

RESOLUTION #26 OF 2021

A RESOLUTION AUTHORIZING THE TOWN BOARD OF THE TOWN OF MIDDLETOWN TO ENTER INTO A LICENSE AGREEMENT WITH THE COUNTY OF DELAWARE IN CONNECTION WITH THE CONSTRUCTION OF THE SEWAGE COLLECTION SYSTEM SERVING THE HAMLET OF NEW KINGSTON

WHEREAS, the Town Board of the Town of Middletown previously entered into an agreement with the Catskill Watershed Corporation (“CWC”) to participate in the Community Wastewater Management Program, which program will provide for the design and construction of a wastewater management project in the Hamlet of New Kingston (“Project”); and

WHEREAS, the CWC, through the program, will provide full funding for the wastewater management project through a block grant; and

WHEREAS, in order to proceed with the planning and permitting for the Project, the Town of Middletown (“Town”) must select and acquire property for use in the construction of the sewer collection system and community septic system; and

WHEREAS, the County of Delaware (“County”) is the owner of a right-of-way/access road in the Town of Middletown, Delaware County, New York (the right-of-way/access road shall be referred to as "County ROW");

WHEREAS, County is the owner of a conveyance structure over Tuttle Hollow Creek in the Town of Middletown, Delaware County, New York (the structure shall be referred to as “Bridge”);

WHEREAS, as part of the New Kingston Sewer District Project, the Town wishes to install a portion of a sewage force main pipeline and related infrastructure within the County ROW in proximity to the Bridge (the sewage force main and related infrastructure shall be collectively referred to as “Pipeline”);

WHEREAS, County is willing to accommodate the Town and grant a license so that the Town may install and operate the Pipeline within the County ROW, but only in accordance with the provisions of a License Agreement, in the form attached hereto and made a part hereof; and

WHEREAS, the Town of Middletown Town Board (the “Board”), with assistance from the Project Team (CWC, Lamont Engineers and Young/Sommer, LLC), has reviewed and considered the terms and conditions of the Agreement; and

WHEREAS, the Board has determined that entering into the Agreement with the County is in the best interest of the Project, the District and its residents, and the health, safety and welfare of the Town and its residents, as it is in the public’s best interest that the Project be properly constructed and maintained; and

WHEREAS, the Board had previously complied with the mandates of SEQRA for the entire Project including necessary land acquisition.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE TOWN OF MIDDLETOWN TOWN BOARD, DELAWARE COUNTY, NEW YORK:

THAT THE Town of Middletown Town Board hereby authorizes the Town to enter into the Agreement with the County and approves and agrees to the terms and conditions therein; and

BE IT FURTHER RESOLVED, that the Town Board and the attorneys for the Town are hereby directed to take such actions as are necessary to implement this resolution.

WHEREUPON, the Resolution was put to a vote and recorded as follows:

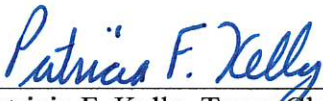
Motion made by: Brian Sweeney

Seconded by: Nelson Delameter

Resolution adopted by a vote of 5 ayes and 0 nays

I hereby certified that the above resolution was duly adopted by the Town Board of the Town of Middletown at its regular meeting held on October 13th, 2021.

Dated: October 13th, 2021



Patricia F. Kelly, Town Clerk
Town of Middletown

SEAL




STATE OF NEW YORK }
COUNTY OF DELAWARE }
TOWN OF MIDDLETOWN }

I have compared the preceding copy with the original Resolution on file in this office adopted by the Town Board of Middletown at a regular meeting held October 13th, 2021, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

MEMBERS PRESENT	MEMBERS ABSENT	VOTE
Supervisor Davis		Yea/Nay/Abstain
Councilperson Sweeney		Yea/Nay/Abstain
Councilperson Delameter		Yea/Nay/Abstain
Councilperson Reischel		Yea/Nay/Abstain
Councilperson Dabritz		Yea/Nay/Abstain

Dated: October 13th, 2021



Patricia F. Kelly, Town Clerk
Town of Middletown

SEAL



LICENSE AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of _____, 2021, by and between the New Kingston Sewer District, with a mailing address of 42339 State Highway 28, Margaretville, New York 12455 ("Middletown"), and DELAWARE COUNTY, acting by and through the Delaware County Board of Supervisors, with a mailing address of 111 Main Street, Delhi, New York 13753 ("County");

