

in no way relieves the User of liability for any violations caused by the User before or after receipt of the Notice of Violation.

Section 903 - Consent Orders

The Inspector, is hereby empowered to enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the User responsible for the noncompliance. Such orders shall include specific action to be taken by the User to correct the noncompliance within a time period also specified by the order. Consent Orders shall have the same force and effect as an administrative order.

Section 904 - Administrative or Compliance Orders

When the Inspector, finds that a User has violated or continues to violate this Law or a permit or administrative order issued thereunder, he may issue by personal service or registered mail an administrative order to the User responsible for the discharge that orders one or more of the following: (i) imposes a penalty pursuant to Section 905; (ii) imposes a cease and desist order pursuant to Section 906; or (iii) directing that, following a specified time period, sewer service shall be discontinued, severed and abated in accordance with Section 907 unless the violation is corrected and that there is no reoccurrence of the violation. Administrative orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring, and management practices.

The User may, within fifteen (15) calendar days of receipt of such order, petition the Inspector to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Inspector by registered mail. Within ten (10) calendar days of receipt of the petition, the Inspector shall issue a written decision either:

- (1) Rejecting any frivolous petitions, or
- (2) Modifying or suspending the order

Within fifteen (15) calendar days of receipt of the Inspector's decision, the User may seek a hearing pursuant to Section 908 hereof.

Section 905 - Administrative Fines

Notwithstanding any other section of this Law, any User who is found to have violated any provision of this Law, or a wastewater discharge permit or administrative order issued hereunder, shall be fined in an amount not to exceed one thousand dollars (\$1,000.00) per violation. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.

Section 906 - Cease and Desist Orders

When the Inspector, finds that a User has violated or continues to violate this Law or any permit or administrative order issued hereunder, the Inspector may issue an administrative order to cease and desist all such violations and direct those persons in noncompliance to:

- (1) Comply forthwith
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the discharge.

Section 907 - Termination of Permit

Any User who violates the following conditions of this Law, or a wastewater discharge permit or administrative order, or any applicable State and Federal law, is subject to permit termination and/or discontinuance of sewer service:

- (1) Violation of permit conditions or conditions of an administrative order,
- (2) Failure to accurately report the wastewater constituents and characteristics of its discharge,
- (3) Failure to report significant changes in operations or wastewater constituents and characteristics,
- (4) Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling, or
- (5) Failure to pay administrative fines, fees or user charges.

Section 908 - Show Cause Hearing

Within 10 days after receipt of the request of hearing, the Inspector shall serve a notice on the User specifying the time and place of a hearing to be held by the Town Board regarding the violation, a summary of the reasons why the action is to be taken and a summary of the evidence in support of the violation. The notice of the hearing shall be served at least ten (10) calendar days before the hearing in accordance with Section 910 of this Article. Copies of such notice shall be provided to the property owner.

The Town Board may itself conduct the hearing, or may designate any of its members or any officer or employee of the Town to conduct the hearing who may then:

- (1) Issue, in the name of the Town Board, notices of hearings compelling the attendance and testimony of witnesses, and the production of evidence relevant to any matter involved in such hearings,
- (2) Take the evidence,
- (3) Take sworn testimony,
- (4) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Town Board for action thereon.

After the Town Board has reviewed the evidence and testimony, it may order the user to comply with the Inspector's order or fine, modify the Inspector's order or fine, or vacate the Inspector's order or fine.

Section 909 - Failure of User to Petition the Inspector

In the event the Inspector issues any administrative order, terminates the User's permit, or makes any fine as set forth in this Article, and the User fails, within the designated period of time set forth, to petition the Inspector, as provided in appropriate sections of this Article or to seek a hearing, the User shall be deemed in default and its rights to contest the administrative order or fine shall be deemed waived.

Section 910 - Notice

The notices, orders, petitions, or other notification which the User or Inspector shall desire or be required to give pursuant to any sections of this Law shall be in writing and shall be served personally or sent by certified mail or registered mail, return receipt requested, postage prepaid, and the notice, order, petition, or other communication shall be deemed given upon its mailing as provided herein. Any notice, administrative order, or communication mailed to the User pursuant to the sections of this Law shall be mailed to the User where the User's effluent is discharged into transmission lines to the Municipal WWTP Sewer System. Any notice, petition, or other communication mailed to the Inspector shall be addressed and mailed to the Town Hall of the Town.

Section 911 - Right to Choose Multiple Remedies

The Inspector shall have the right to utilize any one or more appropriate administrative remedies set forth in this Article. The Inspector may utilize more than one administrative remedy established pursuant to this Article. A hearing hereunder can combine more than one enforcement action.

JUDICIAL REMEDIES

Section 912 - Civil Actions For Penalties

In lieu of the administration enforcement action taken by the Inspector and/or to enforce an administrative order, the Town Attorney, upon approval by the Town Board, may commence a civil action against a User who violates any of the provisions of or who fails to perform any duty imposed by this Law, or any administrative order or determination of the Inspector issued under this Law, or the terms of any permit issued hereunder. In such action, such person shall be liable to the Town for a civil penalty not to exceed one thousand dollars (\$1000) for each such violation, to be assessed after a hearing. Each violation shall be separate and distinct, and in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. Such penalty may be recovered in an action brought by the Town attorney, in any court of competent jurisdiction giving preference to courts local to the Town. In addition to the above described penalty, the Town may recover all damages incurred by the Town from any persons or Users who violate any provisions of this Law, or who fail to perform any duties imposed by this Law or any administrative order or determination of the Inspector issued under this Law, or the terms of any permit issued

hereunder. In addition to the above described damages, the Town may recover all reasonable attorney's fees incurred by the Town in enforcing the provisions of this Article, including reasonable attorney's fees incurred in any action to recover penalties and damages, and the Town may also recover court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses.

In determining the amount of civil penalty, the court shall take into account all relative circumstances, including, but not limited to the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other relative factors as justice may require.

Such civil penalty may be released or compromised by the Inspector before the matter has been referred to the Town attorney, and where such matter has been referred to the Town attorney, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Town attorney, with the consent of the Town Board.

Section 913 - Court Orders

In addition to the power to assess penalties as set forth in Section 912 above, the Court shall have the power, following the hearing, to issue an order:

- (1) Suspending, revoking, or modifying the violator's Wastewater Discharge Permit, or
- (2) Enjoining the violator from continuing the violation.

Any such court order shall be sought in an action brought by the Town attorney, at the request of the Town Board, in the name of the Town, in any court of competent jurisdiction giving precedence to courts local to the Town.

Section 914 - Criminal Penalties

Any person who willfully violates any provision of this Law or any final determination or administrative order of the Inspector made in accordance with this Article shall be guilty of a Class A Misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000), or imprisonment not to exceed one (1) year or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

Any User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this Law, or wastewater permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Law shall be guilty of a Class A Misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) per violation per day or imprisonment for not more than one (1) year or both.

No prosecution, under this Section, shall be instituted until authorized by the Town Board, by resolution.

Section 915 - Injunctive Relief

Whenever a User has violated or continues to violate the provisions of this Law or permit or order issued hereunder, the Town Attorney, as authorized by the Town Board, may petition a Court of competent jurisdiction, in the name of the Town, for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains the violation of, or compels the compliance with any order or determination thereunder by the Inspector.

Section 916 - Summary Abatement

Notwithstanding any inconsistent provisions of this Law, whenever the Inspector finds, after investigation, that any User is causing, engaging in, or maintaining a condition or activity which, in the judgement of the Inspector, presents an imminent danger to the public health, safety, or welfare, or to the environment, or is likely to result in severe damage to the Municipal WWTP Sewer System, or the environment, and it therefore appears to be prejudicial to the public interest to allow the condition or activity to go unabated until notice and an opportunity for a hearing can be provided, the Inspector may, without prior hearing, order such User by notice, in writing wherever practicable or in such other form as practices are intended to be proscribed, to discontinue, abate, or alleviate such condition or activity, and thereupon such person shall immediately discontinue, abate, or alleviate such condition or activity. As promptly as possible thereafter, not to exceed fifteen (15) calendar days, the Inspector shall provide the User an opportunity for a hearing before the Town Board in accordance with Section 908.

If the User is not within the geographic boundaries of the Town the right of summary abatement to discontinue, abate, or alleviate conditions or activities shall be those prescribed in the inter-municipal agreement or Town-User agreement.

The Inspector, acting upon the belief that an emergency exists, shall be indemnified by the Town against any personal liability that may arise in the performance of his duties to protect the public health, safety, or welfare, or to preserve the Municipal WWTP Sewer System or the environment.

MISCELLANEOUS

Section 917 - Delinquent Fines, Payments and Service Charges

If there shall be any fines, penalties, or other charges due to a violation of this Law, which are due to the Town, or Sewer District pursuant to any Article or Section of this Law (other than pursuant to Article 14), which shall remain due and unpaid, in whole or in part, for a period of twenty (20) calendar days from the date of billing by the Town, the same shall constitute a default and interest shall accrue on the unpaid balance, at the rate of two percent (2%) per month, retroactive to the date of the original billing.

In the event that there are any sewer taxes, assessments, or other service charges which shall have been delinquent for a period of at least sixty (60) calendar days as of November 1 of any year, the Inspector shall report the names of the defaulting persons to the Town Supervisor, the Town Clerk, the Town Chief Assessor, and the Town Treasurer on or before November 1 of the same year. The Town Chief Assessor is hereby directed to add the entire amount of the sewer tax, assessment, or other service charge which shall be in default, plus penalty and interest, as provided for in this Law, to the real property taxes due and owing to Town in the next succeeding year, and the Town Chief Assessor is directed to collect the same in the same manner as real property taxes due and owing to the Town are collected.

Where charges are delinquent and the violator is not a resident of the Town, or is located outside the geographical boundaries of the Town, then the Town attorney is authorized to seek recovery of charges, including punitive damages, in a court of competent jurisdiction or make arrangements with the appropriate county where the User is located to add the amount of the sewer assessment or other charges which shall be in default, plus penalty and interest, as provided for in the Law, to the real property taxes due to the County in the next ensuing year.

