

TOWN OF MIDDLETOWN

LOCAL LAW NO. 1 FOR THE YEAR 2022

**A LOCAL LAW AMENDING THE TOWN OF MIDDLETOWN
SEWER USE LAW**

Be it enacted by the Town Board of the Town of Middletown as follows:

SECTION 1: Legislative intent and purpose.

The purpose of this local law is to amend Local Law No. 1 of 2020, known as the Town of Middletown Sewer Use Law to continue to provide for efficient, economic, environmentally safe, and legal operation of the Publicly Owned Treatment Works (POTW) including the Margaretville Wastewater Treatment Plant and Sewage Collection System. The specific purposes set forth in Section 1.03 of the Town of Middletown Sewer Use Law are also incorporated by reference herein.

SECTION 2. Authority. This local law is adopted pursuant to the Municipal Home Rule Law §§ 10 and 20.

SECTION 3. Amendments. Local Law No. 1 of 2020 shall be amended as follows:

(A) The definition of “Arkville Sewer Service Area” in Section 2.01 (Defined Terms) shall be revised as follows:

Arkville Sewer Service Area - ~~The Margaretville Sewer Service Area~~ Arkville Sewer Service Area is the area shown on the map attached hereto, entitled “Margaretville Wastewater Treatment Plant’s Sewer Collection System Service Area Map”, dated January, 2012, as may be amended from time to time, and incorporated herein as Appendix A.

(B) Section 1301(A) shall be amended as follows:

Section 1301 A New or Expanded Connections Allocation of Sewage Capacity

The Halcottsville Sewer System was designed to handle the wastewater flow from the existing development within the Halcottsville Sewer Service Area with a 10% allocation for growth. Pursuant to Section 5.01(A) new connections require a lateral permit from NYCDEP. As a result, a ~~As~~ new development occurs or as uses of existing parcels are modified there may also be a need for additional capacity. The capacity allocation is a valuable asset to be used for the betterment of the community. In this Article of the Sewer Use Law, the procedure that the Town Board will utilize to make decisions on the allocation of the remaining sewage allocation capacity is set forth. Applicants for new sewer connections and/or existing users making modifications to their improvements that result in significant additional wastewater flow need to obtain

an allocation of sewer capacity from Town Board under this Article. In addition, over time, the sewer system infrastructure will need to be replaced and the replacement cost of that equipment may not be covered by the annual operation and maintenance budget. As a result, the town needs to develop a capital fund that can be used for the periodic replacement of equipment and any necessary expansions. In order to equitably allocate such costs to those benefited by the sewer system in accordance with Section 202-b of the New York Town Law, this Article institutes an equitable procedure for assessing property owners in the Halcottsville Sewer Service Area to recover the costs of capital improvements from those persons discharging sewage.

(C) Section 1301(D) shall be amended

Section 1301 D Calculation of Unallocated Capacity

The Town will maintain a schedule or log showing the unallocated capacity. For purposes of this calculation only, the Town Board will consider as unallocated capacity the difference between the 30 day average permitted flow allocated for Halcottsville in the O&M Agreement and the maximum actual 30 day average flow that occurred within the past 12 months plus any capacity specifically allocated pursuant to this Article of the Sewer Use Law to new or expanded users that have not commenced the new or expanded discharge. Unless otherwise specifically stated herein, nothing in this Article requires the Town Board to allocate sewer capacity in accordance with Table A. In evaluating and making the decision regarding the flow capacity to be assigned to a potential new or expanded user, the Town Board, in its discretion, shall consider, to the extent appropriate and relevant, the design flow allocations published by the New York State Department of Environmental Conservation for new sewage treatment plants, the actual measured flow for the particular use and the actual measured flow for similar uses within the community.

(D) Section 1305 (“Definitions”) shall be amended to delete the definition for “Applicant’s Peak Period”.

(E) Section 1402 (“Authority and Purpose”) shall be amended as follows: **Section 1402 - Authority and Purpose**

The Town Board of the Town of Middletown, pursuant to the provisions of Article 14-f of the General Municipal Law, entitled “Sewer Rent Law” and, in particular, Section 452 thereof, does hereby establish and impose sewer rents to be charged in the Halcottsville Sewer Service District for all properties connected to the Halcottsville Sewer System. The provisions of this Article 14 shall only apply to those properties in the service area for the Halcottsville Sewer District.

(F) Section 1403(B) (“Definitions”) shall be amended to revise the definition of “Sewer System” as follows:

Sewer System *All facilities for collecting, regulating, pumping and transporting wastewater to and away from the City owned Margaretville treatment plant. This definition does not include laterals that transmit sewage from the structure to the sewer collection system.*

(G)Appendix B (Halcottsville Sewer District Boundaries) shall be deleted and replaced with the attached modified Appendix B which shows the correct location of the district boundary line at the Wawaka Lake.

(H)Appendix E (O&M Agreement) shall be deleted and replaced with the attached modified Appendix E which is a clean copy of the proposed O&M Agreement.

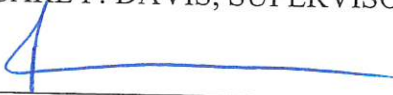
SECTION 4. Each provision of this local law is severable from the others, so that if any provision is held to be invalid or void by a court of competent jurisdiction, such illegal or void provision shall be severed from this local law which shall nonetheless remain in full force and effect. In the event that a provision is determined to be invalid or void for any reason, any repealer/ rescission provision set forth in this local law in regard to the provision shall not apply or otherwise be given effect.

SECTION 5. This local law shall take effect immediately upon filing in the office of the Secretary of State in accord with the provisions of §27 of the Municipal Home Rule Law.

BE IT ENACTED this 11th day of May, 2022 by the Town Board of the Town of Middletown, Delaware County, New York.



CARL P. DAVIS, SUPERVISOR Aye/Nay




BRIAN SWEENEY Aye/Nay

Christopher Dabritz was not
present. _____ Aye/Nay
CHRISTOPHER DABRITZ

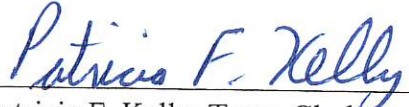


NELSON DELAMETER Aye/Nay



ROBIN WILLIAMS Aye/Nay


ATTEST:



Patricia F. Kelly, Town Clerk

I hereby certify that the local law annexed hereto, designated as Local Law No. 1 of 2022 of the Town of Middletown was duly passed by the Town Board on May 11th, 2022, in accordance with the applicable provisions of law.

I further certify that I have compared the preceding law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law as adopted.



Patricia F. Kelly, Town Clerk

(SEAL)

APPENDIX B

APPENDIX E

**AGREEMENT BETWEEN THE CITY OF NEW YORK
AND THE TOWN OF MIDDLETOWN FOR PAYMENT OF CERTAIN
OPERATION AND MAINTENANCE COSTS OF
COLLECTING, TREATING, AND DISPOSING OF WASTEWATER**

THIS AGREEMENT (the "Agreement") is entered into between the City of New York ("City"), a municipal corporation, organized and existing under the laws of the State of New York, acting by and through the Commissioner of the New York City Department of Environmental Protection ("DEP") and the Halcottsville Sewer District (the "District") and TOWN OF MIDDLETOWN (collectively with the District, the "Town") acting by and through its Supervisor (the City and the Town collectively referred to as the "Parties").

WHEREAS, the City, acting by and through the Commissioner of DEP, is charged with the duty of protecting the high quality of waters from which the City's water supply is drawn and preserving it from degradation for the purpose of protecting the health and general welfare of the consumers of this supply; and

WHEREAS, the City, in January 1997, entered a Memorandum of Agreement regarding the City's watershed protection program by and among the City, the State of New York, the United States Environmental Protection Agency, Catskill Watershed Corporation, the Coalition of Watershed Towns, Putnam County, Westchester County, certain watershed municipalities ("Watershed Communities") and certain environmental groups (the "Watershed MOA").

WHEREAS, the purposes recited in the "Whereas" clauses of the Watershed MOA, include statements that the City, together with the Watershed Communities "enter into a new era of partnership to cooperate in the development and implementation of a Watershed protection program that maintains and enhances the quality of New York City drinking water supply system and the economic vitality and social character of the Watershed communities" and "that the City's land acquisition program, the City's Watershed Regulations, and the other programs and conditions contained in [the MOA], when implemented in conjunction with one another, would allow existing development to continue and future growth to occur in a manner that is consistent with the existing community character and planning goals of each of the Watershed communities ... " (hereinafter "Watershed MOA Principles"); and

WHEREAS, as part of the Filtration Avoidance Determination ("FAD") issued by the United States Environmental Protection Agency ("EPA") to the City in November 2002 and consistent with Paragraph 122 of the Watershed MOA, the City agreed to provide funds for the Community Wastewater Management Program (the "Program") to study, design, permit and construct facilities for the collection, treatment and disposal of wastewater in certain communities listed in the New Infrastructure Program (Paragraph 122 of the Watershed MOA) through the Community Wastewater Management Program (the "Program"); and

WHEREAS, the City's obligation to fund the Program has been extended in subsequent FADs and the FAD issued in December 2017 calls for the completion of a community wastewater project in the hamlet of Halcottsville located in the Town of Middletown (the "Town") by December 31, 2020; and

WHEREAS, the City and the Catskill Watershed Corporation ("CWC") agreed that CWC would manage the various stages of the Program, the most recent being "CWMP Program

III" pursuant to a series of agreements, the most recent being the Community Wastewater Management Program III Contract, dated January 13, 2014 ("the Program III Contract"); and

WHEREAS, in response to CWC's solicitation to participate in the CWMP Program III, the Town passed a resolution to participate in the CWMP Program III; and