WITNESSETH:

WHEREAS, County is the owner of a right-of-way/public road in the Town of Middletown, Delaware County, New York, known as County Highway 6 the relevant portion of which is shown on Exhibit "A" attached hereto and made a part hereof (the right-of-way/public road shall be referred to as "County ROW");

WHEREAS, County is the owner of a conveyance structure over Tuttle Hollow Creek in the Town of Middletown, Delaware County, New York, as also shown on Exhibit "A" attached hereto and made a part hereof (the conveyance structure and any associated structures shall be referred to as the "Bridge");

WHEREAS, as part of the New Kingston Sewer District, Middletown wishes to install a portion of a sewage force main pipeline and related infrastructure within the County ROW in proximity to the Bridge as also shown on Exhibit "A" (the sewage

force main and related infrastructure shall be collectively referred to as "Pipeline" and/or "Installations");

WHEREAS, County is willing to accommodate Middletown and grant a license within the County ROW and as shown on Exhibit "A" (the "License Area") to allow Middletown to install, operate, and maintain the Pipeline within the County ROW, but only in accordance with the provisions of this License Agreement;

WHEREAS, the County requested a construction cost estimate to replace the Pipeline and an engineer for the Installations determined that the portion of the Pipeline within the County's right-of-way is approximately 50 linear feet and estimated the cost to replace 100 linear feet at approximately \$13,000 (2021);

WHEREAS, the County anticipates that during the term of this License Agreement, it may need to modify, replace, repair and/or improve the Bridge;

WHEREAS, subject to the terms and conditions below, the District agrees to reimburse the County for the demonstrated incremental costs incurred by the County as a result of the Pipeline within the License Area to modify, replace, repair and/or improve the Bridge;

WHEREAS, due to the small size of the District, the County is demanding as a condition of the License Agreement (as additional rent) that the Town provide, upon request by the County, as

security for replacement/incremental costs a bond as described herein (the "Replacement Bond") equal to 200% of the estimated Replacement Cost adjusted for inflation every five years. Using 2024 as an initial commencement year and \$15,000 as the estimated Replacement Costs, the bond amount for 2024 would be \$30,000.

NOW, THEREFORE, in consideration of One Dollar and 00/100 (\$1.00) and other good and valuable consideration, the adequacy of which is hereby acknowledged and in further consideration of the faithful fulfillment and discharge by Middletown of its obligations hereinafter set forth, County and Middletown agree as follows:

1. County hereby grants to Middletown, as grantee, for the benefit of grantee, a non-exclusive license and right-of-way for Pipeline within the County ROW, subject however to all the terms and conditions of this Agreement.
2. County hereby gives to Middletown, upon and subject to the terms of this Agreement, the privilege of constructing, installing and maintaining at the locations aforesaid, the Pipeline and all appurtenant equipment necessary and convenient to operation of the Pipeline as described in more specific details in the exhibit attached (hereinafter the "Installations"), with the privilege of entering upon said County ROW from time

to time so far as may be necessary for the purpose of constructing, maintaining, renewing, repairing, relocating, or removing of same. Any access requiring physical disturbance to structures or traffic shall require in accordance with the New York State Highway Law prior County notification and permit.

3. County reserves and excepts the paramount right to continue to occupy, possess and use the County ROW for any and all other purposes, including use, repair or future replacement of the Bridge.

4. The Parties agree that Middletown has no rights to grant easements or licenses, or other interests other than those previously held including the right of travel, and the parties specifically agree that this Agreement does not grant Middletown an easement or license in gross concerning the Pipeline, and therefore, apportionment is not allowable. The license shall be used solely for Pipeline and for no other purpose. Middletown shall operate and use said license in accordance with all existing or future rules and regulations of County (including obtaining a road disturbance permit), and any public authority having jurisdiction, so as not to

interfere with or endanger, in the sole reasonable judgment of County, any property, traffic, operation, maintenance, employees or patrons of County.

5. This license is subject to: (a) all encumbrances, conditions, covenants, easements, and licenses applicable to County's title to or rights in the subject property; (b) any existing or future public utilities or other pipe or facilities located in, on, over, under or across the license, and all instruments, agreements and rights therefor, recorded or not; and compliance by Middletown with the terms and conditions herein, provided however, that any future license granted to other parties will not interfere with Middletown's use, maintenance and repair of the Pipeline and said licenses shall indemnify Middletown against any such interference.