Section 918 - Performance Bonds

The Inspector may decline to reissue a permit to any User which has failed to comply with the provisions of this Law or any order or previous permit issued hereunder, or may require as a condition of reissuance, such User to first file with the Town a satisfactory bond, payable to the Tompkins WWTP Sewer System, in a sum not to exceed a value determined by the Inspector to be necessary to achieve consistent compliance.

Section 919 - Liability Insurance

The Inspector may decline to reissue a permit to any User which has failed to comply with the provisions of this Law or any order or previous permit issued hereunder, unless the User first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the Municipal WWTP Sewer System caused by its discharge.

ARTICLE 10

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ARTICLE 11

PUBLIC DISCLOSURE OF POTW OPERATIONS

Section 1101	Municipal WWTP Sewer System Operations Open to the Public
Section 1102	Procedural Requirements Available
Section 1103	Validity Through Public Inspection

Section 1101- Municipal WWTP Sewer System Operations Open to the Public

It shall be the policy of the Town Board to conduct all business with full disclosure to the public.

Section 1102- Procedural Requirements Available

The nature and requirements of all formal procedures for applying for a permit and for requesting a permit under this Law and for requesting a hearing shall be formulated by the Town and be made available to any resident of the Town upon request.

Section 1103- Validity Through Public Inspection

The Town shall formulate procedures to make available to the public for inspection such orders, statements of policy, and interpretations used by the Town in administration of this Law. No rule, regulation, or civil order shall be valid until it has been available for public inspection.

ARTICLE 12

CONFLICTS, SEVERABILITY, EFFECTIVE DATE AND APPLICABILITY

Section 1201 Conflicts
Section 1202 Severability
Section 1203 Effective Date

Section 1201- Conflicts

The relevant provisions of any local law in conflict with any provision of this Law are hereby repealed.

Section 1202- Severability

Each provision of this Law is severable from the others, so that if any provision is held to be illegal or invalid for any reason whatsoever, such illegal or invalid provision shall be severed from this Law which shall nonetheless remain in full force and effect.

Section 1203- Effective Date

This law shall take effect thirty (30) days after its adoption.

ARTICLE 13
ALLOCATION OF SEWERAGE CAPACITY – SPECIAL BENEFIT ASSESSMENT

Section 1301 A	Allocation of Sewerage Capacity
Section 1301 B	Criteria Household Connection
Section 1301 C	Criteria Non-Household Connection
Section 1301 D	Calculation of Unallocated Capacity
Section 1301 E	Planning Board Site Plan Approval or Subdivision Approval
Section 1301 F	State Environmental Quality Review Act
Section 1301 G	Procedure
Section 1301 H	Application Fee
Section 1301 I	Conditions
Section 1302	Special Benefit Assessment
Section 1303	Capital Fund
Section 1304	Payment of Special Benefit Assessment
Section 1305	Definitions
Section 1306	Parcels Outside Sewer District

Section 1301 A – Allocation of Sewage Capacity

The wastewater treatment plant was designed to handle the waste water flow from the existing development within the Sewer District with a 10% allocation for growth. As a result, as new development occurs or as uses of existing parcels are modified there will be a need for additional capacity at the waste water treatment plant to treat the additional flow. The treatment capacity at the sewage treatment plant 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 treatment 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.

If growth were to occur within the Sewer District, the capacity of the wastewater treatment plant may have to be expanded. The cost of the expansion will primarily have to be paid for by the users of the sewer system. In addition, over time, the wastewater treatment plant will need to replace equipment 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 benefitted 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 in the Special District to recover the costs of any capital improvements of those parts of the POTW which collect, pump, treat, and dispose of wastewaters from those persons discharging such wastewaters into the POTW. These provisions apply to the Tompkins Sewer Service Area.

Section 1301 B – Criteria Household Connection

Each new household connection to the sewer collection system or expansion from an existing household connection from a parcel within the Sewer District will require an approval of the Town Board. The Town Board will issue a decision whether or not to issue an approval based upon the following criteria:

- (i) the remaining unallocated capacity of the waste water treatment plant;
- (ii) the density of the development and its consistency with the overall masterplan and/or comprehensive plan;
- (iii) the competing demands for sewer service and the community's needs for other services;
- (iv) the timing of the submission;
- (v) economic impact on the community infrastructure including parking, schools, road improvements and safety;
- (vi) the sewer capacity, if any, allocated to said parcel in Table A under the column heading "Total Flow"; and
- (vii) any contractual obligations relating to sewer capacity allocation.

Existing individual households can make improvements to their house without requiring an additional allocation. Additional allocations will be required if an additional EDU is being added. An additional EDU would be required if the modifications being made to the property would allow for the building to be occupied by an additional family unit living separately from the existing unit or units within the building. If additional flow is allocated to a household, it will be allocated in increments of an EDU.

Section 1301 C – Criteria Non-Household Connection

Each new non-household connection to the sewer collection system or expansion from an existing non-household connection from a parcel within the Sewer District will require an approval of the Town Board. The Town Board will issue a decision whether or not to issue an approval based upon the following criteria:

- (i) the remaining unallocated capacity of the waste water treatment plant;
- (ii) the type, density, and size of the non-household development and the services provided by it to the community, and its consistency with the overall master plan and/or comprehensive plan;
- (iii) the competing demands for sewer service and the community's needs for other services;
- (iv) the timing of the submission;
- (v) economic impact on the community infrastructure including parking, schools, road improvements and safety;
- (vi) the sewer capacity, if any, allocated to said parcel in Table A under the column heading "Total Flow; and
- (vii) any contractual obligations relating to sewer capacity allocation.

If an existing non-household connection is making a physical modification to its facility which will require a building permit, it must appear before the Town Board for determination on whether an additional GPD allocation is necessary. An additional allocation will not be

necessary unless the Town Board determines that the improvements to be allowed under the building permit will result in an increase in sewage flow on a daily average basis of 75 GPD or more. At that time, the existing non-household connection will identify its current flow and its projected flow during its peak season and during the Town's Peak Season. The Board will have to make a determination on whether to allocate additional flow to the property in accordance with the criteria set forth above. If additional flow is allocated to the property, it will be allocated in increments of 75 gallons per day.

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 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.

Section 1301 E – Planning Board Site Plan Approval or Subdivision Approval

Prior to issuing any subdivision approval and/or site plan approval to a parcel within the Sewer District and/or prior to issuing a building permit to a parcel within the Sewer District, the development of which in accordance with the approval would result in an increase in sewage discharge or a new connection, the Planning Board and/or the Code Enforcement Officer shall refer the applicant/property owner to the Town Board for a sewer collection allocation in accordance with this Article. The Town Board's issuance and/or denial of a sewer allocation is not intended to be proof of or support for or against an application before the Planning Board; it shall, however, be evidence as to whether the proposed project needs to make alternative arrangements for sewage disposal.

Section 1301 F – State Environmental Quality Review Act

For purposes of compliance with the State Environmental Quality Review Act, Environmental Conservation Law, Article 8, as authorized under 6 NYCRR 617.(5)(b), the Town Board's approval and/or denial of a sewer allocation under this Article to a parcel within the Sewer District is a Type 2 action under SEQRA. [Note, that the construction and operation of the sewage collection system and treatment plant were fully addressed in a SEQRA process and an allocation approval or disapproval is not to be construed as or evidence of Town Board approval of the project; said project must still obtain whatever approvals are required as a matter of law].

Section 1301 G – Procedure

The Town Board shall issue its decision within 60 days of the submission of a complete application. At its own discretion, the Town Board may extend review period beyond 60 days in order to obtain more information regarding the criteria set forth above. The Town Board, in its discretion, may conduct a public hearing prior to making a determination. In all cases, the applicant shall have the right to appear at the Town Board meeting and/or hearing (if held) to present his /her case.

Section 1301 H – Application Fee

There is an application fee of \$50 per application. The fee is due with the submission of the application and is nonrefundable. In addition to the application fee, the Town Board reserves the right to charge the applicant for any out-of-pocket costs actually incurred by the Town Board or the Sewer District in retaining consultants to evaluate the application relative to the criteria set forth above.

Section 1301 I – Conditions

The Town Board may condition an Allocated GPD to contain one or more of the following conditions:

- (1) equalization installed on the parcel at the rate of one and one half the Allocated GPD or at such other amount as determined by the Town Board, at the cost of the owner;
- (2) equalization is discharged only during off peak hours or as directed by the person designated by the Town Board;
- (3) water saving measures;
- (4) seasonal use limitations;
- (5) such other conditions as the Town Board deems as reasonable and necessary to protect and preserve the capacity of the sewage treatment;
- (6) providing monthly monitoring of flow and/or other parameters;
- (7) an expiration date for the allocation by which the discharge must commence (or the allocation will expire) regardless of any previously paid sewer connection; and/or
- (8) wastewater pretreatment

Section 1302 – Special Benefit Assessment

(1) It is the determination of the Town Board that all lots and parcels of land within the Service Area of the POTW are especially benefitted thereby, and shall be assessed in just proportion to the benefit received based on the capacity absorbed in accordance with the following formula:

(a) For lots and parcels of land within the Service area of the POTW that are not connected to the sewer system, no Special Benefit Assessment shall be levied.

(b) For households connected to the sewer system:

- (i) To the extent that the capacity absorbed is less than or equal to the Table A GPD, no Special Benefit Assessment shall be levied; and
 - (ii) To the extent that the capacity absorbed is greater than the Table A GPD, a Special Benefit Assessment shall be levied in the amount of \$7,500 per EDU for each EDU above the Table A GPD; and
 - (iii) For the purpose of calculating the Special Benefit Assessment, any Two or more parcels assigned a Table A GPD, which are combined Through a legal filing thus eliminating one, are entitled to the combined allocation. If the parcel is subdivided in the future, the allocation may be re-divided, or remain with one parcel and the other treated as a new parcel.
- (c) For non-households connected to the sewer system:
- (i) To the extent that the capacity absorbed is less than or equal to the Table A GPD no Special Benefit Assessment shall be levied; and
 - (ii) To the extent that the capacity absorbed is greater than or equal to the Table A GPD, a Special Benefit Assessment shall be levied in the amount of \$2,163 per 75 GPD above the Table A GPD.