WHEREAS, pursuant to the Program III Contract requirements, CWC has identified the proposed service area set forth on Attachment A (the "Designated Service Area") and DEP has approved such area as eligible for design and construction funding from the CWMP Program III (the "Project"); and

WHEREAS, DEP agreed to allow the Town to connect the Project to the Margaretville Wastewater Treatment Plant ("Margaretville WWTP"); and

WHEREAS, sewage from the Project will be collected within the District in a sewer collection system and conveyed from the hamlet of Halcottsville to the Town/Village sewer system by means of the Community Sewer System in accordance with all applicable laws and regulations; and

WHEREAS, the City owns and operates the Margaretville WWTP and pays for the costs of treating sewage from existing sewer connections in Margaretville and its vicinity at the Margaretville WWTP; and

WHEREAS, there exists an agreement, dated September 21, 2005 (the "2005 Agreement") between the Parties and the Village of Margaretville ("Village") which sets forth certain duties and obligations of the parties thereto with respect to the Margaretville WWTP and portions of the associated sewer collection system that serves certain portions of the Village and the Town; and

WHEREAS, the area to be served by the Margaretville WWTP under the 2005 Agreement is identified on a map entitled "Existing Sewer System and Planned Sewer Extensions Funded Through the MOA's Sewer Extension Program Served by the Margaretville Wastewater Treatment Plant" dated May 18, 2005, an updated version of which is annexed hereto as Attachment B, which may be amended from time to time by DEP in consultation with the Town/Village; and

WHEREAS, the District has adopted a DEP approved Sewer Use Law; and

WHEREAS, the Community Sewer System will not be part of "Sewer System" as that term is defined in the 2005 Agreement; and

WHEREAS, pursuant to Paragraph 122(k) of the Watershed MOA, the City is responsible for certain costs associated with the operation and maintenance of Program projects, including the Project, on a per household basis; and

NOW THEREFORE, in consideration of the promises, the mutual representations and agreements hereinafter contained, together with such other and further consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1
GENERAL PROVISIONS

Section 1.01 Definitions

1. "Agreement" means this Agreement between the City of New York and the Town for the City's payment of a portion of the Community Sewer System's operation and maintenance costs.
2. "Commencement Date" means the first date following the Effective Date that the Town begins incurring Operation and Maintenance Costs.
3. "Community Sewer System" means the Sewer Collection System and the Pump Station constructed as part of the Project.
4. "Cost of Treatment at Margaretville" means the charges assessed by the City to the Town for treating wastewater from the Project at the Margaretville WWTP. The Cost of Treatment at Margaretville shall be \$13,000 per year until the first full Fiscal Year following the three-year anniversary of the Service Commencement Date. Commencing in that Fiscal Year, the Cost of Treatment at Margaretville shall be adjusted annually to reflect the rate of inflation or deflation, based on a rolling three-year average of the previous three years' Consumer Price Index or its successor.
5. "Effective Date" means the date this Agreement is fully executed.
6. "Executive Committee of the Watershed Protection and Partnership Council" or "Executive Committee" means the Executive Committee of the New York City Watershed Protection and Partnership Council established pursuant to paragraph 98 of the Watershed MOA.
7. "Fiscal Year" has the same meaning as in New York Town Law §101.
8. "Fixed capital equipment" means certain equipment that is part of the Community Sewer System, as described in Exhibit "A" to this Agreement.
9. "Household" means a dwelling place located within the Designated Service Area. Household shall not be construed to mean rooms or units in hotels, motels, bed and breakfast establishments with six or more rooms to rent, inns, camps, time-share condominiums, or other facilities intended for visitors and transient occupants to stay with no intention of residing or maintaining a residency at that location. For facilities used partly for residential and partly for non-residential purposes with common sewer service, that portion of such facility that is used as a residence shall be treated as a household for purposes of this Agreement and the facility shall be charged as a non-household for that portion of the flow, if any, that exceeds the residential flow. For determining the user fee for the non-household portion of the facility, the residential

flow is equivalent to 260 gallons per day times the number of households within the facility. This shall not apply to home offices with no outside employees, which shall be treated as purely residential. Bed and breakfast establishments that have five or fewer rooms to rent will be treated as households for purposes of this Agreement. For purposes of the Household Subsidy defined below, and for determining the user fee for the non-household portion of the facility, the residential flow is equivalent to 260 gallons per day times the number of households within the facility. Home offices with no outside employees are considered purely residential for purposes of this Agreement.

10. "Operation and Maintenance Costs" or "O&M Costs" means certain costs incurred by the Town that fall under the following categories:

(a) certain costs incurred for materials, labor (determined in accordance with subparagraph (d) below), equipment, reasonable insurance and other similar costs that are necessary for managing, operating and maintaining the Community Sewer System (including Start-up and Performance Testing) to achieve the capacity and performance for which it was designed and constructed, as such may be modified from time to time, and to comply with the applicable State and federal regulations (as amended), and the Watershed Regulations. Operation and Maintenance Costs include activities undertaken to reduce or arrest the rate of deterioration of fixed capital equipment included in the Community Sewer System or to maintain such equipment in a state of good repair including, but not limited to, preventive maintenance, normal periodic repair, replacement, and other activities intended to help achieve the optimum useful life of such equipment, as further defined and limited in Exhibit "A." Operation and Maintenance costs further include the Cost of Treatment at Margaretville. Operation and Maintenance Costs also include legal and professional fees, insurance premiums, self-insurance retention/deductibles, Allowable Litigation Awards as defined in subsection (c) below and administrative costs and interest charges that are associated with any of the foregoing activities. Operation and Maintenance Costs include funding of an Operations and Maintenance Reserve Account, as defined and limited herein.

(b) Operation and Maintenance Costs shall not include:

(1) expenditures for acquisition, construction, demolition, complete replacement, or major rehabilitation or reconstruction of fixed capital equipment, whether or not required by a change in regulations, as set forth in Exhibit "A"; or

(2) any personnel, administrative or overhead costs other than as outlined herein; or

(3) debt service, if any, relating to any capital costs incurred by the Town for design, construction, or capital replacement of the Community Sewer System or any portion thereof, other than debt service associated with replacement of fixed capital equipment allowed to be treated as O&M Costs under Exhibit "A"; or

(4) any costs associated with operation and maintenance of the Margaretville WWTP, other than the Cost of Treatment at Margaretville as defined herein.

(c) For purposes of this definition, Allowable Litigation Awards are limited to:

(1) awards in contract damage actions to the extent such awards arise out of operation or maintenance of the Community Sewer System and are not covered by the Town's insurance;

(2) settlements of such contract damage actions that have been determined by the City, in advance of the Town's entering into such settlements, to be reasonable;

(3) awards in personal injury or property damage actions to the extent such awards arise out of operation or maintenance of the Community Sewer System that are not covered by the Town's insurance provided, however, that no such awards will be considered Allowable Litigation Awards unless the City has determined, in accordance with Section 7.05 below, that the Town's insurance policy is satisfactory; and

(4) settlements of personal injury or property damage actions, under the circumstances set forth in subsection (c)(3) above, provided, however, that settlements for amounts in excess of \$7500, or for lesser amounts if the aggregate of such settlements exceeds \$25,000 in any two-year period, must have been determined by the City, in advance of the Town's entering into such settlements, to be reasonable.

(d) Costs for labor include direct salary and indirect personnel costs for pension, insurance and other fringe benefits. Indirect personnel costs are calculated at no more than 25% of the direct salary costs incurred for personnel employed to work at the Project and no more than 40% of the direct salary costs incurred for personnel providing operation and maintenance services for the Project from other locations. Labor costs shall not include the direct or indirect personnel costs of the elected or appointed officials of the Town who are performing general governmental functions, unless such officials are performing actual Operation and Maintenance on the Community Sewer System performed pursuant to a separately-paid, non-governmental position. In such case, the officials' direct salary costs of such Operation and Maintenance, and their indirect personnel costs calculated at no more than 25% of the direct salary costs incurred if such officials are employed to work at the Project, or 40% of the direct salary costs incurred if such officials provide services from other locations, are included.

22. "Operation and Maintenance Reserve Account" means an interest-bearing account maintained by the Town to be used solely for payment of Operation and Maintenance Costs. In any year, such account, including accrued interest, shall be at a level not exceeding the greater of (i) ten percent (10%) of the annual budget for operation and maintenance of the Community Sewer System for such year developed pursuant to Section 3.03(A) and (ii) \$50,000 (the "Reserve Cap"), and shall be replenished only when necessary to maintain such level. The Reserve Cap shall be adjusted for inflation or deflation in the same manner as the Watershed MOA Household Cap as set forth in Section 1.01(30) below.

23. "PASSport" means the City Procurement and Sourcing Solutions Portal or any replacement system which allows vendors to submit disclosure information required for contracting.

24. "Pump Station" means the pumping station designed and constructed for the sewer extension to the Margaretville WWTP for the Community Sewer System, as defined herein, including the transmission line from the Pump Station to the Margaretville WWTP.