6. The Pipeline shall be constructed and maintained, at the sole cost and expense of Middletown. Middletown, at its expense, shall also be responsible for obtaining all governmental approvals which are required for the Pipeline. Middletown's plans (hereinafter "Construction Plans" which are set out in Exhibit "A") shall be

submitted to County and County's written approval obtained prior to construction (and/or reconstruction) of said Installations. Middletown may not enter upon the County ROW until the method of installation and all matters have been approved by County or its designee. The Installations shall be located, constructed and maintained in exact accordance with the Construction Plans approved by the County.

7. All work in connection with the construction and maintenance of the Installations within County ROW, shall be done at the exclusive cost and expense of Middletown in such manner as to not interfere with or impair the safe operation of the County ROW and Bridge, subject to the acceptance and approval of County. Middletown shall give County advance notice of the time when any work is to be done by Middletown within the County ROW and to the Bridge, and, except in the case of emergencies, shall give such notice at least five (5) days prior to commencing such work. If any mechanic's liens or other liens or orders for the payment of money be hereafter filed against the County ROW or Bridge by reason of or arising out of any labor or material furnished or alleged to have been furnished to, or for

Middletown at the County ROW or Bridge, or for, or by reason of any change, alteration or addition, or the cost of expense thereof, or any contract relating thereto on behalf of Middletown, or against County as owner thereof, Middletown shall cause the same to be canceled and discharged of record by bond or otherwise at the election and expense of Middletown, and shall also defend on behalf of County at Middletown's own cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien, liens, or orders, and Middletown shall pay any damages and satisfy and discharge any judgment entered therein and save harmless and indemnify County against any claim or damage resulting therefrom. Middletown shall not authorize or permit any "fixture filings" pursuant to the Uniform Commercial Code to be filed or indexed against the County ROW and Bridge.

8. The work of constructing, inspecting, maintaining, repairing, renewing or removing the Installations shall be performed in a prudent and workmanlike manner and under such general conditions as will be satisfactory to and approved by County, or its designee, and as will not interfere with the proper and safe use, operation and

enjoyment of the County ROW and Bridge. Middletown at its own cost and expense, shall, when performing any work in connection with the Installations, be responsible for the cost of any necessary inspectors, flagmen or watchmen to ensure that men, equipment and materials are kept safe.

9. Middletown will be responsible for any settlement caused to the County ROW, Bridge or facilities of County arising from or as a result of the construction, inspection, maintenance, repair, renewal or removal of said Installations during the term of this Agreement.
10. Middletown agrees to construct, install and maintain said Installations in such manner as will fully comply with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits and performing all acts required thereby and paying all taxes, assessments or fees levied or assessed pursuant thereto as to said Installations, and to save County harmless from any failure so to do. No construction of said Installations shall commence until all governmental approvals have been issued and are final and period for appeal has expired. To the extent a bond is required to be posted with the County or any other governmental

authority in connection with the construction, repair, replacement or maintenance of the Installations, Middletown shall post said bond (including the Replacement Bond) and fulfill all other requirements as might be required by such authorities.

11. In the event Middletown shall no longer use the Pipeline, then Middletown shall take all necessary steps to close said line in such manner so as not to constitute an environmental, structural or other hazard to County's use of the County ROW and Bridge or contemplated use of same, as reasonably determined by County.
12. Middletown, recognizing that County's use of County ROW and Bridge involve increased risks, hereby assumes all liability for, and waives any right to ask or demand damages from County for, or on account of, any loss or damage to property of Middletown or any part thereof, while on the County ROW and Bridge, including loss of or interference with the use of service thereof, regardless of cause, including any fire, regardless of the source of origin thereof, except for gross negligence or willful misconduct of County.
13. Middletown, with the recognition above, and as further consideration for the grant of this license, also assumes

all liability for, and releases and agrees to defend, indemnify, protect and save County harmless from and against (except to the extent the same is caused by or arises out of the gross negligence or willful misconduct of County) for all damage on account of injury to or death of any and all persons (including but not limited to employees, invitees and patrons of the parties hereto) on the County ROW and Bridge or adjacent thereto, caused by the construction, existence, use, maintenance or removal of the Installations.