Section 1303 – Capital Fund

The proceeds of the Special Benefit Assessment provided for in Section 1302 shall be deposited in a capital account that could be accessed by the Sewer District to repair, upgrade and/or expand the wastewater treatment plant and the sewer collection system or for such other purposes allowed under law. The Dollar Charge per EDU (or per 75 GPD) may be modified from time to time by resolution of the Town Board as necessary to ensure adequate funding is available for the long-term capital needs of the Sewer District.

Section 1304 – Payment of Special Benefit Assessment

The Special Benefit Assessment provided for in Section 1302 shall be levied in advance to be mailed concurrent and as part of the semi-annual Town utility bill to the property owner. Payment shall be made in accordance with the procedures for payment of the tax bills and the assessment of any interest and/or penalties shall also be calculated the same as interest and/or penalties are calculated for the tax bills. With respect to the Special Benefit Assessment levied pursuant to Section 1302(1)(b)(ii) and (1)(c)(II), to the extent allowed by law, the Special Benefit Assessment shall be paid prior to the issuance of the building permit for the applicable EDU or construction project.

Section 1305 – Definitions

The meaning of the terms used in this Article shall be as set forth below:

Allocated GPD is the average gallons per day assigned to that tax parcel in accordance with Section 1301 above.

Applicant's Peak Period is the three calendar month consecutive period that the Applicant has its highest flows.

EDU is water usage proportional to that equivalent to a typical single-family residence. For purposes of this Article, all single family residences are assigned one EDU which is equivalent to 260 gallons of water use per day.

GPD is the 30-day average gallons per day discharged to the sewer collection system.

Household means a dwelling place. 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 section.

Non Household means or includes any user or potential user of the sewer system other than a Household.

Table A GPD is the average gallons per day assigned to that tax parcel in Table A as incorporated into Appendix C herein under the column heading "Total Flow". As a condition to obtaining grant funding for the sewer system, the property owners for the parcels listed in Table A were required to contribute their existing sewage capacity (i.e. "Total Flow") to the Sewer District. The sewer system was designed to manage the sum of the Total Flow plus 10%. If the property owner did not contribute its existing sewage capacity in accordance with Table A, the size of the sewage plant would have been decreased and the District's funding reduced.

Town's Peak Period is the consecutive three month period that the sewage plant receives the greatest flow, based upon a review of historical flow records. The Town's Peak Period is to be determined by Resolution of the Town Board.

Section 1306 - Parcels Outside Sewer District

For connections outside of the Sewer District, an additional charge will be required to compensate the Sewer District for its embedded costs. The additional charge will be determined by the Town Board at the time that a petition is submitted for the extension of the Sewer District or to connect to the sewer collection system. The purpose of the additional surcharge is to compensate the Sewer District for the value of its sewage treatment plant and collection system

which will now be shared with properties outside the Sewer District. Any sewer connection for a parcel outside the Sewer District to which the Town Board allows to contribute flows, is subject to the rules set forth in Article 13, although all Allocated GPD will be subject to an appropriate assessment.

ARTICLE 14

SEWER RENTS

Section 1401 - Short Title
Section 1402 - Authority and Purpose
Section 1403 - Defined Terms
Section 1404 - Defined Terms in O&M Agreement Incorporated by Reference
Section 1405A - Payment of Sewer Use Charges for Residential Users
Section 1405B - Calculating Sewer Use Charges for Residential Users
Section 1405C - Calculating Household Subsidy Required under Paragraph 122(k)
Section 1406A - Payment of Sewer Use Charges for Non-Residential Users
Section 1406B - Calculating Non-Residential Sewer Use Charges
Section 1407A - Payment of Sewer Use Charges for Mixed Use Structures
Section 1407B - Calculating Sewer Use Charges for Mixed Use Structures
Section 1408 - Lien

Section 1401 - Short Title

For brevity and ease of communication, this Article may be cited as the Sewer Rent Law for Tompkins Sewer System.

Section 1402 - Authority and Purpose

The Town Board of the Town of Tompkins, 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 Tompkins Sewer System for all properties connected to the Tompkins Sewer System.

Section 1403 – Defined Terms

Unless otherwise stated in the section where the term is used in this Article the meaning of the terms used in this Article shall be as stated below. When not inconsistent with the context, the present tense shall include the future, and words used in the plural shall include the singular and vice versa. For the purposes of this Article, 'shall' is mandatory; 'may' is permissive.

Actual Average Flow - The average daily wastewater flow from a residential or non-residential structure.

For Residential Users (regardless of whether meters are installed), the Actual Average Flow is equivalent to two hundred sixty gallons per day (260 gpd) per EDU.

For Non-Residential Users without Town water meters, the property owner may install a meter to measure Actual Average Flow for purposes of calculating sewer use charges. In the absence of metered data, the flows specified in Appendix C shall be used to calculate the sewer use charges for

Non-Residential Users. Otherwise, the Actual Average Flow for Non-Residential Users for purposes of calculating sewer use charges is the actual meter readings as set forth below.

For metered flow, the Actual Average Flow will be calculated as the metered flow of the prior year. For meters that are not part of the Town water system, it is the responsibility of the property owner to provide to and file with the Town Clerk of the Town of Tompkins an affidavit of actual flow for a 12 month period specified by the Town by July 15 of that year; otherwise, at the option of the Town, the flows specified in Appendix C shall be used to calculate the sewer use charges for the next year.

City The City of New York, and any of its departments and agencies, including, without limitation, NYCDEP.

Combined Residential and Non-Residential Flow The sum of Residential Flows and Non-Residential Flows, whether metered or estimated, to the WWTP.

Designated Service Area (AKA "Town Sewer District") The service area for the Tompkins Sewer System (including any Supplemental Service Area) (referred to as "Service Area of the POTW") agreed to by the Town and the NYCDEP and as filed in the Town Clerks' office and with the New York State Department of Environmental Conservation, New York State Department of Health and the NYCDEP. The Designated Service Area (excepting the Supplemental Service Area) is attached hereto and incorporated herein as Appendix D.

Equivalent Dwelling Unit (EDU) Water usage proportional to that equivalent to a typical single family residence within the Designated Service Area. All Residential Users within the Designated Service Area are assigned one (1) EDU which is 260 gallons of water use per day.

GPD Uncovered User Charge is the Uncovered Operation and Maintenance Costs divided by the Combined Residential and Non-Residential Flow.

GPD User Charge is the O&M Costs divided by the total Combined Residential and Non-Residential Flow.

Household is a dwelling place or household as defined in the O&M Agreement in Section 1.01.

Minimum Fee Fund is the fund generated by charging all Non-Residential Users a minimum fee of \$250. The intent of the Minimum Fee Fund is to use the funds generated by instituting a minimum fee to offset the cost for non-residential users.

Mixed Use Structure is a parcel or facility that contains both Residential and Non-Residential Users as referenced in the O&M Agreement in the definition of "household" in Section 1.01 (11).

Non-Residential Covered User Charge is the product of the GPD User Charge and the Actual Average Flow for Non-Residential Users after deducting the Residential Flow Proportion.

Non-Residential Flows are the sum of the Actual Average Flow of Wastewater flows from all Non-Residential Users to the Municipal Sewer System.

Non-Residential Flow Proportion is the Actual Average Flow minus Residential Flow Proportion.

Non-Residential Share of O&M Cost is the O&M Costs minus the sum of the Total Residential Covered User Charges.

Non-Residential Users are all users discharging wastewater to the Municipal Sewer System other than Residential Users.

Non-Residential User Charge is the difference between Non-Residential Share of O&M Costs and the Minimum Fee Fund divided by the Non-Residential Flow.

NYCDEP The New York City Department of Environmental Protection.

Operations & Maintenance (O&M) Agreement The O&M Agreement attached hereto as Appendix E.

Operation & Maintenance (O&M) Costs The costs of operating and maintaining the Municipal Sewer System as those costs are defined in the O&M Agreement in section of 1.01 but excluding any Watershed Equipment and Method related costs as defined in the O&M Agreement in Section 1.01.

Residential Flows are the sum of the Actual Average Flow of wastewater from all Residential Users in the Designated Service Area..

Residential Flow Proportion is the Actual Average Flow for the residential portion of a mixed use structure calculated as the sum of the EDUs within the structure times two hundred sixty gallons per day (260 gpd).

Residential User A dwelling place or household as defined in the O&M Agreement in section 1.01 (11) that is located in the Designated Service Area that is connected to the Municipal Sewer System.

Sewer System All facilities for collecting, regulating, pumping and transporting wastewater to and away from the Town's treatment plant.

Surcharge The debt or capital charge assessed equitably against benefitted Residential and Non-Residential Users.

Total Residential Covered User Charge is equal to the GPD User Charge times 260 gpd times the number of EDUs for a particular user.

Total Residential User Charge is equal to the Watershed MOA Household Cap times the number of EDUs for a particular user plus the Uncovered User Charge

Town The Town of Tompkins.

Uncovered Operations and Maintenance Costs All costs incurred by the Tompkins Sewer System in operating, maintaining, repairing and replacement of the sewer system that are not classified as O&M costs hereunder.

Uncovered User Charge is the GPD Uncovered User Charge times the Actual Average Flow for a particular user.

User Any property connected to the Municipal Sewer System.

Wastewater Treatment Plant (WWTP) The plant treating wastewater from the Tompkins Sewer System.