25. "Service Commencement Date" means the date wastewater from the Sewer Collection System is transmitted to the Margaretville WWTP.
26. "Sewer Collection System" means and includes sewer pipe lines or conduits, pumping stations (other than the Pump Station as defined), valves, and force mains, and all other constructions, devices, and appliances appurtenant used for conducting sewage, industrial waste or other wastes allowed under the Town of Middletown Sewer Use Law to the Margaretville WWTP.
27. "Start-up and Performance Testing" means the testing of the treatment and processes and equipment and materials constructed or installed at the Community Sewer System by introduction of water, effluent or other liquids to assure compliance with the applicable regulatory requirements, with the end result being final acceptance of the Community Sewer System by DEP. Start-up and Performance Testing shall include any costs of startup and testing paid to Town Contractors.
28. "Town Contract" means an agreement between the Town and a Town Contractor.
29. "Town Contractor" means any person or entity entering into a contract or with the Town for the provision of goods or services reimbursable as an Eligible Costs pursuant to this Agreement.
30. "Town Subcontract" means an agreement between a Town Contractor and a Town Subcontractor.
31. "Town Subcontractor" means any person or entity entering into a contract with a Town Contractor for the provision of goods or services reimbursable as Eligible Costs pursuant to this Agreement.
32. "Watershed MOA Household Cap" or "Household Cap" shall mean \$100 per year household payment for the Operation and Maintenance Costs properly charged to a Household under Paragraph 3.01(B) until the first full Fiscal Year following the three-year anniversary of the Service Commencement Date. Commencing in that Fiscal Year, the Watershed MOA Household Cap shall be adjusted annually to reflect the rate of inflation or deflation, based on a rolling three-year average of the previous three years' Consumer Price Index or its successor.
33. "Watershed MOA Household Subsidy" or "Household Subsidy" means the funds allocated under this Agreement by the City to the Town to pay those Operation and Maintenance Costs that exceed the Household Cap as required under Watershed MOA Paragraph 122(k) and in the and described in Section 3.01 (B)(1) below.
34. "Watershed Regulations" means the Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources, 10 NYCRR Part 128; 15 RCNY Chapter 18, as amended from time to time.

Section 1.02 General Obligations

A. Town Obligations. As further described herein, the Town agrees to operate the Community Sewer System in accordance with this Agreement and to pay the Cost of Treatment at Margaretville as defined herein.

B. DEP Obligations. As further described herein, DEP agrees to pay for certain O&M Costs (or portions thereof) associated with the Community Sewer System and to cover any and all actual costs of treating wastewater from the Community Sewer System at the Margaretville WWTP beyond the Cost of Treatment at Margaretville.

C. This Agreement and DEP's obligations hereunder are limited to Eligible Costs set forth in Section 3.01. Nothing herein shall limit the rights of the Town to seek reimbursement under the law or contract (other than the Program III Contract) for other costs associated with the Community Sewer System operation, maintenance, and replacement to which it may in the future believe it has a legal entitlement, or the rights of DEP and or rights of the City to oppose such alleged entitlement, in a court or administrative forum with appropriate jurisdiction.

Section 1.03 Duration of the Agreement

A. This Agreement shall be effective as of the Effective Date.

B. This Agreement shall expire, unless sooner terminated pursuant to Article 8 of this Agreement, thirty (30) years after the Commencement Date. If, at the expiration of the thirty (30) years, provided the City continues to have any obligation to pay for any portion of the Operation and Maintenance Costs for the System pursuant to Watershed MOA paragraph 122(k) and/or pursuant to PHL Section 1104(1), the Parties shall enter into a new agreement providing for the City's continued payment of operation and maintenance costs as set forth in Watershed MOA paragraph 122(k) and/or PHL Section 1104(1).

C. If the Town fails to fully complete construction of the Community Sewer System, this Agreement shall terminate 90 days after termination of the agreement between the CWC and the Town for the construction of the Community Sewer System through the CWMP Program III, or on any later date on which the Parties may mutually agree.

ARTICLE 2 STANDARDS FOR OPERATION AND MAINTENANCE

Section 2.01 Maintenance of Community Sewer System

The Town hereby covenants and agrees to operate and maintain the Community Sewer System in good repair and operating condition in accordance with good engineering practice and applicable laws and regulations, including the Watershed Regulations. This obligation shall include maintaining the 1-day storage tank installed as part of the Project in a manner such that it is capable of accepting 1-day storage at all times, maintaining a method of flow monitoring at the point where the Community Sewer System connects with the City wastewater system in Arkville, New York, and regularly sharing flow data with the Margaretville WWTP.

Section 2.02 Connections to the Community Sewer System

- A. In order to ensure that the Margaretville WWTP can handle the increased flow resulting from the Community Wastewater System connection, among other reasons, the Town will (a) not permit any connections to the Community Sewer System from outside the boundaries of the Designated Sewer Area without the written approval of DEP and (b) not permit any connections to the Community Sewer System that result in a thirty day average flow that, in the view of DEP, exceeds 14,074 gallons per day (“gpd”) into the Margaretville WWTP. In reviewing a connection request for a connection that is either outside the Designated Sewer Area and/or a connection that may result in a flow that exceeds 14,074 gpd (30 day average), DEP agrees that such request shall not be unreasonably denied and must be considered consistent with the Watershed MOA Principles
- B. The Town reserves the right to petition the City to allow a supplemental service area known as “Kelly Corners,” as shown on the attached Attachment C, to connect to the Community Sewer System and to increase the permitted flow to the Margaretville WWTP to serve Kelly Corners. The decision whether to grant or deny the petition is in the sole discretion of the City.

Section 2.03 Excess Influent Flow

When instantaneous influent flow reaches 0.4 million gallons per day at the Margaretville WWTP, plant flows are monitored by the Margaretville WWTP operator (the “Margaretville Operator”). If in the Margaretville Operator’s professional opinion, the total flow from all sources into the Margaretville WWTP will cause a violation of the SPDES permit or damage to plant equipment, the Margaretville Operator may direct the Town, via the Halcottsville operator (the “Halcottsville Operator”) to divert the flow from the Halcottsville collection system to the 1-day storage tank installed as part of the Project. The Halcottsville Operator may divert the flow from the Halcottsville collection system to the 1-day storage tank upon such notification by the Margaretville Operator that the risk that combined Halcottsville-Margaretville flow may cause a violation of the SPDES permit. The Halcottsville Operator will release stored flow at such time and in such manner as agreed upon by the Margaretville Operator. Notwithstanding the foregoing, nothing herein will prevent the Halcottsville Operator, upon notice to the Margaretville Operator, from releasing stored flow at such time and in such manner as necessary to prevent the 1-day storage tank from exceeding its capacity or to prevent sewage within the Halcottsville collection system from backing up.

ARTICLE 3 PAYMENT

Section 3.01 Eligible Costs

- A. Subject to Section 3.01(D) below, the City shall pay the Town the Eligible Costs, as defined below.

B. Eligible Costs shall be the sum of (i) the Household Subsidy and (ii) the Household Subsidy For Certain Fines which shall be determined as follows:

- (1) Household Subsidy Required under Paragraph 122(k): The difference, if any, between
 - (a) the aggregate total of all sewer rents, charges, and/or other fees, properly allocable to and charged to each Household served by the Community Sewer System within the Designated Service Area. In no event shall this aggregate include (1) any O&M Costs that are properly allocable to sewer rents, charges, and/or fees charged to properties other than Households; or (2) any O&M Costs that are properly allocable to sewer rents, charges, and/or fees charged to Households served by the Community Sewer System which are outside of the Designated Service Area; or (3) any amount of Fines (as hereinafter defined) which shall be separately calculated and paid to the extent provided in Section 3.01(C) below and
 - (b) the aggregate total derived by multiplying the then-applicable Watershed MOA Household Cap times the number of Households served by the Community Sewer System and within the Designated Service Area.
- (2) Household Subsidy for Certain Fines: The amount of certain Fines (as hereinafter defined) imposed on the Town, arising out of the operation and maintenance of the Pump Station calculated in accordance with and subject to the conditions of Section 3.01(C) below.

C. The City shall pay an amount in respect of certain Fines (as defined herein) imposed on the Town arising solely out of the operation and maintenance of the Pump Station, in accordance with the following terms, conditions, and limitations:

(1) Calculations and Payments.

- (a) If the Town is assessed with any Fine associated with the Pump Station, a calculation shall be made, based on the immediately preceding year during the term hereof, to determine the relationship between Total Non-Subsidized O&M Costs (as hereinafter defined) and Total Community O&M Costs (as hereinafter defined) for users served by the Community Sewer System.

If, for the immediately preceding year during the term hereof, the Total Non-Subsidized O&M Charges are equal to or greater than twenty-five percent (25%) of the Total Community O&M Charges, the total amount of such Fine shall be treated as an O&M Cost for the Community Sewer System for purposes of calculating the Household

Subsidy (if any) payable by the City in accordance with Paragraph 122(k) of the Watershed MOA and pursuant to Section 3.01(B) above.

If, for the immediately preceding year during the term hereof, the Total Non-Subsidized O&M Charges are less than twenty-five percent (25%) of the Total Community O&M Charges, then such Fine shall be treated as follows:

- (i) If the aggregate total of all sewer rents, charges and/or other fees allocable to Subsidized Households (as hereinafter defined), for the year in which the Fine is imposed, would exceed the then-applicable Watershed MOA Household Cap without inclusion of any amount in respect of such Fine, the City shall pay the first Ten Thousand Dollars (\$10,000) of that portion of the Fine that would be otherwise be allocable to such Subsidized Households, if allocated among all users served by the Community Sewer System; if that portion of the Fine that would otherwise be allocable to such Subsidized Households is greater than Ten Thousand Dollars (\$10,000), the amount thereof in excess of \$10,000 shall be paid in accordance with clause (iii) below.
- (ii) If the aggregate total of all sewer rents, charges and/or other fees charged to Subsidized Households, for the year in which the Fine is imposed, would be less than the then-applicable Watershed MOA Household Cap, without inclusion of any amount in respect of such Fine, the Subsidized Households shall pay the first Ten Thousand Dollars (\$10,000) of that portion of the Fine that would otherwise be allocable to such Subsidized Households, if allocated among all users served by the Community Sewer System, up until the point that such aggregate total is increased to the then-applicable Watershed MOA Household Cap. The City will pay the balance of the first Ten Thousand Dollars (\$10,000) of such portion of the Fine; if such portion of the Fine is greater than Ten Thousand Dollars (\$10,000), the amount thereof in excess of \$10,000 shall be paid in accordance with clause (iii) below.
- (iii) If the portion of the Fine that would otherwise be allocable to such Subsidized Households is in excess of Ten Thousand Dollars (\$10,000), the excess shall be shared between the City and such Subsidized Households, in a ratio of 75% for the City, 25% for the Subsidized Households, provided that in no event shall the aggregate amount payable in any year during the term hereof by any Subsidized Household, pursuant to this clause (iii), exceed

an amount equal to the then applicable Watershed MOA Household Cap, any excess beyond that amount being payable by the City.

