costs for the Digester Project, plus any interest owing on the C'Ville Costs, and any outstanding payment obligations hereunder (hereinafter collectively referred to as the "Termination Payment"); and
- c. In the event a material change in circumstances, including but not limited to the imposition of new taxes, regulations or laws, ("Force Majeure") that requires the City to make significant additional capital investments in the Digester Project or to suspend or cease operation of the Digester Project in order to comply with the Cost Neutral Objective, the City may declare a Force Majeure Event and reserves the right to seek modification or to terminate this Agreement. Upon the declaration of a Force Majeure, the City and C'Ville will meet and discuss in good faith any additional capital investments necessary to continue operating the Digester Project or compensation for the additional operating costs arising from Force Majeure prior to seeking termination of the agreement. If the Force Majeure was beyond the reasonable control of the City and the parties agree to termination, in C'Ville sole and absolute discretion, C'Ville, in good faith, will give consideration to making contribution to offset the remaining debt service. If the Force Majeure event is subject to insurance coverage, the City agrees to apply the proceeds from the insurance to reduce the Termination Payment. Except as otherwise stated, in event of termination due to Force Majeure, each party releases the other party from any further obligations hereunder; and
- d. In the event either party plans to terminate this Agreement, that party shall provide written notification at least 60 days prior to anticipated termination. The written notification shall include an explanation of the basis for termination, and shall provide all necessary information regarding payments or alternative arrangements made to satisfy that party's obligations under this Agreement.

8. Indemnification. In the event a party suffers property damage, bodily injury, sickness or disease (including death), in whole or in part arising out of or resulting from any portion of the services provided hereunder, and such property damage, bodily injury, sickness or disease (including death) is caused by the sole negligence of the other party, the other party shall indemnify and hold harmless the damaged party for the amount of any and all claims, liabilities, losses, damages and expenses (including attorney fees) arising from the other party, its agents' and employees' connection activities under this Agreement. No claim whatsoever shall be made by or against any individual officer, agent or employee of either party for, or on account of, anything done or omitted in connection with this Agreement. This section shall survive the termination of this Agreement.

9. Miscellaneous

- a. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter discussed herein. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- b. All notices required or permitted hereunder shall, unless otherwise specified, be in writing and delivered by hand, by certified mail, return receipt requested, or by recognized overnight courier to the parties at the addresses listed below, or at such other location designated by the parties hereto in writing.

If to C'Ville:  
Carl V. Byrne, President  
C'Ville Yoghurt, Inc.  
2394 US Route 11  
Lafayette, NY 13084

If to City  
Bruce Adams, Chief Operator  
Cortland Wastewater Treatment  
251 Port Watson Street  
Cortland, NY 13045

With Copy to :  
James A. Gosier, General Counsel  
C'Ville Yoghurt, Inc.  
2394 US Route 11  
Lafayette, NY 13084

With Copy to:  
Mack Cook, Director of Finance  
City of Cortland  
25 Court Street  
Cortland, NY 13045

- c. If any provision of this Agreement or its application is determined to be invalid, illegal, or unenforceable in any respect, the validity and legality of all other provisions and applications hereof shall not in any way be affected or impaired.
- d. Neither party shall be deemed to have waived the observance or performance of any term or provision of this Agreement, or any default hereunder, except pursuant to a written instrument of waiver signed by such party. No waiver of the observance or performance of any term of this Agreement shall be deemed to be a waiver of any subsequent failure to observe or perform this Agreement.

- e. This Agreement is not intended to create any benefit or interest in any third party. This Agreement may not be assigned, in whole or in part, except by written agreement of the parties hereto. This Agreement will run with the owner of the Dairy and will bind any future owner of the Dairy, and shall also bind the City and any future owner of the WWTP. This Agreement shall be recorded at the County Clerk's Office. The parties will execute the documents necessary for the recording of this Agreement.
- f. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. To the fullest extent permitted by law, the parties consent to the jurisdiction of the Supreme Court of the State of New York in connection with any action by either party against the other pursuant to this Agreement.
- g. This Agreement shall be effective when fully executed by the Parties.
- h. The parties agree that each party, and its employees, agents, contractors, subcontractors and/or consultants are not agents or employees of the other party. Each party agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the other party, or of any of its departments, agencies, or units.
- i. C'Ville, its agents, employees, contractors and subcontractors shall comply with all applicable State, federal and local laws, rules and regulations, including, but not limited to, the Worker's Compensation Law and minimum wage and unemployment insurance requirements of the Labor Law in carrying out the terms and conditions of this Agreement.
- j. Each party represents and warrants that:
  - i. The party has all requisite power and authority to execute, deliver and perform this Agreement.
  - ii. This Agreement has been duly authorized by all necessary action on the part of each party and has been duly executed and delivered by the said party and constitutes a legal, valid, binding and enforceable obligation of the said party.
  - iii. The execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which said party is bound, or to the knowledge of the said party, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the said party or any, of its activities or properties.