Watershed Equipment and Methods Costs The equipment and methods incorporated in the Sewer System required solely by the Watershed Regulations as defined in the O&M Agreement in section 1.01 (25).

Watershed Memorandum of Agreement (MOA) The New York City Watershed Memorandum of Agreement as executed on January 21, 1997.

Watershed MOA Household Cap The sewer use charge for Households as defined in the O&M Agreement in section 1.01 (26).

Section 1404 – Defined Terms in O&M Agreement Incorporated by Reference

All terms defined in the O&M Agreement are hereby incorporated into and made a part of this Law by reference, except to the extent expressly modified herein. A copy of the O&M Agreement is attached as Appendix D.

Section 1405 - Sewer Use Charges - Residential Users

Section 1405 A - Payment of Sewer Use Charges for Residential Users

An annual sewer use assessment shall be levied in advance against each Residential User to be mailed concurrent and/or as part of the semi-annual Town utility bill to the property owner. Payment shall be made in accordance with the procedures for payment of the tax bills and the assessment of any interest and/or penalties shall also be calculated the same as interest and/or penalties are calculated for the tax bill.

Section 1405 B - Calculating Sewer Use Charges for Residential Users

Sewer use charges will be assessed against Residential Users in an amount equal to Total Residential User Charge plus Surcharge.

Section 1405 C - Calculating Household Subsidy Required under Paragraph 122(k)

In addition, for purposes of the O&M Agreement and the calculation of the Household Subsidy Required under Paragraph 122(k) of the Watershed MOA, the aggregate total of all sewer, rents, charges, and/or other fees, properly allocable to and charged to a particular Household served within the Designated Service Area shall be equal to the Total Residential Covered User Charge.

Section 1406 - Sewer Use Charges for Non-Residential Users

Section 1406 A - Payment of Sewer Use Charges for Non-Residential Users

An annual sewer use assessment shall be levied in advance against each Non-Residential User to be mailed concurrent and/or as part of the semi-annual Town utility bill to the property owner. Payment shall be made in accordance with the procedures for payment of the tax bills and the assessment of any interest and/or penalties shall also be calculated the same as interest and/or penalties are calculated for the tax bill.

Section 1406 B - Calculating Non-Residential Sewer Use Charges

Sewer use charges shall be assessed against Non-Residential Users as the sum of the following: (1) \$250 and (2) the product of the Non-Residential User Charge and the Actual Annual Flow and (3) of the product of the GPD Uncovered User Charge and the Actual Annual Flow plus (4) the Surcharge:

$$\begin{aligned} &\text{Non Residential Sewer Use Charge} = \\ &[\$250 + [\text{Non-Residential User Charge} \times \text{Actual Average Flow}] + [\text{GPD Uncovered User Charge} \\ &\times \text{Actual Average Flow}] + [\text{Surcharge}] \end{aligned}$$

Section 1407 - Sewer Use Charges for Mixed Use Structures

Section 1407 A - Payment of Sewer Use Charges for Mixed Use Structures

An annual sewer use assessment shall be levied in advance against each Mixed Use Structure to be mailed concurrent and/or as part of the semi-annual Town utility bill to the property owner. Payment shall be made in accordance with the procedures for payment of the tax bills and the assessment of any interest and/or penalties shall also be calculated the same as interest and/or penalties are calculated for the tax bill.

Section 1407 B - Calculating Sewer Use Charges for Mixed Use Structures

Sewer use charges will be equal to Total Residential User Charge plus the sewer use charges assessed against Non-Residential Users as the sum of the following: (1) \$100 plus (2) the product of the Non-Residential User Charge and the Non-Residential Flow Proportion and (3) of the product of the GPD Uncovered User Charge and the Non-Residential Flow Proportion and (4) the Surcharge:

$$\begin{aligned} \text{Total Sewer Use Charge for Mixed Use Structure} = & \\ & [\text{Total Residential User Charge}] + \\ & [\text{\$250}] + [\text{Non-Residential User Charge} \times \text{Non-Residential Flow Proportion}] + [\text{Non-Residential} \\ & \text{Flow Proportion} \times \text{GPD Uncovered User Charge}] + [\text{Surcharge}] \end{aligned}$$

Section 1408 - Lien

Any unpaid assessment shall represent a lien on the property to the same extent and the same as the real property tax.

APPENDIX A

SEWER PIPE INSTALLATION - DESIGN STANDARDS

Section 1 - Sewer Pipe Installation

- (1) Local utilities shall be contacted to verify construction plans and to make arrangements to disconnect all utility services, where required to undertake the construction work. The utility services shall later be reconnected. The work shall be scheduled so that there is minimum inconvenience to local residents. Residents shall be provided proper and timely notice regarding disconnection of utilities.
- (2) The construction right-of-way shall be cleared only to the extent needed for construction. Clearing consists of removal of trees which interfere with construction, removal of underbrush, logs, and stumps, and other organic matter, removal of refuse, garbage, and trash, removal of ice and snow, and removal of telephone and power poles, and posts. Any tree which will not hinder construction shall not be removed, and shall be protected from damage by any construction equipment. Debris shall not be burned, but hauled for disposal in an approved manner.
- (3) The public shall be protected from personal and property damage as a result of the construction work.
- (4) Traffic shall be maintained at all times in accordance with applicable highway permits. Where no highway permits are required, at least ½ of a street (at least ten (10) foot width) shall be kept open for traffic flow.
- (5) Erosion control shall be performed throughout the project to minimize the erosion of soils onto lands or into waters adjacent to or affected by the work. Erosion control can be effected by limiting the amount of clearing and grubbing prior to trenching, proper scheduling of the pipe installation work, minimizing time of open trench, prompt grading and seeding, and filtration of drainage.
- (6) The trench shall be excavated only wide enough for proper installation of the sewer pipe, manhole, and appurtenances. Allowances may be made for sheeting, de-watering, and other similar actions to complete the work. Roads, sidewalks, and curbs shall be cut, by sawing or by other methods as approved by the Inspector, before trench excavation is initiated.
- (7) Under ordinary conditions, excavation shall be by open cut from the ground surface. However, tunneling or boring under structures other than buildings may be permitted. Such structures include crosswalks, curbs, gutters, pavements, trees, driveways, and railroad tracks.
- (8) Open trenches shall be protected at all hours of the day with barricades, as required.
- (9) Trenches shall not be open for more than 30 feet in advance of pipe installation nor left unfilled for more than 30 feet in the rear of the installed pipe, when the work is in progress,

without permission of the Inspector. When work is not in progress, including over night, weekends, and holidays, the trench shall be backfilled to ground surface.

(10) The trench shall be excavated approximately six (6) inches deeper than the final pipe grade. When unsuitable soils are encountered, these shall be excavated to a maximum depth of 2-1/2 feet below the final pipe invert grade and replaced with select materials.

(11) Ledge rock, boulders, and large stones shall be removed from the trench sides and bottom. The trench shall be over-excavated at least 12 inches for five (5) feet, at the transition from rock bottom to earth bottom, centered on the transition.

(12) Maintenance of grade, elevation, and alignment shall be done by some suitable method or combination of methods.

(13) No structure shall be undercut unless specifically approved by the Inspector.

(14) Proper devices shall be provided, and maintained operational at all times, to remove all water from the trench as it enters. At no time shall the sewer line be used for removal of water from the trench.

(15) To protect workers and to prevent caving, shoring and sheeting shall be used, as needed. Caving shall not be used to backfill the trench. Sheeting shall not be removed but cut off no lower than one foot above the pipe crown nor no higher than one foot below final grade, and left in the trench, during backfill operations.

(16) The pipe barrel shall be supported, along its entire length, on a minimum of four (4) inches of No. 2 stone free of organic material. This foundation shall be firmly tamped in the excavation.

(17) Bell holes shall be hand excavated, as appropriate.

(18) Pipe shall be laid from low elevation to high elevation. The pipe bell shall be up-gradient; the pipe spigot shall be down-gradient.

(19) The joints shall be made, and the grade and alignment checked and made correct.

(20) The pipe shall be in straight alignment.

(21) When a smaller sewer joins a larger one the invert of the larger sewer shall be lowered sufficiently to maintain the same hydraulic gradient. An approximate method which may be used for securing this result is to place the 0.8 depth of both sewers at the same elevation.

(22) Crushed stone shall be placed over the laid pipe to a depth of (6) to (12) inches. The embedment of thermoplastic pipe shall be in accordance with ASTM D2321 using class 1A or 1B backfill materials. Care shall be exercised so that stone is packed under the pipe haunches. Care shall be exercised so that the pipe is not moved during placement of the crushed stone.

(23) The migration of fines from surrounding backfill or native soils shall be restricted by gradation of embedment materials or by use of suitable filter fabric.

(24) The remaining portion of the trench above the pipe embedment shall be backfilled in 12 inch lifts which shall be firmly compacted. Compaction near/under roadways, driveways, sidewalks, and other structures shall be to 95 % of the maximum moisture-density relationship, as determined by ASTM Specification D 698, Method D. Ice, snow, or frozen material shall not be used for backfill.

Note that if a sewer pipe installation project triggers any of the thresholds in the NYC Rules and Regulations, 10 NYCRR §128-3.9(b)(3), 15 RCNY §18-39(b)(3), the project will require NYCDEP review and approval of a stormwater pollution prevention plan.

Section 2 - Cleanout Installation

(1) Cleanouts for low pressure sewers shall be placed at intervals of approximately 400 to 500 feet, at major changes of direction, where one collection main joins another main and at the upstream end of each main branch. Wherever a force main joins a gravity sewer main, or a gravity main joins a gravity main, a manhole shall be provided instead of a cleanout.

(2) The design of the cleanouts and/or manholes shall be as approved by the Inspector.

Section 3 - Manholes and Manhole Installation

(1) Design of all manholes shall be submitted to the Inspector and shall receive approval prior to placement.