(b) If a Fine is assessed against the Town during the first year of the term hereof, it shall be assumed, for purposes of calculating how the Fine is to be paid under subsection 3.01(C)(1)(a) above, that the Community Sewer System was in operation during the immediately preceding year, and that the Total Non-Subsidized-Household O&M Charges for such preceding year were less than twenty-five percent (25%) of the Total Community O&M Charges for such preceding year (that is, subsection 3.01(C)(1)(a) is to be applied to the Fine as if the Community Sewer System were in operation for such immediately preceding year and as if Total Non-Subsidized-Household O&M Charges for such preceding year were less than twenty-five percent (25%) of the Total Community O&M Charges for such preceding year).

(2) Definitions. As used in this Section 3.01, the following terms shall have the respective definitions assigned to them below:

“Fines” shall mean any fine or penalty, and/or the costs of any environmental benefit project(s), imposed on the Town or its agent, arising out of the operation and maintenance of the Pump Station, provided that Fines shall not include (and the City shall have no obligation to pay any portion of, whether as Household Subsidy under Paragraph 122(k) of the Watershed MOA or otherwise) any fine, penalty or environmental benefit project imposed by a federal, state or local regulatory authority on the Town as a result of any criminal conduct, willful misconduct, or gross negligence in connection with the operation and maintenance of the Pump Station.

“Subsidized Household” shall mean an individual Household served by the Community Sewer System, located within the Designated Service Area.

“Total Non-Subsidized O&M Charges” shall mean, without reference to any portion of the Fine giving rise to the calculation thereof, the total amount of all O&M Costs allocable by the Town to users other than Subsidized Households served by the Community Sewer System.

“Total Community O&M Charges” shall mean, without reference to any portion of the Fine giving rise to the calculation thereof, the total amount of all O&M Costs allocable by the Town to all users served by the Community Sewer System.

D. The obligation of the City to pay for Eligible Costs, as set forth herein, is subject to the establishment, by the Town, of a system of sewer rents, charges, and/or other user fees assessed, to properties served by the Community Sewer System, that fairly allocates costs of

operating and maintaining the Community Sewer System and the Cost of Treatment at Margaretville WWTP based on any legally valid method of apportioning such rents, charges or fees, including late charges or fees, if any. Late charges or fees shall be uniform for all ratepayers (the City to be treated as a ratepayer for purposes of this sentence) and late charges or fees shall in no event exceed the greater of two percent (2%) per month of the charges that are late or \$50 per ratepayer. DEP reserves the right to challenge the Town's allocation of sewer rents and/or other user fees on the basis that such allocation does not comply with the foregoing standard. The Town agrees that except as otherwise mandated by federal or State law, it shall not provide sewer service free of charge to any property served by the Community Sewer System.

Section 3.02 Payment Generally

A. The maximum aggregate amount payable by the City pursuant to Section 3.01(A) hereof, for Eligible Costs incurred during the term hereof, shall be limited to \$4,200,000.00 over the term of this Agreement. Payments for Eligible Costs shall be made in accordance with the payment procedures set forth in Section 3.03 of this Agreement (Funds payable under this Agreement are referred to as "Funds"). If the actual and reasonable eligible costs, payable pursuant to Section 3.01(A), exceed \$4,200,000.00 over the term of this Agreement, the Parties shall seek to amend this Agreement increasing the amount of monies available to be paid under this Agreement. Nothing in this paragraph shall diminish any obligations the City has under the Program III Contract, Paragraphs 122(k) or 143(a) of the Watershed MOA, or Section 1104 of the PHL, or the obligations of the Town to properly operate and maintain the Community Sewer System pursuant to the Watershed Regulations, and other applicable laws.

B. Payments by the City to the Town shall be made in the form of an electronic fund transfer, check or warrant in the proper amount, made payable to the Town or the District. Payments by the Town to the City shall be made in the form of a check or warrant in the proper amount, made payable to the New York City Water Board and sent to New York City Department of Environmental Protection, 71 Smith Avenue, Kingston, New York 12401.

Section 3.03 Payment Procedures

A. Following the Effective Date of this Agreement, payment of amounts payable by the City to the Town under this Agreement shall be made as follows:

- (1) Annual budget for operation and maintenance: As part of its annual budget process or at such other time allowed by local law, the Town will propose an operations and maintenance budget for the Community Sewer System. Notwithstanding the foregoing, the first such budget will be proposed within thirty (30) days of the Effective Date.
- (2) When the proposed budget for the Community Sewer System is issued, the Town will transmit it together with such additional information as may be necessary to identify all costs by item to the City. The Town will also provide information to the City that will provide a reasonable estimate of the sewer rents, charges, and/or other user fees intended to be charged to household and non-household users of the Community Sewer System.

- (3) Within thirty (30) days after receipt of the proposed budget, the City will provide any comments and/or objections. Upon finalization of the budget, the Town will send a copy of the final budget together with an invoice to the City in an acceptable form, requesting payment of the Eligible Costs, as determined pursuant to Section 3.01 of this Agreement. The City will make payments quarterly, based on invoices, ninety (90) days after receipt of the invoice, on an annual cycle consistent with the Town's Fiscal Year.
- (4) If the City objects to any aspect of the proposed budget or the allocation of charges which affects its payments as provided for in paragraph (A)(3) above and those objections are not resolved to the satisfaction of the City in the final budget, the City will file its objections within thirty days of its receipt of the invoice accompanying such final budget. Any such dispute will be subject to the provisions of Sections 3.05 and 12.09 of this Agreement. The basis for the City's objection will be limited to the following issues:
 - a. The budget item is unnecessary to fulfill obligations under the Agreement or its cost is unreasonably high;
 - b. The charge relates to an item for which the City is not responsible; or
 - c. The allocation of charges is illegal under New York State law or is inconsistent with the sewer rent law of the Town.
- (5) The City will be responsible for the timely payment of all undisputed costs according to the schedule set forth above regardless of whether it makes an objection to the final budget. In the event of a disagreement concerning payments or invoices under this Article, the City will be obligated to make the following payments on the due date of the applicable invoice:
 - a. full payment of the agreed-upon items or portion of other items that are not in dispute.
 - b. payment of disputed items to the extent that the total amount of Eligible Costs for that year does not exceed one hundred and fifty percent (150%) of the prior year's agreed upon or finally resolved Eligible Costs budget.

The City will not otherwise pay disputed costs until and unless such disputes are resolved in favor of the Town.

B. Following the effective date of this Agreement, payment of amounts payable by the City to the Town under this Agreement shall be made as follows:

- (1) Except with respect to the first year or portion thereof that this Agreement is in effect, at least sixty (60) days prior to the commencement of each Fiscal Year, the Town shall bill the City for the O&M Cost for the next Fiscal Year.
- (2) Within thirty (30) days of the Effective Date of this Agreement, the Town shall submit an invoice to the City for the projected O&M Cost for the first Fiscal

Year, or portion thereof, of this Agreement. The invoice shall be based upon the projected portion of the first Fiscal Year of this Agreement during which the Community Sewer System will be in operation.

(3) Within thirty (30) days after receipt of an invoice from the Town, the City will provide any comments and/or notice of any objections. If the City objects to any aspect of the invoice that affects the amount of payment, and such dispute is not resolved within thirty (30) days of the City's making the objection (the "Negotiation Period"), then the City has the right to compel the submission of any item or items in dispute to binding arbitration within sixty (60) days thereafter according to the process described in Section 3.05 herein.

(4) If the City does not exercise its right to compel binding arbitration within sixty (60) days after the Negotiation Period, the right to binding arbitration is waived and the City agrees that the time to dispute or adjudicate any item or items included in the City's Notice of Objection has expired and the City's objections shall be deemed waived by all Parties.

(5) This Section 3.03(B) shall survive the termination of this Agreement

C. All payments to the Town under this Agreement shall be placed by the Town in separate dedicated accounts promptly upon receipt by the Town. To the greatest extent feasible, such accounts shall be interest-bearing.

D. Within sixty (60) days after the end of each Fiscal Year, the Town shall provide the City with a reconciliation statement setting forth the actual costs paid in the preceding year. This reconciliation statement will reconcile estimated amounts versus actual costs expended for the preceding year. The total dollar amount of estimated funds advanced by the City, but not spent or allocated by the Town, will be deducted from the Town's next invoice to be sent to the City after the reconciliation statement. Any shortfall between the estimated budget and the amount spent on operation and maintenance may be added to the following year's estimated budget or paid from the Operation and Maintenance Reserve Account. Funds properly allocated to an Operation and Maintenance Reserve Account in accordance with the terms of this Agreement are considered to be allocated and not subject to reimbursement to the City.

E. The Town shall submit to the City all documentation in support of expenditures under this Agreement as may be required by and at the expense of the City. Upon reasonable notice, the Town shall make its records with respect to operation and maintenance of the Community Sewer System available to the City for inspection and/or copying as the City may deem necessary. Adequate documentation to be submitted shall include, but not be limited to, copies of purchase orders, paid bills, meter readings canceled checks, certified payroll and machinery use records. The Town shall provide the City additional documentation at the City's expense to support each invoice or reconciliation statement as the City reasonably requires.