14. All obligations of Middletown under this Agreement to release, indemnify and hold County harmless shall also extend to officers, agents and employees of County and to companies and other legal entities that control, are controlled by, are subsidiaries of the County, and their respective officers, agents and employees.
15. Middletown shall promptly (within thirty (30) days) advise County in writing of any claims made against Middletown, and/or County under this Agreement or from use of the Installations.
16. All notices and communications concerning this Agreement shall be addressed to Middletown and County at the addresses above, or at such other addressees as such

party may designate in writing to the others. Unless otherwise expressly stated herein, all such notices shall be in writing sent postage pre-paid via overnight mail or United States certified or registered mail (or a similar mail service available at the time and shall be effective upon receipt or refusal of delivery.

17. In the event that Middletown defaults with respect to any provisions of this Agreement, Middletown agrees to indemnify County against or reimburse it for any and all expenses, costs and reasonable attorneys' fees resulting from or made necessary by the bringing of any proceeding to enforce any of the terms, covenants or conditions of this Agreement to be performed or complied with by Middletown or to enforce any of County's rights to recover any amount to be paid to it by Middletown or to be otherwise performed pursuant to this Agreement.
18. Any waiver by either party of any of its rights as to anything herein contained shall not be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or breach is waived in writing by said party.
19. Neither the failure of County to object to any work done, material used, or method of construction or maintenance

of said Installations, nor any approval given or supervision exercised by County, shall be construed as an admission of liability or responsibility by County, or as a waiver by County of any of the obligations, liability and/or responsibility of Middletown.

20. Neither this Agreement nor any provision hereof or agreement or provision included herein by reference shall operate or be construed as being for the benefit of any third person.
21. This Agreement contains the entire understanding between the parties hereto, and cannot be changed, altered, amended or modified, except by written instrument subsequently executed by the parties hereto.
22. The terms hereof are covenants running with the County ROW and Bridge and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, lessees and assigns.
23. Unless otherwise canceled or terminated by the mutual agreement of all parties hereto, or terminated by Middletown pursuant to the provisions of Paragraph 9 hereof, the licenses granted by this Agreement shall continue in perpetuity.

24. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such State, without regard to its principles of conflicts of laws.
25. If any provision of this Agreement or the application of any such provision is held invalid by a court or other dispute resolution forum of competent jurisdiction, then the remainder of this Agreement, and the application of such provision other than to the extent that it is held invalid, will not be invalidated or affected thereby.
26. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate the day and year first above written.

TOWN OF MIDDLETOWN

By: Carl P. Davis
Name: Carl P. Davis
Title: Town Supervisor

DELAWARE COUNTY

By: _____
Name: _____
Title: _____

STATE OF NEW YORK)
 : ss.:
COUNTY OF DELAWARE)

On this 14th day of October, Two Thousand Twenty One, before me, the undersigned, a Notary Public in and for the State, personally appeared Carl P. Davis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Patricia F. Kelly

Notary Public-State of New York
Commission Expires July 31, 2022

PATRICIA F. KELLY
NOTARY PUBLIC, STATE OF NY
CERTIFIED IN DELAWARE CNTY
COMMISSION EXPIRES JULY 31, 2022

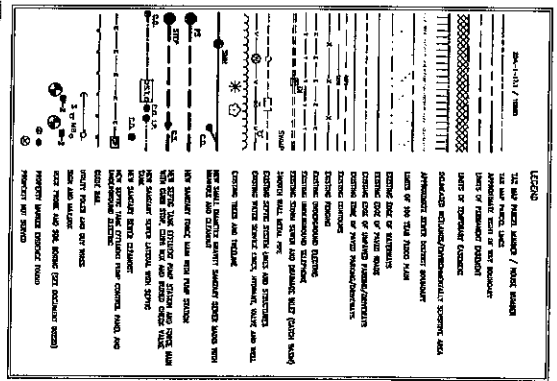
STATE OF NEW YORK)

: ss.:

COUNTY OF _____)

On this _____ day of _____, Two Thousand Twenty One, before me, the undersigned, a Notary Public in and for the State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in her(his) capacity, and that by her(his) signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public-State of New York
Commission Expires _____