(2) Manholes shall be placed where there is a change in slope or alignment, and at intervals not exceeding 400 linear feet except as authorized by the Inspector

(3) Manhole bases shall be constructed or placed on a minimum of six (6) to twelve (12) inches of No. 2 stone free of organic materials.

(4) Manhole bases shall be constructed of 4,000 psi (28 day) concrete 8 inches thick, or shall be precast bases properly bedded in the excavation. Field constructed bases shall be monolithic, properly reinforced, and extend at least 6 inches beyond the outside walls of lower manhole sections. Precast manhole bases shall extend at least 6 inches beyond the outside walls of lower manhole sections.

(5) Manholes shall be constructed using precast minimum 4 foot inside diameter concrete manhole barrel sections, and an eccentric top section, conforming to ASTM Specification C-478, with the following exceptions on wall thickness:

Manhole Inside Diameter	Wall Thickness
<u>Feet</u>	<u>Inches</u>
4	5
5	6
6	7
6-1/2	7-1/2
7	8
8	9

All sections shall be cast solid. Lift holes or lift eyes for handling should not penetrate completely through the concrete wall or slab but extend only part way through, either from the inside or the outside. Cement mortar shut all lift holes after manhole installation.

Flat top slabs shall be a minimum of 8 inches thick and shall be capable of supporting a H-20 loading.

(6) All joints between sections shall be sealed with an "O" ring rubber gasket, meeting the same specifications as pipe joint gaskets, or butyl joint sealant completely filling the joint (minimum 2- 1 inch strips of butyl sealant.)

(7) All joints shall be sealed against infiltration. All metal parts shall be thickly coated with bitumastic or elastomeric compound to prevent corrosion.

(8) No holes shall be cut into the manhole sections closer than 6 inches from joint surfaces.

(9) Manholes which extend above grade shall not have an eccentric top section. The top plate shall be large enough to accommodate the cover lifting device and the cover.

(10) The elevation of the top section shall be such that the cover frame top elevation is 0.5 foot above the 100-year flood elevation (in a field), 0.5 foot above a lawn elevation, or at finished road or sidewalk grade.

(11) Twenty-four (24) inch heavy duty cast iron manhole frames and covers shall be used for all manholes. The mating surfaces shall be machined, and painted with tar pitch varnish. The cover shall not rock in the frame. Infiltration between the cover and frame shall be prevented by proper design and painting. Covers shall have "Sanitary Sewer" cast into them. Covers shall have lifting holes suitable for any lifting/jacking device. The lifting holes shall be designed so that infiltration is prevented. Manhole covers and frames within the 100 year flood plain shall be watertight and non-vented.

(12) A drop of at least 0.1 foot shall be provided between incoming and outgoing sewers on all junction manholes and on manholes with bends greater than 45 degrees.

(13) Inverts and shelves/benches shall be placed after testing the manholes and sewers.

(14) Benches shall be level and slope to the flow channel at about 1 inch per foot.

(15) The minimum depth of the flow channel shall be the nominal diameter of the smaller pipe. The channel shall have a steel trowel finish. The flow channel shall have a smooth curvature from inlet to outlet.

(16) Manhole frames, installed at grade, shall be set in a full bed of mortar with no less than two nor more than four courses of brick underneath to allow for later elevation adjustment. In lieu of brick, grade rings may be used for elevation adjustment. Grade rings shall not exceed 6 inches in depth. The total number of grade rings shall not exceed 12 inches in height, however, in no event shall more than 3 grade rings be used.

(17) Manholes which extend above grade, shall have the frames cast into the manhole top plate. The top plate shall be securely anchored to the manhole barrel, by a minimum of six ½ inch corrosion resistant anchor bolts, to prevent overturning when the cover is removed. The anchor bolts shall be electrically isolated from the manhole frame and cover.

(18) Internal drop pipes and fittings shall be Schedule 80 PVC plastic sewer pipe in compliance with ASTM D2241. Corrosion resistant anchors shall be used to attach the drop pipe to the inside surface of the manhole barrel.

Section 4 - Infiltration/Exfiltration Testing

All sanitary sewers or extensions to sanitary sewers, including manholes, shall satisfy requirements of a final infiltration test before they will be approved and wastewater flow permitted by the Town. The infiltration rate shall not exceed 25 gallons per 24 hours per mile per nominal diameter in inches. An exfiltration test may be substituted for the infiltration test; the same rate shall not be exceeded. The exfiltration test shall be performed by the applicant, under the supervision of the Inspector, who shall have the responsibility for making proper and accurate measurements required. The exfiltration test consists of filling the pipe with water to provide a head of at least 5 feet above the top of the pipe or 5 feet above groundwater, whichever is higher, at the highest point under test, and then measuring the loss of water, from the pipe section under test, by the amount of water which must be added to maintain the original level. However, under no circumstances shall the head at the downstream manhole exceed ten (10) feet or fill to within six (6) inches of the top of the downstream manhole. Should this condition prevail, the testing methods in Sections 9 and/or 10 shall be utilized. In this test, the test section must remain filled with water for at least 24 hours prior to taking any measurements. Exfiltration shall be measured by the drop of water level in a standpipe with a closed bottom end, or in one of the sewer manholes serving the test section. When a standpipe and plug arrangement is used in the upper manhole in the test section, there shall be some positive method for releasing entrapped air prior to taking any measurements.

Section 5 - Test Section

The test section shall be as ordered or as approved, but in no event longer than 1,000 feet. In the case of sewers laid on steep grades, the test length may be limited by the maximum allowable internal pressure on the pipe and joints at the lower end of the test section. For purposes of determining the leakage rate of the test section, manholes shall be considered as sections of 48-inch diameter pipe, 5 feet long. The maximum allowable leakage rate for such a section is 1.1 gallons per

24 hours. If leakage exceeds the allowable rate, then necessary repairs or replacements shall be made, and the section retested.

Section 6 - Test Period

The test period, during which the test measurements are taken, shall not be less than two (2) hours.

Section 7 - Pipe Lamping

Prior to testing, the section shall be lamped. Any length of pipe out of straight alignment shall be realigned.

Section 8 - Deflection Testing

Also prior to testing, at the discretion of the Inspector, all plastic pipe, in the test section, shall be tested for deflection. Deflection testing shall involve the pulling of a rigid ball or mandrel, whose diameter is 95 percent of the pipe inside diameter, through the pipe. Any length of pipe with a deflection greater than 5 percent shall be replaced. The test section shall be flushed just prior to deflection testing. The test shall not be performed with a mechanical pulling device.

Section 9 - Low Pressure Air Testing Alternative

In lieu of hydrostatic testing (exfiltration or infiltration), low pressure air testing may be employed. Low pressure air tests shall conform to ASTM Specification C 828. All sections to be tested shall be cleaned and flushed, and shall have been backfilled, prior to testing. Air shall be added until the internal pressure of the test section is raised to approximately 4.0 PSIG. The air pressure test shall be based on the time, measured in seconds, for the air pressure to drop from 3.5 PSIG to 2.5 PSIG.

Acceptance is based on limits tabulated in the "Specification Time Required for a 1.0 PSIG Pressure Drop" in the Uni-Bell PVC Pipe Association "Recommended Practice For Low-Pressure Air Testing of Installed Sewer Pipe".

Before pressure is applied to the line all connections shall be firmly plugged. Before the test period starts, the air shall be given sufficient time to cool to ambient temperature in the test section.

If the test section is below groundwater, the test pressure shall be increased by an amount sufficient to compensate for groundwater hydrostatic pressure, however, the test pressure shall not exceed 10 PSI, or a lower pressure as required by the Inspector.

The pressure test gauge shall have been recently calibrated, and a copy of the calibration results shall be made available to the Inspector prior to testing.

Section 10 - Vacuum Testing Alternative

In lieu of hydrostatic testing (exfiltration or infiltration), vacuum testing may be employed for testing of sewer lines and manholes. Sewer lines and manholes shall be tested separately. All sewer lines to be tested shall be cleaned and flushed, and shall have been backfilled, prior to testing. The vacuum test shall be based on the time, measured in seconds, for the vacuum to decrease from 10 inches of mercury to 9 inches of mercury for manholes, and from 7 inches of mercury to 6 inches of mercury for sewers.

Acceptance of manholes is based on the following:

Manhole Depth	Manhole Diameter	Time to Drop 1" Hg (10" to 9")
10 ft or less	4 ft	120 seconds
10 ft to 15 ft	4 ft	150 seconds
15 ft to 25 ft	4 ft	180 seconds

For 5 ft diameter manholes, add 30 seconds to the times above.

For 6 ft diameter manholes, add 60 seconds to the times above.

If the test on the manhole fails (the time is less than that tabulated above), necessary repairs shall be made and the vacuum test repeated, until the manhole passes the test.

Acceptance of sewers (7" Hg to 6" Hg) is based on the time tabulated in the "Specification Time Required for a 0.5 PSIG Pressure Drop" in the Uni-Bell PVC Pipe Association "Recommended Practice For Low-Pressure Air Testing of Installed Sewer Pipe".

The vacuum test gauge shall have been recently calibrated, and a copy of the calibration results shall be made available to the Inspector prior to testing.

Section 11 - Force Mains

Force mains serving sewage lifting devices, such as grinder pumps and pump stations, shall be designed in accordance with Section 401 of the Sewer Use Law. Additional design requirements are:

(1) Force main pipe material shall be:

(a) Ductile Iron Pipe shall conform to ANSI A21.51. The minimum wall thickness shall be Class 52 (ANSI A21.50). The pipe shall be clearly marked with either "D" or "DUCTILE". Fittings shall conform to ANSI A21.10. Pipe and fittings shall be furnished with push-on joints conforming to ANSI A21.11. Pipe and fittings shall be cement mortar lined and have an internal and external bituminous seal coating.