Section 3.04 Conditions of Payment

A. The City's obligation to pay Funds is contingent upon the Town's submission of annual budgets, invoices and reconciliations required to be made under this Agreement, as specified in Section 3.03 above.

B. The Town shall ensure that Funds advanced to it and interest earned on such Funds shall only be utilized for expenditures incurred in connection with the work to be performed under this Agreement and for no other purpose.

C. The Town will employ generally accepted cash management practices as established by the New York State Comptroller.

D. If the Town is in material breach of the terms of this Agreement and such breach is not cured within the time frames provided in Section 8.01 below, the City shall be entitled, in addition to any other rights or remedies available to it at law or in equity, to withhold payments due under this Agreement to the Town, in an amount that represents the cost of curing the breach and covering any reasonable damages resulting directly from such breach.

E. This Agreement does not and is not intended to express any opinion as to the liability of the City to pay for the costs which the City is assuming hereunder. This Agreement shall not be used as an admission or precedent in any other action, proceeding or document.

F. Upon reconciliation of payments by the City to the Town under this Agreement, the Town agrees that payment by the City shall serve as a general release of any and all actions, causes of action, demands, suits, proceedings, costs, claims, charges (including but not limited to the fees, cost and disbursements of experts, consultants and attorneys), which the Town has or may have against the City under this Agreement for any and all operation and all maintenance costs of the Community Sewer System for the period covered by the payment.

Section 3.05 Payment Adjustments

A. In the event of a disagreement concerning any proposed budgets, payments, invoices, or reconciliation statements under this Article ("Eligible Disputes"), the Party initiating the dispute will be obligated to serve notice of the dispute. Thereafter, the Parties shall use their best efforts to settle the disagreement. To this effect, they shall consult and negotiate with each other in good faith and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties.

(1) If the Parties do not reach such solution within a period of thirty (30) days from the date of service of the notice of the dispute (the "Negotiation Period"), the City may compel the submission of any item or items in dispute to binding arbitration within sixty (60) days thereafter according to the process described below. In no event can the dispute submitted to binding arbitration involve an amount where the disputed portion(s) exceeds fifty thousand dollars (\$50,000) or where an issue of law is involved (except that such limitation will not bar the submission of a dispute which requires an interpretation of the Town's sewer use or rent law) (hereafter referred to as "Eligible Dispute"). (Commencing in the third Fiscal Year of this Agreement, the \$50,000 threshold shall be adjusted annually to reflect the rate of inflation or deflation, based on a rolling three-year average of the previous three years' Consumer Price Index or its successor.) Arbitration will be the exclusive legal process for adjusting payments under this Agreement, except as provided in the previous two sentences.

(2) If the City fails to exercise its right to compel binding arbitration within the sixty (60) days after the Negotiation Period, the right to binding arbitration is waived and the Parties agree that the time to dispute or adjudicate any item or items included in the City's Notice of Objection has expired and the City's objections shall be deemed waived by all Parties.

(3) Either Party may exercise any available judicial remedies to resolve a dispute in the event that the dispute cannot be submitted to binding arbitration because it is not an Eligible Dispute or in the event that an arbitrator determines that it is not an Eligible Dispute after it has been submitted for arbitration. In no event shall litigation be commenced during the Negotiation Period. In the event that the dispute is not resolved during the Negotiation Period, the Parties agree that any action or proceeding to resolve the dispute must be commenced, if at all, within ninety (90) days after the expiration of the Negotiation Period, or ninety (90) days after an arbitrator makes the determination that the dispute is not an Eligible Dispute, as the case may be. The Parties agree that any action beyond that date is untimely and that the time for judicial intervention is exhausted.

B. The City shall exercise its right to arbitration by requesting in writing that the New York State Department of Environmental Conservation appoint an Administrative Law Judge ("ALJ") to act as an Arbitrator to conduct the arbitration and issue a binding determination. Alternatively, if an ALJ is not available, the Parties shall submit to arbitration administered by the American Arbitration Association ("AAA"). Either the ALJ or the individual appointed by the AAA (both hereinafter referred to as the "Arbitrator") shall conduct the arbitration under the version of the AAA Commercial Arbitration Rules then in effect. The City shall provide simultaneous notice to the Town by overnight mail and fax of such request. The request shall state with particularity the nature of and the dollar amount associated with the item in question. If the Arbitrator is an ALJ, the arbitration shall take place at NYCDEP's offices in Kingston, New York. The Parties shall share equally in the cost, if any, of the Arbitrator and any stenographic record. Each party will bear its own legal and engineering costs incurred pursuant to this Section, except that the City will pay the attorney's fees to the extent required by paragraph 181 of the Watershed MOA. The Parties agree that the decision of the Arbitrator is binding upon the Parties.

C. In the event that the City prevails on a disputed item for which it had already made payment, the City may deduct the amount together with interest at the rate set forth in Section 5004 of the New York Civil Practice Law and Rules ("CPLR") from its next payment or payments to the Town. In the event that the Town prevails on a disputed item for which the City has not made payment, the City will pay the disputed item within ninety (90) days of receipt of the Arbitrator's decision together with interest at the rate set forth in CPLR Section 5004. Interest shall accrue from the date the payment was made by the City or the date that the payment was due from the City, as the case may be.

ARTICLE 4 **PERSONNEL**

Section 4.01 Employees

A. The Town and the City agree that the Town, and its employees, agents, and/or Town Contractors are not agents or employees of the City or DEP.

B. The Town covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of any of its departments, agencies, or units.

C. All experts, consultants or employees of the Town who are employed by the Town to perform work under this Agreement are neither employees of the City by virtue of this Agreement nor under contract to the City for work covered in this Agreement and, the City is not responsible for their work, direction, compensation and personal conduct while engaged under this Agreement.

D. Nothing contained in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Town, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the Town for payment of taxes of any nature including but not limited to sales taxes, unemployment insurance, worker's compensation, disability benefits and social security, or, to any person, firm or corporation. Nothing in this paragraph is intended to preclude such liabilities or costs referenced in this paragraph from being considered as part of the O&M Costs included as part of the Eligible Costs pursuant and subject to Article 3. Nothing in this paragraph will create or absolve the City of liability that may arise directly or indirectly from the failure of the City to make the payments that are required pursuant to this Agreement, the Watershed MOA or the PHL. This paragraph will survive any termination of this Agreement.

E. The City is not responsible for any physical injuries or death to the Town's agents, servants, or employees or to any other person or for damage to any property sustained during its operations and work under this Agreement resulting from any act of omission or commission or error in judgment of any of the Town's officers, trustees, employees, agents, servants, or independent contractors. The Town shall hold harmless and indemnify the City from liability upon any and all claims for damages, on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Town, its officers, trustees, employees, agents, servants, or independent contractors to the extent set forth in Article 9. The City shall not be responsible for the safety and protection of the Town's employees at the Community Sewer System or on other property owned by the Town and/or used in connection with the Community Sewer System. Nothing in this paragraph is intended to preclude such liabilities or costs referenced in this paragraph from being considered as part of the O&M Costs included as part of the Eligible Costs pursuant to Article 3. Nothing in this paragraph will create or absolve the City of liability that may arise directly or indirectly from the failure of the City to make the payments that are required pursuant to this Agreement, the Watershed MOA or the PHL. This paragraph will survive any termination of this Agreement.

F. The Town, its agents, employees, and Town Contractors 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.

Section 4.02 Equal Employment

The Town shall abide by all applicable Federal, State and local laws regarding equal employment.

Section 4.03 Employees of the City

A. The Town and the City agree that the City, DEP, and their employees, agents, contractors, subcontractors and/or consultants are not agents or employees of the Town.

B. The City and DEP covenant and agree that neither they nor their employees or agents will hold themselves out as, nor claim to be, officers or employees of the Town, or of any of its departments, agencies, or units.

C. All experts, consultants or employees of the City or DEP who are employed by the City or DEP to perform work in connection with the Community Sewer System are neither employees of the Town by virtue of this Agreement nor under contract to the Town for work covered in this Agreement.

D. Nothing contained in this Agreement shall impose any liability or duty on the Town for the acts, omissions, liabilities or obligations of the City, DEP, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the City or DEP for payment of taxes of any nature including but not limited to sales taxes, unemployment insurance, workman's compensation, disability benefits and social security, or, to any person, firm or corporation. This paragraph will survive any termination of this Agreement.

E. The Town is not responsible for any physical injuries or death to the City's or DEP's agents, servants, or employees or to any other person or for damage to any property sustained during its operations and work under this Agreement resulting from any act of omission or commission or error in judgment of any of the City's or DEP's officers, trustees, employees, agents, servants, or independent contractors. The City and DEP shall hold harmless and indemnify the Town from liability upon any and all claims for damages, on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the City or DEP, their officers, trustees, employees, agents, servants, or independent contractors to the extent set forth in Article 9. The Town shall not be responsible for the safety and protection of the City or DEP's employees on City-owned property. This paragraph will survive any termination of this Agreement.

ARTICLE 5

PROCUREMENT OF GOODS AND SERVICES

Section 5.01 Procurement and Bidding

The Town shall comply with all public bidding and other procurement requirements applicable to the Town by State law or by the local laws of the Town and County in soliciting Town Contracts. For all Town Contracts subject to public bidding, the Town shall, at the City's request and the City's expense, provide the City with prompt written notice of the public bidding, together with a complete and correct copy of each Town Contract, for work done under this Agreement.

Section 5.02 Town Contracts

A. Each Town Contract shall include the following provisions:

- (1) A requirement that the Town Contractor perform all work in accordance with the terms of this Agreement;
- (2) A requirement that the Town Contractor perform all acts to be performed under the Subcontract in compliance with all applicable Federal, State and local laws, rules, regulations and orders, including the Watershed Regulations and the CWMP III Program;
- (3) A statement and a requirement that the Town Contractor agrees to indemnify the City and assume liability for injuries on the same basis identified in this Agreement, pursuant to Article 9;
- (4) A statement and requirement that nothing contained in the Town Contract shall create any contractual relationship between the Town Contractor and the City; and
- (5) A statement and requirement that the Town Contractor will not engage in any unlawful employment discrimination under the Town Contract based upon race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status.