PERMANENT EASEMENT LEGEND

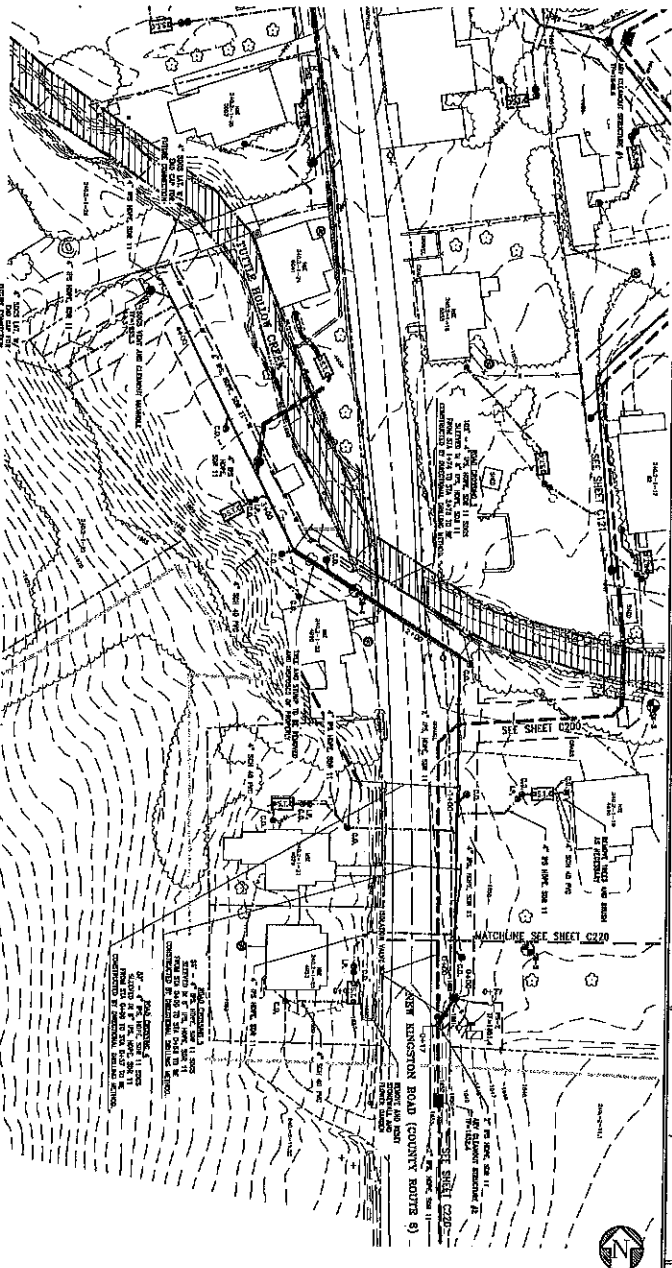
TYPE	WIDTH	OWNER
10 FT	10 FT	STATE
20 FT	20 FT	STATE
30 FT	30 FT	STATE
40 FT	40 FT	STATE
50 FT	50 FT	STATE
60 FT	60 FT	STATE
75 FT	75 FT	STATE
100 FT	100 FT	STATE
150 FT	150 FT	STATE
200 FT	200 FT	STATE
250 FT	250 FT	STATE
300 FT	300 FT	STATE
350 FT	350 FT	STATE
400 FT	400 FT	STATE
450 FT	450 FT	STATE
500 FT	500 FT	STATE
550 FT	550 FT	STATE
600 FT	600 FT	STATE
650 FT	650 FT	STATE
700 FT	700 FT	STATE
750 FT	750 FT	STATE
800 FT	800 FT	STATE
850 FT	850 FT	STATE
900 FT	900 FT	STATE
950 FT	950 FT	STATE
1000 FT	1000 FT	STATE

