

**RESOLUTION #27 OF 2021**

**A RESOLUTION AUTHORIZING THE TOWN BOARD OF THE TOWN OF MIDDLETOWN TO ENTER INTO A SETTLEMENT AGREEMENT WITH THE WATERSHED AGRICULTURAL COUNCIL OF NEW YORK CITY WATERSHEDS, INC. IN CONNECTION WITH THE CONSTRUCTION OF THE SEWAGE COLLECTION SYSTEM SERVING THE HAMLET OF NEW KINGSTON**

**WHEREAS**, The Town of Middletown (“Town”) and New Kingston Sewer District, through the Community Wastewater Management Program, is constructing a community subsurface wastewater treatment facility, consisting of a receiving manhole, a flow meter, an absorption bed, dosing pump station, shallow absorption beds, and associated piping to serve the District (the “Treatment System”). Funding for the Treatment System is from the City of New York through a block grant administered by the Catskill Watershed Corporation (“CWC”); and

**WHEREAS**, after a permissive referendum, the Town formed the New Kingston Sewer District (the “District”) to construct the Treatment System and associated improvements on a 21.6 +/- acre parcel of land located at County Highway 6 in the Town of Middletown, County of Delaware, and State of New York, being a portion of the parcel identified on the Town of Middleton Tax Map as Parcel No. 241.-1-1.1 (the “Property”) completely funded by a block grant administered by CWC ; and

**WHEREAS**, the Property was burdened by a Watershed Agricultural Council of New York City Watersheds, Inc. (“WAC”) conservation easement that prohibits certain development on the Property (the “WAC Easement”); and

**WHEREAS**, WAC also holds a conservation easement on adjoining property, which is also a portion of the parcel identified on the Town of Middleton Tax Map as Parcel No. 241.-1-1.1 (the “Adjacent Property”) that the Town proposed to use to access the Property; and

**WHEREAS**, in accordance with Article 2 of the New York State EDPL, the Town conducted a public hearing and adopted a Determination and Findings that it was in the public’s best interest to proceed with condemnation of the 21.6 +/- acre portion of the Property for fee ownership, a permanent access easement on the Adjacent Property, and termination of the WAC Easement pursuant to New York State Environmental Conservation Law Section 49-0307 on the 21.6 +/- acre portion of land being acquired for fee ownership; and

**WHEREAS**, on November 17, 2020, the Town commenced a proceeding for condemnation in Delaware County Supreme Court pursuant to Article 4 of the New York State EDPL requesting an order vesting title in the 21.6 +/- acre portion of the Property in the Town and conveying a permanent access easement to the Town across the Adjacent Property, and then terminating WAC’s conservation easement pursuant to New York State Environmental Conservation Law Section 49-0307 on the 21.6 +/- acre portion of land that was acquired for fee ownership; and

**WHEREAS**, the Court granted the Town's request for relief by Order of the Delaware County Supreme Court (J. Northrup) dated February 17, 2021. A Notice of Acquisition and Acquisition Map were filed in the Delaware County Clerk's office on February 25, 2021, thereby terminating the WAC Easement on the 21.6 +/- acre portion of land that was acquired for fee ownership and creating a permanent access easement on the Adjacent Property; and

**WHEREAS**, the permanent access easement across the Adjacent Property is described, in the Town's EDPL Article 4 petition, as being a twenty-foot-wide, 26,205± square foot area, as shown on the above-referenced Acquisition Map filed by the Town; and

**WHEREAS**, as part of the on-going proceeding, WAC is seeking fair compensation for the portion of the WAC Easement that was terminated and such other damages as WAC incurred by reason of the condemnation; 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 a certain settlement agreement, in the form attached hereto and made a part hereof (the "Agreement"); and

**WHEREAS**, the Board has determined that entering into the Agreement with WAC 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 WAC 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: Christopher Dabritz

Seconded by: Brian Sweeney

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 13<sup>th</sup>, 2021.

Dated: October 13<sup>th</sup>, 2021

*Patricia F. Kelly*

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 13<sup>th</sup>, 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		<u>Yea</u> /Nay/Abstain
Councilperson Sweeney		<u>Yea</u> /Nay/Abstain
Councilperson Delameter		<u>Yea</u> /Nay/Abstain
Councilperson Reischel		<u>Yea</u> /Nay/Abstain
Councilperson Dabritz		<u>Yea</u> /Nay/Abstain

Dated: October 13<sup>th</sup>, 2021

*Patricia F. Kelly*

Patricia F. Kelly, Town Clerk  
Town of Middletown

SEAL

**AGREEMENT FOR PAYMENT OF FAIR COMPENSATION  
FOR PROPERTY ACQUISITION**

**THIS AGREEMENT FOR PAYMENT OF FAIR COMPENSATION FOR PROPERTY ACQUISITION** (“Agreement”) by and between **WATERSHED AGRICULTURAL COUNCIL OF NEW YORK CITY WATERSHEDS, INC** (“WAC”) and the **TOWN OF MIDDLETOWN and the NEW KINGSTON SEWER DISTRICT** (collectively the “Town”). WAC and the Town are sometimes referred to in this Agreement, individually, as a “party” and, collectively, as the “parties.”