B. The Town shall take reasonable measures to impose the foregoing provisions applicable to Town Contractors on Town Subcontractors. Nothing in this Section constitutes a guarantee to the City that the Town's Subcontractors will comply with the foregoing provisions. However, the Town is responsible for the performance of the terms of this Agreement, whether they are performed by Town Contractors or Town Subcontractors.

Section 5.03 Background Investigation Compliance for Town Contracts and Town Subcontracts

A. Before any Town Contract or Town Subcontract in excess of Two Hundred and Fifty Thousand Dollars (\$250,000) is awarded ("Covered Contracts"), the Town shall submit the Subcontractor Approval Form Annexed hereto as Attachment D with the "Prime Contract Information", "Prime Contractor Information" and "Subcontractor Information" sections filled out to DEP's Agency Chief Contracting Officer via the City's payee information portal or successor portal for the entity being awarded the Covered Contract ("Covered Contractor"). DEP reserves the right to object to any Covered Contractor within ten (10) business days of the submittal of the foregoing Subcontractor Approval Form based on a finding that the proposed Subcontractor does not have a satisfactory business integrity or is otherwise nonresponsible; provided that approval will be presumed if the Town has not received an objection to the proposed Subcontract within ten (10) business days of confirmation of DEP's receipt of the Subcontractor Approval Form. Notwithstanding the foregoing, such approval is not required in all individual employer-employee contracts and Covered Contracts with an entity as described in Section 99-r of the General Municipal Law or any federal or local governmental agency.

B. The City shall not use this Section as a means of restricting the selection or approval of one Covered Contractor over another Covered Contractor. Any objections by the City shall be based solely on the criteria set forth in Section 5.03(A), and shall not be based on other factors including, without limitation, financial resources, technical qualifications, experience, organization, material, equipment, facilities, personnel resources and expertise, a satisfactory record of performance, the existence of accounting and auditing procedures, or compliance with requirements for the utilization of small, minority-owned and women-owned businesses as subcontractors; provided that the City shall be entitled to review and rely upon any facts and circumstances relevant to the criteria set forth in Section 5.03(A).

C. In addition to and not in limitation of the indemnification provision in Article 9, at the Town's request, the City shall defend, indemnify and hold harmless the Town, its officers, agents and employees from and against any liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of a determination with respect to a Covered Contract pursuant to this Section. The Town agrees to cooperate with and provide reasonable assistance to the City in defending any actions or claims which the City has undertaken to defend pursuant to this sub-Section 5.03 (C).

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties of the Town

The Town represents and warrants that:

A. The Town has all requisite power and authority to execute, deliver and perform this Agreement.

B. This Agreement has been duly authorized by all necessary action on the part of the Town and has been duly executed and delivered by the Town and, assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of the Town.

C. 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 the Town is bound, or to the knowledge of the Town, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Town or any, of its activities or properties.

D. Acceptance of funds hereunder shall be deemed at such time a reaffirmation of the representation and warranties hereof.

Section 6.02 Representations and Warranties of the City and DEP

A. The City has all requisite power and authority to execute, deliver and perform this Agreement. DEP is a validly authorized and existing agency of the City, with full right and power to execute, deliver and perform its obligations under this Agreement.

B. The execution, delivery and performance by the City and DEP of this Agreement are within the powers of the City and DEP, have been duly authorized by all necessary action by or in respect of, or filing with, any governmental body, agency or official (except for the approval by the Mayor. The City and DEP also represent that they have complied with all applicable laws in connection with the execution, delivery and performance of this Agreement.

C. This Agreement will, when executed by the City, and assuming due execution and delivery by the Town, constitute the valid and binding agreement of the City and DEP, enforceable in accordance with its terms.

D. The execution and delivery of this Agreement by the City and DEP, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any provision of applicable law, charter, ordinance or regulation or, to the extent of the City's knowledge, of any material agreement, judgment, injunction, order, decree or other instrument binding upon the City or DEP.

ARTICLE 7 RECORDS AND REPORTS

Section 7.01 General

The Town agrees that a copy of any and all non-privileged written materials and documents that are prepared pursuant to this Agreement shall be forwarded to the City upon request and at the City's expense. The City shall have the right to use all non-privileged and non-confidential written materials, documents and information that are gathered or prepared pursuant to this Agreement for any purpose deemed appropriate by the City.

Section 7.02 Maintenance of Records

The Town shall maintain complete and accurate records in readily accessible files on all of its activities in connection with this Agreement. Such records shall include, but not be limited to, financial records detailing the receipt, management, and disbursement of all funds provided pursuant to this Agreement. The Town shall maintain all records relating to this Agreement for a period of at least seven (7) years after the generation of the document.

Section 7.03 Audit and Inspection

A. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the State and the State Comptroller, and the City and the City Comptroller pursuant to the powers and responsibilities as conferred by State and City law.

B. The Town shall prepare and maintain any and all documentation and justification in support of expenditures or fees under this Agreement in accordance with generally accepted business practices and shall make such documentation available to the State, including the State Comptroller, and the City, including the City Comptroller, as they consider necessary.

C. This Section 7.03 shall survive expiration of this Agreement.

Section 7.04 Annual Reports

Within sixty (60) calendar days after the end of each Fiscal Year, the Town, as part of its submission of Eligible Costs, shall submit to the City reports with respect to the continued implementation of this Agreement. Such annual reports will cover the following items: (1) any unanticipated operation or maintenance problems arising during the preceding year and measures taken to address such problems; (2) any violations of the Margaretville WWTP's SPDES permit attributable to flow from the Community Sewer System during the preceding year and measures taken to address such violations; (3) any foreseeable, unusual, and large Eligible Costs anticipated for the upcoming year; and (4) any other matters that the Town and the City shall hereafter agree upon for inclusion in such reports. To the extent that there are annual reporting requirements for any other State, federal or local agency regarding the operation of the Community Sewer System, such reports shall also be submitted to the City in a timely fashion.

Section 7.05 Insurance Coverage

No later than the beginning of each Fiscal Year, the Town shall provide documentation of all insurance policies for the Community Sewer System in a form acceptable to the City. The documentation will be accompanied by a request that the City determine that the coverage is adequate. The City will respond to this request within 90 days either by determining that the coverage is adequate or by specifying the ways in which the insurance policies need to be supplemented. The Town's coverage will be deemed adequate if (a) the City states in writing that the insurance policy is adequate; (b) the Town supplements the insurance policy as requested in writing by the City; or (c) no response is received from the City within 90 days. The City shall not unreasonably withhold a determination that the coverage is adequate or require the purchase of insurance that is inconsistent with good business judgment.

ARTICLE 8 DEFAULT, SUSPENSION OR TERMINATION

Section 8.01 Default

A. In the event of a breach in the observance or performance of any material terms of this Agreement, and such default continues for more than thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party, such non-defaulting party may (in addition to any other remedies available at law or in equity), terminate this Agreement on not less than ten (10) days prior written notice to the defaulting party. If the nature of the Town's material breach of the Agreement is such that it cannot reasonably be cured within thirty (30) days of receipt of such notice, the City may not suspend or terminate this Agreement, or withhold payments pursuant to Subsection 3.04(D) above, provided that the Town commences appropriate actions to cure prior to the end of the thirty days and diligently pursues all reasonable actions necessary to cure the breach.

B. For purposes of this Agreement, breach of a material term of this Agreement includes, but is not limited to, failure to retain during the term of this Agreement an operator with the proper level of State certification to be responsible for the Community Sewer System in accordance with applicable law; failure to operate the Community Sewer System with the staffing levels required by applicable State law and regulation or technical guidance during the

term of this Agreement; willful or grossly negligent commission of acts or omission of acts by the Town and the Town's employees, servants, agents, or independent contractors, including the Community Sewer System's operator, that give rise to additional Eligible Costs for the Community Sewer System or require replacement of equipment at the Community Sewer System.

Section 8.02 Termination

If either Party elects to terminate this Agreement, pursuant to Section 8.01, the following procedures shall be followed:

A. City's Termination.

(1) In the event of termination by the City pursuant to Section 8.01, the City shall not be responsible for any obligations under this Agreement from the date on which the Town receives written notice of the termination from the City pursuant to Section 8.01. Any obligation necessarily incurred by the Town in good faith on account of this Agreement prior to receipt of notice of termination and falling due after such date shall be paid by the City in accordance with the terms of this Agreement.

(2) Nothing in this sub-Section or Section 8.01 shall be deemed to excuse the Town from continuing to operate and maintain the Community Sewer System in compliance with applicable laws, rules, or regulations pertaining to the Community Sewer System, notwithstanding termination of this Agreement by the City.

(3) The City's termination of this Agreement does not affect any obligation the City may have under the Watershed MOA (if any) or under PHL Section 1104 (if any) to fund operation and maintenance costs relating to the operation and maintenance of this Community Sewer System or excuse the City from accepting sewage from the Project.

B. Town's Termination. If the Town should terminate this Agreement, the termination shall in no way relieve the Town from complying with any and all applicable laws, rules, and regulations pertaining to the Community Sewer System. The Town's termination of this Agreement shall not relieve the Town from its obligation to pay for the Cost of Treatment at Margaretville WWTP as defined herein. The Town's termination of this Agreement does not affect any obligation the City may have, under the Watershed MOA (if any) or under PHL Section 1104 (if any), to fund operation and maintenance costs relating to the operation and maintenance of this Community Sewer System.