- (b) Polyvinyl Chloride (PVC) Plastic Pipe shall conform to ASTM D2241. Materials used in the manufacture of PVC pipe shall meet ASTM C1784. The minimum wall thickness shall be SDR-21. Fittings shall conform to ASTM D2241. Joints and gaskets shall conform to ASTM D2241, D1869, and F477.
 - (c) High Density Polyethylene (HDPE) 160 psi rated in compliance with ASTM D-3050 and D-3350.
 - (d) Other pipe materials require prior written approval of the Inspector before being installed.
- (2) Trenching, bedding, and backfilling shall be in accordance with Section 1 above.
 - (3) Joint preparation and assembly shall be in accordance with the manufacturer's written instructions.
 - (4) Anchorages, concrete blocking, and/or mechanical restraint shall be provided when there is a change of direction of 7-1/2 degrees or greater.
 - (5) Drain valves shall be placed at low points.
 - (6) Automatic air relief valves shall be placed at high points and at 400 ft intervals, on level force main runs.
 - (7) Air relief and drain valves shall be suitably protected from freezing.
 - (8) When the daily average design detention time, in the force main, exceeds 20 minutes, the manhole and sewer line receiving the force main discharge or the sewage shall be treated so that corrosion of the manhole and the exiting line are prevented. The corrosion is caused by sulfuric acid biochemically produced from hydrogen sulfide anaerobically produced in the force main.
 - (9) The force main shall terminate, in the receiving manhole, at a PVC plastic sewer pipe "T". The vertical arms of the "T" shall be twice the diameter of the force main. The upper arm shall be at least 4 feet long; the lower arm shall terminate in a PVC plastic sewer pipe 90 degree elbow in a flow channel directed to the manhole exit pipe. The "T" and its arms shall be securely fastened to the inside surface of the manhole wall using corrosion resistant anchors.

Section 12 - Force Main Testing

All force mains shall be subjected to hydrostatic pressure of 150 percent of the normal operating pressure. The duration of the test, at pressure, shall be at least 2 hours. Before conducting the test, the pipe shall be filled with water and all air shall be expelled. During the test, water shall be added, as needed, to maintain the test pressure. The amount of water added shall be recorded so as to calculate leakage, except for HDPE which is calculated as allowable makeup water. Leakage shall not exceed 25 gallons per day per mile per inch nominal pipe diameter. Allowable makeup water shall not exceed manufacturer's recommendations per inch nominal pipe diameter. During the

test, the owner and the Inspector shall walk the route of the force main and examine the exposed pipe and the ground covering any backfilled pipe to discover leaks. Leakage in excess of that specified above shall be corrected with new material at the owner's expense and the test repeated. Any observed leaks shall be repaired at the owner's expense. Each test section length shall be as approved by the Inspector, but in no event longer than one thousand (1,000) feet.

Section 13 - Final Acceptance and Warranty/Surety

All sanitary sewers and extensions to sanitary sewers constructed at the applicant's expense, after final approval and acceptance by the Inspector, and concurrence by the Town Board, shall become the property of the Town, and shall thereafter be operated and maintained by the Town. No sanitary sewer shall be accepted by the Town until four (4) copies of as-built drawings have been so filed with the Inspector and the Inspector has approved the submitted drawings.¹ Said sewers, after their acceptance by the Town, shall be guaranteed against defects in materials or workmanship for one (1) year, by the applicant. The guarantee shall be in such form and contain such provision as deemed necessary by the Town Board, secured by a surety bond or such other security as the Town Board may approve, except that no surety bond or other security shall be required from any municipal applicant.

Section 14 - Liability Insurance Coverage During Construction Period

The Town shall reserve the right to require liability insurance coverage during the construction period.

¹ In certain cases, additional as-built drawings may be required.

APPENDIX B

Parameters of Concern

Class A - Halogenated Hydrocarbons
Class B - Halogenated Organics (Other than Hydrocarbons)
Class C - Pesticides (Includes Herbicides, Algaecides, Biocides, Slimicides and Mildewcides)
Class D - Aromatic Hydrocarbons
Class E - Tars
Class F - Substituted Aromatics (Other than Hydrocarbons and Non-Halogenated)
Class G - Miscellaneous
Class M - Metals and their Compounds

Class A - Halogenated Hydrocarbons

A01. Methyl Chloride
A02. Methylene Chloride
A03. Chloroform
A04. Carbon Tetrachloride
A05. Freon/Genatron
A06. Other Halomethanes
A07. 1,1,1-Trichloroethane
A08. Other Haloethanes
A09. Vinyl Fluoride
A10. Vinyl Chloride
A11. Dichloroethylene
A12. Trichloroethylene
A13. Tetrachloroethylene
A14. Chlorinated Propane
A15. Chlorinated Propene
A16. Hexachlorobutadiene
A17. Hexachlorocyclopentadiene
A18. Chlorinated Benzene
A19. Chlorinated Toluene
A20. Fluorinated Toluene
A21. Polychlorinated Biphenyl (PCB)
A22. Chlorinated Naphthalene
A23. Dechlorane (C₁₀Cl₁₂)
A24. Hexachlorocyclohexane (BHC)
A99. Halogenated Hydrocarbons Not Specified Above

Class B - Halogenated Organics (Other than Hydrocarbons)

B01. Phosgene
B02. Methyl Chloromethyl Ether

- B03. Bis-Chloromethyl Ether
- B04. Other Chloroalkyl Ethers
- B05. Benzoyl Chloride
- B06. Chlorothymol
- B07. Chlorinated Phenol
- B08. Chlorinated Cresols or Xylenols
- B09. Chlorendic Acid
- B10. Chloroaryl Ethers
- B11. Dichlorophene or Hexachlorophene
- B12. Chlorinated Aniline (Including Methylene Bis (2-Chloroaniline))
- B13. Dichlorobenzidine
- B14. Chlorinated Diphenyl Oxide
- B15. Chlorinated Toluidine
- B16. Kepone ($C_{10}Cl_{10}O$)
- B17. Dichlorovinyl Sulfonyl Pyridine
- B18. Chloropicrin
- B19. Trichloromethyl Thio-Phthalimide
- B20. Trichloro-Propylsulfonyl Pyridine
- B21. Tetrachloro-Methylsulfonyl Pyridine
- B22. Tetrachloro-Isophthalonitrile
- B99. Halogenated Organics Not Specified Above

Class C - Pesticides (Includes Herbicides, Algaecides, Biocides, Slimicides and Mildewcides)

- C01. Aldrin/Dieldrin
- C02. Chlordane and Metabolites
- C03. DDT and Metabolites
- C04. Endosulfan/Thiodan and Metabolites
- C05. Endrin and Metabolites
- C06. Heptachlor and Metabolites
- C07. Malathion
- C08. Methoxychlor
- C09. Parathion
- C10. Toxaphene
- C11. Sevin
- C12. Kelthane
- C13. Diazinon
- C14. Dithane
- C15. Carbaryl
- C16. Silvex
- C17. Dithiocarbamates
- C18. Maneb
- C19. Dioxathion
- C20. Tandex/Karbutilate
- C21. Carbofurans
- C22. Pentac
- C23. Folpet
- C24. Dichlone

C25. Rotenone
C26. Lindane/Isotox
C27. Simazine
C28. Methoprene
C99. Pesticides Not Specified Above

Class D - Aromatic Hydrocarbons

D01. Benzene
D02. Toluene
D03. Xylene
D04. Biphenyl
D05. Naphthalene
D06. Ethylbenzene
D07. Styrene
D08. Acenaphthene
D09. Fluoranthene
D99. Aromatic Hydrocarbons Not Specified Above

Class E - Tars

E01. Coal Tar
E02. Petroleum Tar
E99. Tars Not Specified Above

Class F - Substituted Aromatics (Other than Hydrocarbons and Non-Halogogenated)

F01. Phenol, Cresol or Xylenol
F02. Catechol, Resorcinol, or Hydroquinone
F03. Nitrophenols
F04. Nitrobenzenes
F05. Nitrotoluenes
F06. Aniline
F07. Toluidines
F08. Nitroanilines
F09. Nitroanisole
F10. Toluene Diisocyanate
F11. Dimethylaminoazobenzene
F12. Benzoic Acid (and Benzoate Salts)
F13. Phthalic, Isophthalic or Terephthalic Acid
F14. Phthalic Anhydride
F15. Phthalate Esters
F16. Phenoxyacetic Acid
F17. Phenylphenols
F18. Nitrobiphenyls
F19. Aminobiphenyls (Including Benzidine)
F20. Diphenylhydrazine
F21. Naphthylamines

F22. Carbazole
F23. Acetylaminofluorene
F24. Dyes and Organic Pigments
F25. Pyridine
F99. Substituted Aromatics Not Specified Above

Class G - Miscellaneous

G01. Asbestos
G02. Acrolein
G03. Acrylonitrile
G04. Isophorone
G05. Nitrosamines
G06. Ethyleneimine
G07. Propiolactone
G08. Nitrosodimethylamine
G09. Dimethylhydrazine
G10. Maleic Anhydride
G11. Methyl Isocyanate
G12. Epoxides
G13. Nitrofurans
G14. Cyanide