**RECITALS**

**WHEREAS**, The Town of Middletown and New Kingston Sewer District (collectively the “Town”), through the Community Wastewater Management Program, is constructing a community subsurface wastewater treatment facility, consisting of a receiving manhole, a flow meter, an absorption bed, dosing pump station, shallow absorption beds, and associated piping to serve the District (the “Treatment System”). Funding for the Treatment System is from the City of New York through a block grant administered by the Catskill Watershed Corporation (“CWC”); and

**WHEREAS**, the Town proposes to construct the Treatment System and associated improvements on a 21.6 +/- acre parcel of land located at County Highway 6 in the Town of Middletown, County of Delaware, and State of New York, being a portion of the parcel identified on the Town of Middleton Tax Map as Parcel No. 241.-1-1.1, as further described in Exhibit “E” to the Town’s EDPL Article 4 Petition (the “Property”); and

**WHEREAS**, the Property was burdened by a WAC conservation easement that prohibits certain development on the Property (the “WAC Easement”); and

**WHEREAS**, WAC also holds a conservation easement on adjoining property, which is also a portion of the parcel identified on the Town of Middleton Tax Map as Parcel No. 241.-1-1.1 (the “Adjacent Property”) that the Town proposed to use to access the Property; and

**WHEREAS**, paragraph 15 of WAC’s conservation easement provided that no rights-of-way, easements of ingress or egress, or utility easements were to be granted or developed on, over or across the Property or the Adjacent Property without WAC’s prior written approval (“Easement Committee Approval”); and

**WHEREAS**, in accordance with Article 2 of the New York State EDPL, the Town conducted a public hearing and adopted a Determination and Findings that it was in the public’s best interest to proceed with condemnation of the 21.6 +/- acre portion of the Property for fee ownership, a permanent access easement on the Adjacent Property without Easement Committee Approval, and termination of the WAC Easement pursuant to New York State Environmental Conservation Law Section 49-0307 on the 21.6 +/- acre portion of land being acquired for fee ownership; and

**WHEREAS**, on November 17, 2020, the Town commenced a proceeding for condemnation in Delaware County Supreme Court pursuant to Article 4 of the New York State EDPL requesting an order vesting title in the 21.6 +/- acre portion of the Property in the Town and conveying a permanent access easement to the Town across the Adjacent Property without Easement Committee Approval, and then terminating WAC's conservation easement pursuant to New York State Environmental Conservation Law Section 49-0307 on the 21.6 +/- acre portion of land that was acquired for fee ownership; and

**WHEREAS**, the relief requested in the Town's Verified Petition was granted by Order of the Delaware County Supreme Court (J. Northrup) dated February 17, 2021 (the "Judgment"). A Notice of Acquisition and Acquisition Map were filed in the Delaware County Clerk's office on February 25, 2021, thereby terminating the WAC Easement on the 21.6 +/- acre portion of land that was acquired for fee ownership and creating a permanent access easement on the Adjacent Property without Easement Committee Approval; and

**WHEREAS**, the permanent access easement across the Adjacent Property is described, in the Town's EDPL Article 4 petition, as being a twenty-foot-wide, 26,205± square foot area, as shown on the above-referenced Acquisition Map filed by the Town; and

**WHEREAS**, the Town is required by law to pay WAC fair compensation for the portion of the WAC Easement that was terminated and the taking of the access easement without Easement Committee Approval and such other damages as allowed under law; and

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Town will pay WAC \$200,640 as full settlement of all claims for compensation (including any claims for attorney fees and appraisal fees under EDPL §701) for the termination or extinguishment of the WAC Easement on the 21.6 +/- acre portion of land that was acquired for fee ownership and the establishment of a permanent access easement across the Adjacent Property without Easement Committee Approval.
2. WAC releases and will hold the Town, CWC, the owner of the property (Michael Moriarty), and the City of New York harmless from any liability or claims for additional compensation or damages arising from the termination of the WAC Easement on the 21.6 +/- acre portion of land that was acquired for fee ownership and the establishment of a permanent access easement across the Adjacent Property without Easement Committee Approval.
3. Although the EDPL proceeding terminated WAC's approval authority under Paragraph 15 of WAC's conservation easement with respect to the access easement, the parties acknowledge that WAC's conservation easement on the Adjacent Property was not terminated as a result of the condemnation, and that said conservation easement prohibits and/or requires WAC's approval for certain development on the Adjacent Property.

4. The parties further acknowledge that the Town intends to make certain infrastructure improvements within the permanent access easement, as reflected in the Engineering Design Parameters for the Treatment System, including a bridge, but not including paving of the permanent access easement.
5. WAC reserve its rights under its conservation easement to review, to comment on and, if required, to approve infrastructure improvements within the permanent access easement and agrees that it will not unreasonably withhold any necessary approvals for improvements to or the use of the permanent access easement established on the Adjacent Property. The Town reserves any and all rights under law to dispute said review and approval. Upon completion of said improvements, the Town will prepare an as built survey showing the boundaries of the permanent access easement and the parties agree to execute whatever documents are necessary to confirm and acknowledge the boundaries of the permanent access easement, and the conditions set forth on the Acquisition Map, subject only to WAC's remaining authority under its conservation easement, which it agrees to exercise in good faith so as to facilitate the Town's access to the Property and the Town's rights under the Judgment.
6. All prior understandings and agreements between WAC and the Town regarding the subject matter of this Agreement are merged into this Agreement. This Agreement completely expresses their full agreement and has been entered into after full investigation. Neither party is relying upon statements made by anyone that is not a party to this Agreement.
7. This Agreement may not be changed or ended orally.
8. This Agreement shall apply to and bind the distributees, executors, administrators, successors and assigns of WAC and the Town.
9. This Agreement may be executed in counterparts, each of which shall be deemed an original, and a facsimile copy showing execution shall be given the same force and effect of an original.

**IN WITNESS WHEREOF**, the Town and WAC have executed this Agreement as of the date set forth above.

The Watershed Agricultural Council of the  
New York City Watersheds, Inc.


Date: \_\_\_\_\_, 2021

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By: Wayland A. Gladstone, Chair

Town of Middletown  
New Kingston Sewer District

Date: October 13th, 2021

By:   
Carl Patrick Davis, Town Supervisor