C. Upon termination, the Town shall deliver to the City a final payment voucher form within sixty (60) days of the expiration or termination of this Agreement, covering all eligible costs incurred by the Town prior to the expiration or termination of this Agreement, and not covered by previous invoices submitted. Any remaining funds shall be returned to the City within thirty (30) days of the termination.

Section 8.03 Force Majeure

In the event the City or the Town cannot comply with the terms and conditions of this Agreement because of climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides or other catastrophes or acts of God; acts of war or of the public enemy or terrorist acts; disruption, outage or power failure caused by a utility's inability to provide service, pandemics, epidemics, outbreaks of infectious disease or any other public health emergency; other states of emergency declared by the City, State or Federal government, quarantine restrictions, and freight embargoes; including the City's or Town's reasonable responses to any of the above or other condition as to which conduct the City or the Town (as the case may be) was not the proximate cause, the City's or the Town's performance under this Agreement may be excused or delayed provided that, within 10 days of obtaining knowledge of the effect of such condition, the City notifies the Town, or the Town notifies the City (as the case may be), by written notice identifying the condition and estimating its effect on compliance with the terms and conditions of this Agreement and requests an appropriate extension of the relevant terms and conditions of this Agreement. The City or the Town, as applicable, shall make its best efforts to provide for alternate arrangements to fulfill the terms and conditions of this Agreement.

ARTICLE 9 INDEMNIFICATION

The Parties agree to indemnify each other and save each other harmless from all claims, liabilities, losses or expenses of every character whatsoever for bodily injury, including death, and/or damage to property, where such injury or damage is the result of the indemnifying Party's negligence or willful tort occurring while working on activities relating to this Agreement. In the event such injury or damage is caused by the combined negligence of the Parties, each Party shall be responsible for its relative culpability. Prior to requesting indemnification from the City, the Town shall first attempt to seek coverage through an applicable insurance policy and any indemnification by the City shall be strictly in excess of any and all insurance coverage carried by the Town and Town Contractors, if any.

ARTICLE 10 INSPECTION

The Town agrees to allow the City reasonable access to the Community Sewer System to permit inspection and observation of operation and maintenance of the Community Sewer System, to read the flow meters that must be installed in connection with the Community Sewer System in order to determine the flow from the Community Sewer System to the Margretville WWTP, and to take samples of the wastewater for the purpose of establishing compliance with the Watershed Regulations. The Town may require the City to provide reasonable notice prior to such inspection and observation. Nothing in this Agreement shall affect the City's authority under other applicable laws or regulations.

ARTICLE 11 INVESTIGATIONS

The Town and the City agree to cooperate fully and faithfully with any investigation, audit or inquiry relating to the subject matter of this Agreement conducted by New York State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, contract, lease, permit or license that is the subject of investigation, audit or inquiry. Any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

ARTICLE 12 MISCELLANEOUS

Section 12.01 Severability

If any provision of this Agreement or its application shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications hereof shall not be affected or impaired in any way.

Section 12.02 Compliance with the Law

The Town agrees that all acts to be performed in connection with this Agreement shall be performed in compliance with all applicable federal, State and local laws, rules, regulations and orders, including the State Environmental Quality Review Act and the Watershed Regulations.

Section 12.03 Assignment or Other Disposition of the Agreement

The Town agrees to notify DEP at least thirty (30) days prior to any assignment, transfer, conveyance, sublet or other disposition of this Agreement or any part thereof, or of its right, title, or interest therein, to another municipality or governmental entity. Such assignment, transfer, conveyance, sublet or other disposition of this Agreement shall be effective only upon registration of an agreement between the City and the assignee pursuant to Section 328 of the City Charter, in form and substance satisfactory to the City, in which the assignee expressly agrees to assume, perform and be bound by all of the liabilities and obligations of the Town hereunder. The City shall not unreasonably withhold its consent to such an assignment. Notwithstanding this Section 12.03, the Town may retain and employ Town Contractors subject to the limitations and restrictions on subcontractors set forth in Article 5 of this Agreement. Nothing in this Section affects the City's obligations under paragraph 143 or paragraph 122(k) of the Watershed MOA, or under PHL Section 1104.

Section 12.04 Modification

This Agreement may not be modified or amended except by an instrument in writing signed by both of the Parties hereto. This Agreement may not be modified or amended orally.

Section 12.05 Notification.

A. Unless otherwise expressly provided in this Agreement, any notice from one Party to the other Party required or permitted to be given hereunder shall be in writing and shall be

delivered by hand, or by registered mail, return receipt requested, by overnight mail, or by facsimile confirmed with a copy sent by regular mail, to the following addresses:

If to DEP:

New York City Department of Environmental Protection
71 Smith Avenue
Kingston, New York 12401
Attention: Deputy Commissioner, Bureau Water Supply

with a copy to:

New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373-5108
Attention: General Counsel

If to the Town:

Supervisor, Town of Middletown
Post Office Box 577
Margaretville, NY 12455

B. At any time, either Party may designate a new address for the receipt of notices by providing written notice of such new address to the other Party, in the manner specified in Subsection 12.05(A) above.

C. Notices sent to the other Party in accordance with this Section 12.05 shall be deemed to be delivered when sent.

Section 12.06 Claims or Actions

A. No director, officer, employee, agent or other person authorized to act on behalf of the City shall have any personal liability in connection with this Agreement or any failure of the City to perform its obligations hereunder. No director, officer, employee, agent or other person authorized to act on behalf of the Town shall have any personal liability in connection with this Agreement or any failure of the Town to perform its obligations hereunder.

B. Upon the initiation by a Party or service upon a Party of any legal action or proceeding in connection with or relating to this Agreement, that Party will provide written notice to the other Party within ten (10) business days. In the event any claim is made or an action brought in any way relating to the Agreement herein (except an action brought by one Party against the other Party), the Parties shall diligently render to each other, any and all assistance which may be necessary to prosecute or defend such action or claim. In the event a regulatory agency or a third party notifies the Town that it intends to, or does, commence an administrative enforcement action and/or court proceeding related to compliance with applicable law, including, but not limited to, the operation and/or maintenance of the Community Sewer System, the Town shall contact the City in accordance with section 12.05 as soon as it is notified of such action, but

no later than two business days after the Town received notification related to such enforcement action. Such notice shall include, to the maximum extent practicable, pertinent information concerning the planned or taken action. In the event the City learns that an enforcement action concerning operation of the Community Sewer System against the Town is likely, it shall promptly notify the Town in accordance with section 12.05, unless the regulatory agency directs the City otherwise. In either event, the Town and City shall diligently, and in good faith, work together in any proceeding relating to such enforcement action to devise a technically effective and cost-effective remedial plan for the Town to propose, if necessary, to the regulatory agency. The Town shall not submit a remedial plan to a regulatory agency or third party unless the City has indicated in writing that it concurs with the remedial plan. The Town's failure to obtain such written determination in accordance with the above terms shall render the remedial plan ineligible as an Operation and Maintenance Cost under this Agreement.

Section 12.07 No Third Party Beneficiary

This Agreement is not intended to create any benefit or interest in any third party.

Section 12.08 Cooperation

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.

Section 12.09 Dispute Resolution

A. The dispute resolution procedures in Section 3.05 of this Agreement shall be the exclusive procedures for resolving Eligible Disputes under this Agreement. For any other disputes arising under this Agreement, the Parties may use any other procedure allowed by applicable law.

B. Except as specifically provided for resolving Eligible Disputes, nothing in this Section 12.09 will be interpreted as a condition precedent to the filing of civil action for breach of contract or any other remedy.

Section 12.10 Civil Litigation

A. Notwithstanding that this Agreement is not a contract entered into pursuant to the Watershed MOA, the City will pay attorney's fees to the extent such payment would be required by paragraph 181 of the Watershed MOA if this Agreement were a contract entered into pursuant to the Watershed MOA, in connection with any action brought by the Town or the City to enforce the terms of this Agreement.

B. Although the City has agreed to pay for certain fines and penalties as a portion of Eligible Costs pursuant to Section 3.01(C), the Parties acknowledge that this Section 12.10 does not create, or absolve the City from any liability it might otherwise have for reimbursement of

attorney's fees, fines, penalties or other costs in the event that the Town is sued by a third party in connection with violations of any applicable permits or otherwise in connection with the operation and maintenance of the Community Sewer System. The City does not believe that it would be liable for such reimbursement, even in the event that the Town substantially prevailed in a defense that such violations were caused solely by the City's failure to make payments under this Agreement. The Town reserves the right to make a claim for such reimbursement in State court or in any other forum with jurisdiction.

Section 12.11 Miscellaneous

A. 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.

B. Except for the Watershed MOA, this Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements with respect to such subject matter, whether written or oral. In the event of a conflict between the terms of this Agreement and the Watershed MOA, the terms of the Watershed MOA shall govern.

C. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the duly authorized representatives of the City and the Town have executed this agreement in triplicate.

For The Town

BY: _____
Supervisor
Town of Middletown

For THE CITY OF NEW YORK

BY: _____
Elisa Velazquez, ACCO, Assistant Commissioner
New York City Department of Environmental Protection

Approved as to Form and Certified as to Legal Authority

Acting Corporation Counsel

Dated:

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

On this ___ day of _____, 202_, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she is the _____ of the Department of Environmental Protection of the City of New York, the individual described herein and who executed the foregoing instrument; and that he signed his name thereto as authorized by said municipal corporation.

Notary Public

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

On this ___ day of _____, 202_, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she is the _____ of the Town of Middleton, the individual described in and which executed the foregoing instrument; and that he signed his name thereto by the authority of said municipality.