SEWER TANK SIZE LEGEND

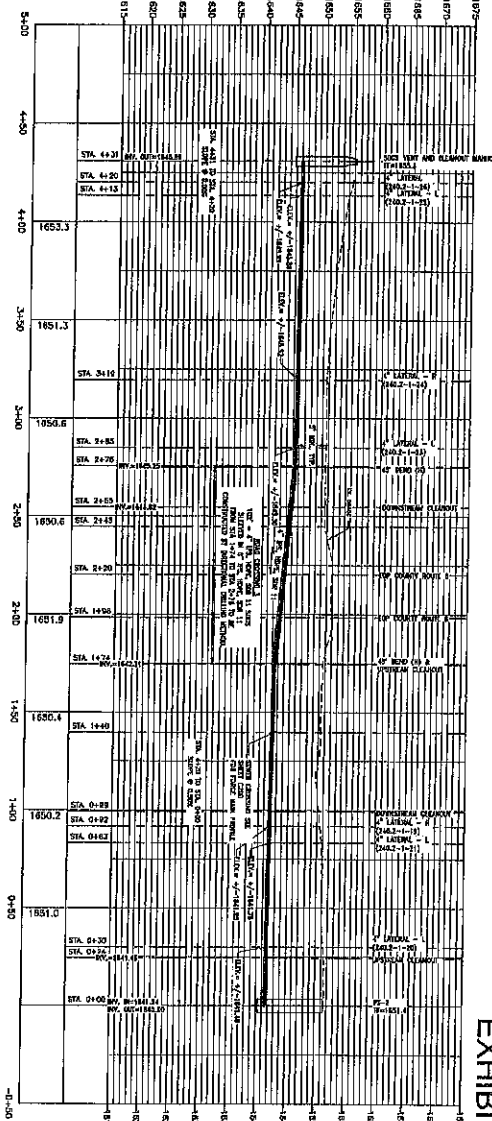
TANK SIZE	DIAMETER	DEPTH
150"	150"	6'
180"	180"	6'
210"	210"	6'
240"	240"	6'
270"	270"	6'
300"	300"	6'
330"	330"	6'
360"	360"	6'
390"	390"	6'
420"	420"	6'
450"	450"	6'
480"	480"	6'
510"	510"	6'
540"	540"	6'
570"	570"	6'
600"	600"	6'
630"	630"	6'
660"	660"	6'
690"	690"	6'
720"	720"	6'
750"	750"	6'
780"	780"	6'
810"	810"	6'
840"	840"	6'
870"	870"	6'
900"	900"	6'
930"	930"	6'
960"	960"	6'
990"	990"	6'
1020"	1020"	6'
1050"	1050"	6'
1080"	1080"	6'
1110"	1110"	6'
1140"	1140"	6'
1170"	1170"	6'
1200"	1200"	6'

CONSTRUCTION REQUIREMENTS

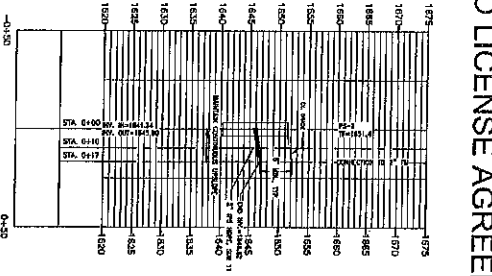
ALL TANKS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DELAWARE COUNTY SEWER DISTRICT SPECIFICATIONS AND THE STANDARD SPECIFICATIONS FOR CONSTRUCTION OF SEWERAGE AND WATER MAINS, LATEST EDITION, AS APPLICABLE. ALL TANKS SHALL BE CONSTRUCTED WITH A MINIMUM OF 2' OF COVER OVER THE TOP OF THE TANK. ALL TANKS SHALL BE CONSTRUCTED WITH A MINIMUM OF 1' OF COVER OVER THE TOP OF THE TANK. ALL TANKS SHALL BE CONSTRUCTED WITH A MINIMUM OF 1' OF COVER OVER THE TOP OF THE TANK. ALL TANKS SHALL BE CONSTRUCTED WITH A MINIMUM OF 1' OF COVER OVER THE TOP OF THE TANK.



PLAN VIEW: STA 4+31 TO PS-2 AND PS-2 TO STA 0+17
SCALE: H=1"=30' V=1"=10'



PROFILE VIEW: STA 4+31 TO PS-2
SCALE: H=1"=30' V=1"=10'



PROFILE VIEW: PS-2 TO STA 0+17
SCALE: H=1"=30' V=1"=10'

EXHIBIT A TO LICENSE AGREEMENT

Lamont Engineers
Professional Engineers
No. 1000 Delaware Avenue
Newark, Delaware 19711
Phone: 302-739-1111
Fax: 302-739-1112

**NEW KINGSTON SEWER DISTRICT
COMMUNITY WASTEWATER MANAGEMENT PROGRAM**

DELAWARE COUNTY NEW YORK STATE

C210

DATE: 11/17/2000
BY: AS/AM/ET
CHECKED BY: AS/AM/ET
DESIGNED BY: AS/AM/ET
DRAWN BY: AS/AM/ET
SCALE: AS SHOWN
SHEET NO. 2 OF 3