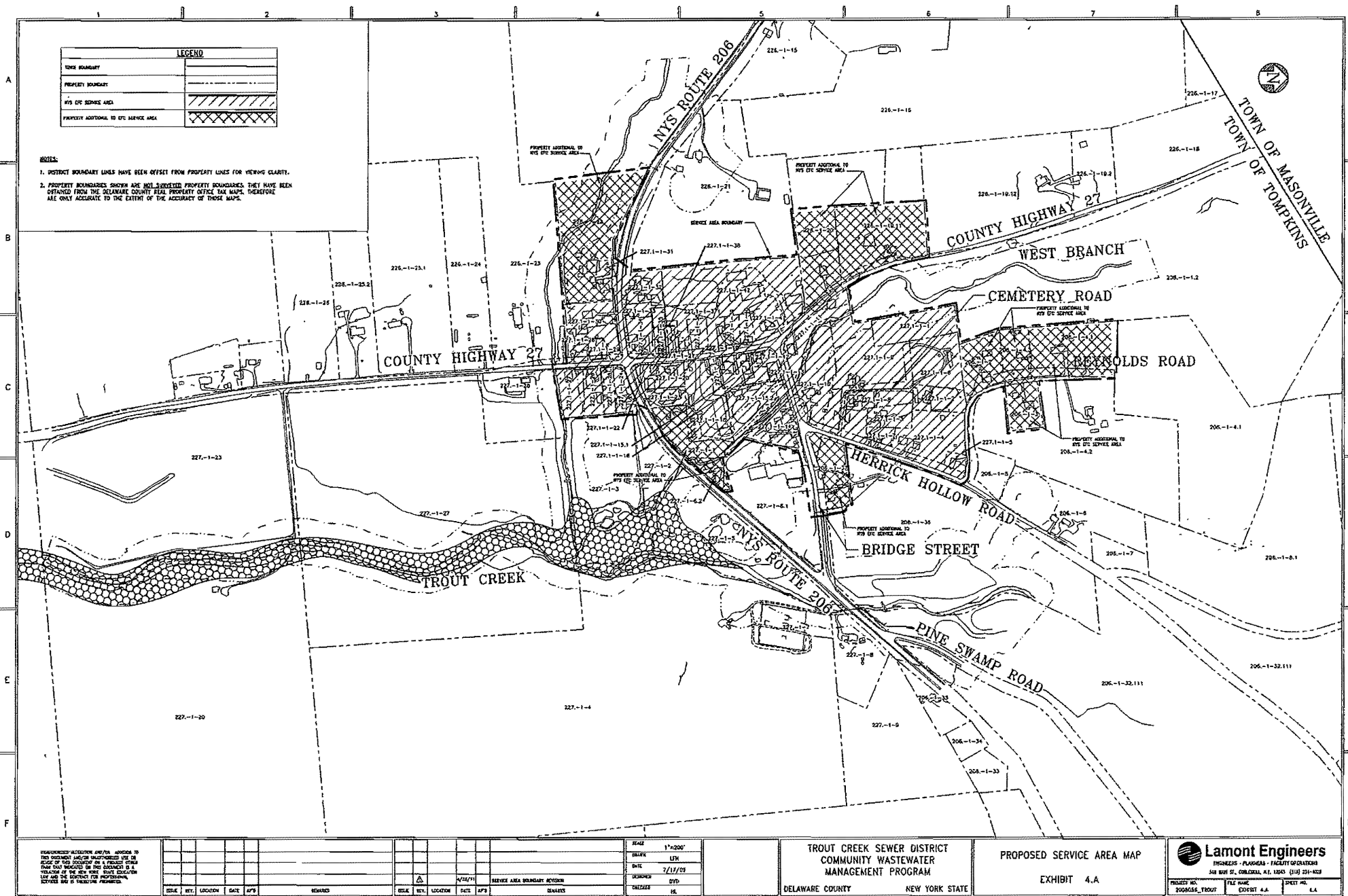
Class M - Metals and Their Compounds

M01. Antimony
M02. Arsenic
M03. Beryllium
M04. Cadmium
M05. Chromium
M06. Copper
M07. Lead
M08. Mercury
M09. Nickel
M10. Selenium
M11. Silver
M12. Thallium
M13. Zinc
M99. Metals Not Specified Above

APPENDIX C

Facility Type	No. of Units	Flow Calculation Basis	Average Household Size	Flow (gpd)	Estimated Flow (gpd)		Cost based on Estimated Flow
Residential						DEP Residential Subsidy	\$40,043
Single Family Homes	32	EDU	2.6	100	8,320	Cost to Trout Creek Residents	\$4,600
						Total Residential Portion of Budget	\$44,643
Two Family Homes	10	EDU	2.6	100	2,600	Assume No \$10,000 DEP Subsidy for Commercials	\$0
Apartments	1	EDU	2.6	100	260	Total Residential + Subsidy(s) from DEP	\$44,643
Commercial w/ Apartment	3	EDU	2.6	100	780	Total Commercial Portion of Budget	\$3,957
Total Residential EDU's = 46						Assume \$250 Minimum Charge per Commercial (8 commercials)	\$2,000
Residential Total = 11,960						Remainder for Commercials to cover (Budget Resp. by Town - (Total Residential + Subsidy from DEP))	\$1,957
Commercial/Institutional							
T C Sports (227.1-1-23)	n/a	2 employees	2 @ 25 gpd	50	50	Cost for commercial	\$342
United Methodist Church (227.1-1-20)	n/a	100 seats	100 @ 3 gpd	300	300	Cost for commercial	\$882
Town Highway Dept. (227.1-1-18)	n/a	7 employees	7 @ 25 gpd	175	175	Cost for commercial	\$573
Fire Dept. (Main Bldg) (227.1-1-42)	n/a	35 ± members	n/a	400	200	Cost for commercial	\$619
Fire Dept. (Aux. Bldg) (227.1-1-42)	n/a	15 ± members	n/a	375	75	Cost for commercial	\$388
Legion Post (227.1-1-27)	n/a	25 ± members	n/a	375	200	Cost for commercial	\$619
Trout Creek Post Office (227.1-1-12)	n/a	2 employees	n/a	30	30	Cost for commercial	\$305
Commercial Total = 1,030						Cost for Commercial Portion of Mixed Use Only	
Mixed Use							
Construction Office (w/1 res. (227.1-1-32) (no water/com)	1	2 Employees	2 @ 0 gpd	0	0	Cost for commercial	\$0
Print Shop (1 res.) (206.-1-2)	1	2 Employees	2 @ 15 gpd	30	30	Cost for commercial	\$305
Residence with Antique Warehouse (no water/com)	1	2 Employees	2 @ 0 gpd	0	0	Cost for commercial	\$0
Mixed Use Total = 30						Price per Gallon for Commercials = \$1.85	
Commercial/Industrial/Mixed Use Subtotal = 1,060						Price per Gallon for Residences = \$3.73	
ESTIMATED WASTEWATER USE = 13,020						Overall Budget	\$54,000
						DEP Watershed Rules and Regulations Portion of Budget (approximately 10%)	\$5,400
						Budget Responsible by Town	\$48,600
Total DEP Cost per year							\$45,443

APPENDIX D



Hamlet of Trout Creek Sewer District Property Owners List
Exhibit 3.4.A

PRINT_KEY	PROP_ADDR	OWNER1
206.-1-3	136 REYNOLDS RD	Sramek, Ashley
206.-1-4.3	143 REYNOLDS RD	Raffaele, Kenneth J
206.-1-2	85-87 Reynolds Road	Sramek, William
227.1-1-2	110 CEMETERY RD	Gehl, Karen A
227.1-1-3	63 HERRICK HOLLOW RD	Phoenix, Larry
227.1-1-5	21 REYNOLDS RD	Gould, Nancy F
227.1-1-6	116 CEMETERY RD	Worden, Wendy J
227.1-1-9	51 CEMETERY RD	Mieleszko, Jan
227.1-1-7	63 HERRICK HOLLOW RD	Higley, Luther H
226.-1-20	8735 COUNTY HWY 27	Hulse, Robert L
206.-1-37	153 BRIDGE ST	Buttel, Howard
227.1-1-11	9 BRIDGE ST	Oralls, Ramon E
227.1-1-8	30 CEMETERY RD	Ellis, Leona S
227.1-1-10	53 BRIDGE ST	Fairchild, Stanley
227.1-1-15.2	148 BRIDGE ST	Town of Tompkins
227.1-1-42	8695 COUNTY HWY 27	Trout Creek Fire Company, Inc
227.1-1-14	68 BRIDGE ST	Koehler, Charles F
227.1-1-41	8675 COUNTY HWY 27	Stuendel, Carl F
226.-1-22	8132 STATE HWY 206	Arcuri, Nicholas A
227.1-1-40	8635 COUNTY HWY 27	Lambrecht, Terry J
227.1-1-39	8631 COUNTY HWY 27	Latourette, Timothy
227.-1-1	8253 STATE HWY 206	Kinney, Doris
227.-1-6.2	STATE HWY 206	Town of Tompkins
227.1-1-37	8569 COUNTY HWY 27	Tomao, Andrew
227.1-1-38	8581 COUNTY HWY 27	Faulkner, Leon A
227.1-1-23	8251 STATE HWY 206	Kinney, Christopher
227.1-1-20	8558 COUNTY HWY 27	Trout Creek Baptist
227.1-1-36	8559 COUNTY HWY 27	Cook, Joann
227.1-1-35	8555 COUNTY HWY 27	Lucenti, Diane M
227.1-1-32	STATE HWY 206	Siniscalchi, Dominick
227.1-1-22	STATE HWY 206	Kinney, Christopher
227.1-1-21	8548 COUNTY HWY 27	Hornbeck, James Lewis
227.1-1-34	STATE HWY 206	Siniscalchi, Dominick
227.1-1-33	STATE HWY 206	Siniscalchi, Dominick
227.1-1-29	8499 COUNTY HWY 27	Umair, Ali
227.1-1-30	8174 STATE HWY 206	O'Sullivan, Patrick
227.1-1-25	8500 COUNTY HWY 27	Gardepe, Randall C.
227.1-1-31	8586 COUNTY HWY 27	Town of Tompkins
227.1-1-24	8240 STATE HWY 206	Decker, John A
227.1-1-26	8488 COUNTY HWY 27	Griffin, Joel D
227.1-1-28	8409 COUNTY HWY 27	Ritz, Karla S
227.1-1-27	8460 COUNTY HWY 27	Guntown Post No 1554
226.-1-19.11	8805 COUNTY HWY 27	Fitch, Kenneth L
227.1-1-13	32 BRIDGE ST	Walton School District
227.1-1-12	8650 COUNTY HWY 27	N.Laifer, LLC
227.1-1-18	8586 COUNTY HWY 27	Town of Tompkins Garage
227.1-1-16	8638 COUNTY HWY 27	Vanderbush, Suzanne
227.1-1-15.1	8624 COUNTY HWY 27	Kole, Gregory
227.1-1-17	8596 COUNTY HWY 27	Johnson, Harry R
227.1-1-4	101 HERRICK HOLLOW RD	Higley, Luther H
227.1-1-19	COUNTY HWY 27	Huber, John
227.1-1-1	Carrol Cemetery	Carrol Cemetery