Notary Public

Exhibit A

Fixed Capital Equipment Chart

The following tables detail the eligibility of replacement and/or repair of capital equipment. The tables are as follows:

Table 1 - Table 1 includes items which generally may not be replaced with O&M funds from DEP. This Table includes numerous exceptions, generally with regard to emergency repairs or routine maintenance. When one of these exceptions is met, DEP approval is not required prior to the commencement of work.

Table 2A - Table 2A is similar to Table 1, but with additional criteria for exceptions. These criteria include DEP approval and, if the replacement occurs more than 30 years after startup of the upgrade equipment, a review for cost effectiveness prior to initiating the work.

Table 2B - Table 2B is similar to Table 2A. In this Table, the exceptions allow replacement, possibly without a review for cost effectiveness, for malfunctioning, unsafe, unreliable, etc. equipment. As with Table 2A, DEP approval is required prior to initiating the work.

Table 2C - Table 2C includes items that may be replaced with O&M funds from DEP at any time, provided that the item has become obsolete and DEP approval is obtained.

The items listed in the left columns of the following tables identify the widest range of items that may have been installed as part of the Community Sewer System pursuant to CWMP Program III. Thus, the lists include more items than may have been installed as part of this Community Sewer System. Only those items installed as part of the Community Sewer System are eligible for replacement and/or repair as described in the tables.

Table 1. Strict Capital Expense Items

This Table includes items that shall not be replaced using O&M funds provided by NYC. Any exceptions, such as for emergency and O&M repairs, are listed in the right column of the Table. O&M funds provided by DEP may not be used for any planned or scheduled repairs for items in this Table.

Equipment EQUIPMENT	Exceptions and Conditions EXCEPTIONS AND CONDITIONS
Underground concrete structures	Except associated access hatches and minor concrete work or parging necessary to assure that the structural elements meet their estimated useful lives
Pump stations	Except pumps; valves and check valves; controls for valves; main grinder pump station controls; dosing pump station controls; collection system grinder pump station control panel; outdoor enclosures for all controls; level sensing systems; flow chart recorder; flow meter (ultrasonic sensor and associated hardware); auto dialer; and all associated electrical components
Valve vaults	Except valves (including hydro-mechanical or electric actuators in valve pits) and all associated electrical components
Generators	This limitation refers to complete replacement of the unit, not replacement of individual components (includes back-up generator automatic transfer switch)
Collection system	Except partial ad hoc replacements (this exception does not include planned and/or scheduled repairs)
Buildings, slabs, shells, walls, roof, steps, rails, covers	Except outdoor panel boards; windows, doors and partial ad hoc replacements (this exception does not include planned and/or scheduled repairs)
Roads, driveways, parking lots, fencing, walkways	Except resurfacing or repairing of paved or gravel areas and partial ad hoc replacements (this exception does not include planned and/or scheduled repairs)
Lawn mowers, snow blowers and other maintenance equipment	Except any piece of maintenance equipment costing less than \$1,500 may be replaced with O&M funds
Electrical supply/distribution infrastructure wiring	Excludes replacements of small sections of wiring during normal maintenance and repair (this exception does not include planned and/or scheduled repairs)
Heating system and ventilation system	Except components with moving parts, and repair and maintenance of insulation

Table 2. Replacement of Capital Items Requiring DEP Approval

Where items in the following tables are eligible for replacement with O&M funds, the replacement may be paid for with O&M funds provided by DEP only with the prior written approval of DEP. NYCDEP approval shall not be unreasonably denied or delayed if the conditions specified are met.

A. The items in the left column are generally not eligible for replacement with O&M funds provided by DEP. However, if the proposed replacement is approved by NYCDEP and if (a) replacement occurs within the first 30 years after the Community Sewer System begins operation or replacement occurs thereafter, if such replacement is shown to be cost effective pursuant to Footnote 2 below, and (b) the specific conditions shown below for replacement are met, then the replacement will be eligible for payment with O&M funds provided by DEP.

Equipment	Exceptions and Conditions
Transformers, control panels, motor control centers	
Raw, partially treated, or effluent wastewater pump sets (pump station) delivering 100% of plant flow or with an installed cost over \$7,500 per unit.	All pumps, compressors, blowers with installed costs at or below \$7,500 may be replaced with O&M funds.
Lab equipment with replacement cost of \$5,000 or greater, installed	All lab equipment with installed costs at or below \$5,000 may be replaced with O&M funds Units may be replaced with O&M funds, in the case of substantially complete failure provided said failure is not due to lack of proper O&M ¹ 2

B. Items which may be replaced at any time in light of cost effectiveness. Replacement of the following items may be funded with O&M funds from DEP only if the specific conditions shown below are met.

Equipment	Exceptions and Conditions
Pumps as described in Table 2A above and any single piece of functional set of mechanical	Where a malfunction impedes, makes unsafe or unreliable, or adds expense to normal operation

¹ Proper "O&M" means O&M performed in accordance with the O&M Manual, or any addendum thereto, approved by DEP.

² To demonstrate cost effectiveness: The WWTP Owner must estimate for a period equal to the manufacturer's service life for a proposed piece of equipment the cost to continue to operate the piece of equipment, including any necessary repairs to continue operation. The resulting cost' estimate must then be compared to the cost of equipment replacement, taking into account installation costs (based on suppliers quotes) and O&M for the service life of the piece of equipment.

equipment costing over \$7,500 installed. Control panels, motor control centers	and where replacement is shown to be more cost effective
--	--

C. Items which may be replaced at any time due to obsolescence. Replacement of the following items may be funded with O&M funds only if the piece of equipment has become obsolete. Obsolescence occurs when [i] compatible replacement parts are no longer available; [ii] when standards for worker safety established by employee unions, government or industry require new equipment; [iii] improvements in energy efficiency make the continued use of the existing technology not cost effective; or [iv] technological developments make the use of existing control panels and/or motor control centers inconsistent with good engineering judgment.

Equipment

Gas and oxygen sensing safety systems.
Control panels, motor control centers.
CPU, SCADA software and any hardware necessary for centralized information processing, including any specialized VO points, UPS, printers and related cables

All dollar figures mentioned are subject to the inflation adjustments included in the O&M Agreement.

ATTACHMENT A
DESIGNATED SERVICE AREA MAP

ATTACHMENT B

**MAP OF EXISTING SEWER SYSTEM AND PLANNED SEWER
EXTENSIONS FUNDED THROUGH THE MOA'S SEWER
EXTENSION PROGRAM SERVED BY THE MARGARATVILLE
WASTEWATER TREATMENT PLANT**

ATTACHMENT C
MAP OF KELLY CORNERS

ATTACHMENT D

SUBCONTRACTOR APPROVAL FORM

CITY OF NEW YORK SUBCONTRACTOR APPROVAL FORM	
For subcontracts to be approved AFTER contract registration Column on left indicates whom that section is to be completed by	
AGENCY	PRIME CONTRACT INFORMATION
Agency: NYCDEP	Unit/Div: BWS-WLCP
Contract No.: CAT 444	Registration: 82620151421279 Registration Date: _____
Contract Description: Implementation of Stream Management Plans, Schoharie Watershed	
Contract Subject to a Project Labor Agreement (PLA) YES <input type="checkbox"/> NO <input type="checkbox"/>	
PRIME CONTRACTOR IDENTIFICATION	
Name: Greene County SWCD	
EIN/SSN: 14-1549477	
SUBCONTRACTOR INFORMATION	
Company Name:	PIP Vendor #:
Contact (please print):	Title:
Phone:	Fax:
Address:	City: _____ State/Zip: _____
EIN/SSN:	E-Mail:
Subcontract Description:	
Subcontract Value:\$ _____	Start Date / / _____ End Date / / _____
Subcontractor Signed Letter of Assent <input type="checkbox"/> (If Prime Contract is subject to a Project Labor Agreement)	
Subcontractor is DSBS-certified as: M/WBE <input type="checkbox"/> EBE <input type="checkbox"/> or LBE <input type="checkbox"/> (check all that apply & note status below)	
YES <input type="checkbox"/>	Application Pending <input type="checkbox"/> Intends to Apply <input type="checkbox"/> NO <input type="checkbox"/>
Subcontractor Prevailing Wage or Living Wage Statement (if applicable) <input type="checkbox"/>	
Primary Trades to be used (list all)	
Subcontractor's Experience Modification Rating (EMR): _____ (Letter from Insurance carrier to verify rating must be included).	
Prime Contractor Certification: I hereby affirm that the information supplied is true and correct.	
Signature _____	Title _____
Print Name _____	Date _____
Email _____	Phone _____
AGENCY PRELIMINARY REVIEW PLEASE SEE PAGE 2 FOR INSTRUCTIONS	
Agency Preliminary Review Completed By: _____ Date _____	
1. VENDEX <input type="checkbox"/> 2. Employment <input type="checkbox"/> 3. References <input type="checkbox"/> 4. PLA <input type="checkbox"/> 5. Apprenticeship <input type="checkbox"/> 6. Licenses <input type="checkbox"/>	
PRIME CONTRACTOR RESPONSE	
For each of the boxes checked in the agency preliminary response above, I have informed the Subcontractor of all relevant requirements and provided all requested documentation. <input type="checkbox"/>	
AGENCY FINAL RESPONSE	
Final Agency Approval: Granted <input type="checkbox"/> Denied <input type="checkbox"/>	
Signature: _____	Date _____
If Subcontracted Amount Has Changed, Please Enter The Revised Amount And Resubmit	

MOCS Subcontractor Approval Form (August 2013)

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**AGREEMENT
BETWEEN THE CITY OF NEW YORK
AND THE TOWN OF MIDDLETOWN
FOR PAYMENT OF CERTAIN
OPERATION AND MAINTENANCE COSTS OF
COLLECTING, TREATING, AND DISPOSING OF
WASTEWATER**