- k. Within sixty (60) calendar days after the end of each Calendar Year, C'Ville shall submit to the City the following items: (1) an accounting of the whey generated during the preceding year; (2) a summary of any operational issues that impacted the quality and volume of whey and measures taken to address such problems; and (3) any foreseeable, unusual, and change in the whey generation anticipated for the upcoming year.
- l. Each party agrees to allow the other party reasonable access to the WWTP and Dairy, respectively, during normal business hours, to permit inspection and observation of whey generation and Digester operation. Either party may require the other party to provide reasonable notice prior to such inspection and observation.
- m. The Parties acknowledge and agree that during the Term of this Agreement they will provide each other promptly with all documentation, reports, and information that may be necessary to carry out their respective obligations under this Agreement. Nothing in this Agreement shall be deemed as consent by or an obligation of any Party to provide documents or information protected by or to waive the attorney-client privilege or attorney-work product privilege.

CITY OF CORTLAND

C'VILLE YOGHURT, INC.

By: \_\_\_\_\_

by: \_\_\_\_\_

# EXHIBIT

# A

**CITY OF CORTLAND, NEW YORK**  
**LOCAL LAW NO. \_\_\_\_\_ OF THE YEAR 2014**  
Filed with the NYS Department of State on \_\_\_\_\_, 2014  
**CITY OF CORTLAND**  
**Chapter 74. "ANIMALS"**

**Section 1. Enactment and Title.**

The City Council of the City of Cortland does hereby amend Chapter 74, Article II "DOGS" §74.20 prohibited acts.

**Section 2. Authorization, Purpose and Intent.**

The City has determined that it is necessary to modify its present Animal Control Laws.

**Section 3. Scope of Controls.**

During the effective period of Local Law:

**A. It should be unlawful for:**

1. Any owner to allow any dog to run at large.
2. Any owner to fail to restrain any dog by an adequate collar and leash, ~~unless it is accompanied by its owner or a responsible person able to control it by command, when not on the property of the owner or within a six (6) high, properly installed and maintained, or invisible fence surrounding the property within which the dog is allow to run free.~~
3. Any owner to allow any dog to engage in habitual loud howling, barking, crying or whining or to conduct itself in such a manner so as to engage in habitual loud howling, barking, crying or whining or to conduct itself in such a manner so as to unreasonably and habitually annoy and/or disturb any person other than the owner of such dog.
4. Any owner to allow any dog to cause damage or destruction to property or to defecate, urinate, dig or otherwise commit an nuisance, other than on the property of the owner of such dog.
5. Any owner to allow any dog to chase, jump upon or at, or otherwise harass any person in such a manner as to reasonably cause intimidation or fear or to put such person in reasonable apprehension of bodily harm or injury.
6. Any owner to allow any dog to chase, run alongside of, bark at or otherwise harass any motor vehicle, motorcycle, bicycle, carriage or any other vehicle or device used by persons for travel or any riders or occupants thereof while said vehicle or device is on a public highway or private property other than property of the owner of said dog. For purposes of this section, a horse or other animal shall be considered a vehicle or device.
7. Any owner to fail to license any dog at the age of four months or older, or allow any dog to be unlicensed due to failure to renew a dog license.
8. Any owner to fail to have any dog identified by a valid or current City dog license and identification tag.
9. Any person to knowingly affix to any dog any false or improper identification tag or any identification tag belonging to another dog.

10. Any owner or custodian of any dog to fail to confine, restrain or present such dog for any lawful purpose pursuant to this article or Article 7 of the New York State Agriculture and Markets Law.
11. Any person to furnish any false or misleading information on any license or form required by the City, the City's Dog Control Officer, or any shelter or pound servicing the City.
12. Any owner to fail to notify the City Clerk of any change of ownership, change of address, death or loss of any dog licensed in the City.

B. Establishment of the fact or facts that a dog has committed any of the acts prohibited by this article shall be presumptive evidence against the owner of such dog that he/she has failed to properly confine, leash or control his/her dog.

----- deleted text  
*Italic – new text*