APPENDIX E

**AGREEMENT BETWEEN THE CITY OF NEW YORK
AND THE TOWN OF TOMPKINS FOR PAYMENT OF CERTAIN
OPERATION
AND MAINTENANCE COSTS FOR THE HAMLET OF TROUT CREEK
COMMUNITY SEPTIC SYSTEM**

THIS AGREEMENT as of the _____ day of _____, 2011 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 TOWN OF TOMPKINS (the "Municipality") acting by and through its Supervisor (the City and the Municipality 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 and certain environmental groups (the "Watershed MOA"); and

WHEREAS, as part of the City's November 2002 Filtration Avoidance Determination issued by the United States Environmental Protection Agency ("FAD"), the City has 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 for certain communities listed in Paragraph 122 of the Watershed MOA; and

WHEREAS, the City and the Catskill Watershed Corporation ("CWC") have agreed that CWC will manage the Program as described in the Community Wastewater Management Program Contract, dated November 5, 2003 (the "Program Contract"); and

WHEREAS, the Community Wastewater Management Program is a condition of the FAD and a continuation of the New Infrastructure Program set forth in paragraph 122 of the Watershed MOA; and

WHEREAS, in accordance with the Program Contract, the City agrees to pay the Municipality for certain costs associated with the operation and maintenance of the Community Septic System in accordance with this Agreement and consistent with the paragraph 122(k) of the MOA; and

WHEREAS, in implementing the Program, the City will provide funds for wastewater management projects in up to 5 (five) communities as prioritized in paragraph

122(c) of the Watershed MOA; and

WHEREAS, in response to a solicitation by CWC, the Municipality passed a resolution to participate in the Program for the Hamlet of Trout Creek; and

WHEREAS, as part of the Program, the Municipality has constructed, is constructing, or is planning to construct a Community Septic System (the "System") to treat wastewater from an area (the "Designated Service Area") as determined in the Study Phase undertaken pursuant to the Program Contract; and

WHEREAS, consistent with the Program Contract, a Municipality which constructs a new Community Septic System with funding from the Program, will own, and be responsible for the operation and maintenance of, the System; and

WHEREAS, the Municipality has agreed to operate and maintain the new System in accordance with its SPDES permit, the Watershed Regulations and the terms and conditions set forth in this Agreement; 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 Municipality for funding a portion of the System's operation and maintenance costs.
2. "City" means the City of New York, and any of its departments and agencies including without limitation, DEP.
3. "Commencement Date" means the date that charges assessed against the dischargers to the System begin accruing.
4. "Community Wastewater Management Program" or "Program" means the program described in the November 2002 FAD and the Program Contract, which provides funds to study, design, permit and construct facilities for the collection, treatment and disposal of wastewater.
5. "Contractor" or "Consultant" or "Subcontractor" means any person or entity contracting with the Municipality for the provision of goods or services related to this Agreement.
6. "DEP" means the New York City Department of Environmental Protection.

7. "Designated Service Area" means the service area for the System agreed to by the Municipality and DEP in the Study Phase undertaken pursuant to the Program Contract.
8. "Effective Date" means the date this Agreement is fully executed and registered with the City of New York pursuant to Section 328 of the New York City Charter.
9. "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.
10. "Fiscal Year" has the same meaning as in Town Law §101 or Village Law §5-500(4).
11. "Fixed capital equipment" means certain equipment that is part of the System and/or the associated sewerage system, as described in Exhibit "A" to this Agreement.
12. "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 purposes of the Household Subsidy described in Section 3.01(B)(2) 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. This exception 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.
13. "Maintenance Plan" means the operation and maintenance plan described in Section 2.04(b)(7) of the Program Contract.
14. "Municipality" means the Town of Tompkins, which is the owner of the System and is responsible for the operation and maintenance of the System, or its agents.
15. "New Sewage Treatment Infrastructure Program" or "New Infrastructure Program" means the program, set forth in Paragraph 122 of the Watershed MOA, which provides funds to study, design, permit and construct certain facilities for the collection, treatment and disposal of wastewater. The New Infrastructure Program is distinct from the Community Wastewater Management Program that is the subject of this Agreement.
16. "Operation and Maintenance Costs" or "O&M Costs" shall mean:

(a) all 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 System and associated sewerage system 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 Maintenance Plan, the System's SPDES permit, State and local 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 at the facility 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 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 fines or penalties paid by the Municipality arising from the Municipality's operation of the System, subject to the provisions of Section 3.01 below. Operation and Maintenance Costs also include the costs of any remedial measures that the Municipality is ordered to undertake by a regulatory agency or State or federal court arising out of the operation of the System. The Parties hereby acknowledge the City's commitment to pay the costs of remedial measures ordered by a regulatory agency or State or federal court arising out of the operation of the Community Septic System and acknowledge their intention to enter into a separate agreement providing payment for such remedial measures. 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 above; or
- (3) debt service, if any, relating to any capital costs incurred by the Municipality for design, construction, or capital replacement of the System or any portion thereof, other than debt service, if any, associated with replacement of fixed capital equipment allowed to be treated as O&M under Exhibit "A."

(c) For purposes of this Section, 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 System and are not covered by the Municipality's insurance;
- (2) settlements of such contract damage actions that have been determined by the City, in advance of the Municipality'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 System that are not covered by the Municipality'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 Municipality'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 Municipality'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 40% of the direct salary costs incurred. Labor costs shall not include the direct or indirect personnel costs of the elected or appointed officials of the Municipality who are performing general governmental functions, unless such officials are performing actual Operation and Maintenance on the 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 40% of the direct salary costs incurred are included.

17. "Operation and Maintenance Reserve Account" means an interest-bearing account maintained by the Municipality 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 System for such year developed pursuant to Section 3.03(A) and (ii) \$ 6,000 (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 Household Cap as set forth in Section 1.01(23) below.

18. "Party" or "Parties" means the City and/or DEP and the Municipality.

19. "Sewerage system" means and includes pipe lines or conduits, pumping stations,

and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal. For the specific purposes of this Agreement, references to a sewerage system refers to the sewerage system for the Designated Service Area approved by DEP during the Study Phase undertaken pursuant to the Program Contract, including any subsequent amendments thereto, if any, as approved by DEP.

20. “SPDES Permit” means the State Pollutant Discharge Elimination System Permit issued by the New York State Department of Environmental Conservation pursuant to NYS Environmental Conservation Law Title 8, Section 17-0801 et seq. for the System.

21. “System” or “Community Septic System” means the intermediate sized sewage treatment system installed under the Program in accordance with the Facility Plan dated , including any subsequent amendments thereto, if any, approved by DEP .

22. “VENDEX” means the City Vendor Information Exchange System.

23. “Household Cap” shall mean \$100 per year until the full Fiscal Year following the three-year anniversary of the Commencement Date. Commencing in that Fiscal Year, the 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.

24. “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.

25. .

Section 1.02 Purpose of Agreement

The purpose of this Agreement is to provide for DEP’s payment of certain costs associated with operating and maintaining the System in accordance with the Program Contract. The Municipality has constructed, or is planning the construction of, a Community Septic System and associated sewerage system under the Program. The Municipality agrees to operate the System and associated sewerage system in accordance with this Agreement and DEP agrees to pay for certain O&M costs associated with the System and associated sewerage system in accordance with this Agreement.

Except as specified herein, this Agreement does not provide for DEP’s payment of costs associated with operation and maintenance of the System. Nothing herein shall limit the rights of the Municipality to seek reimbursement under law or contract (other than the Program Contract) for other costs associated with the System’s operation, maintenance, and replacement to which it may in the future believe it has legal entitlement, or the rights of DEP and/or 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 when fully executed by the Parties and registered by the City pursuant to Section 328 of the City Charter. The Municipality may commence the operation of the System to be performed under this Agreement as of the Commencement Date.

B. This Agreement shall expire, unless sooner terminated pursuant to Article 8 of this Agreement, thirty (30) years after the Commencement Date. For so long as the City continues to have any obligation to pay for any portion of the Operation and Maintenance costs for any WWTP in the Watershed pursuant to Watershed MOA paragraph 122(k) or its successor, this Agreement shall be extended every thirty (30) years for an additional period of thirty (30) years. Extensions, if any, shall become effective upon registration by the City pursuant to Section 328 of the New York City Charter.

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

ARTICLE 2

COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

The Municipality hereby covenants and agrees to operate and maintain the System in good repair and operating condition in accordance with good engineering practice and applicable laws and regulations, including the Watershed Regulations and the System's SPDES permit.

ARTICLE 3

PAYMENT

Section 3.01 Eligible Costs

A. The City shall pay the Municipality the Eligible Costs, as defined below.

B. Eligible Costs shall be the sum of (i) the Household Subsidy Required Under Paragraph 122(k) of the Watershed MOA, and (ii) the Household Subsidy for Certain Fines, which shall be determined as follows:

(1)

(Household Subsidy : 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 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; (2) any O&M Costs that are properly allocable to sewer rents, charges, and/or fees charged to Households served by the System which are outside of the Designated Service Area; or (3) any amount in respect 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 Household Cap times the number of Households served by the System and within the Designated Service Area.

(2) Household Subsidy for Certain Fines: An amount in respect of certain Fines (as hereinafter defined) imposed on the Municipality, if any, arising out of the operation and maintenance of the System, 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 imposed on the Municipality arising out of the operation and maintenance of the System, in accordance with the following terms, conditions, and limitations:

(1) Calculations and Payments.

- (a) 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 Household Cap without inclusion of any amount in respect of such Fine, the City shall pay the first Five Thousand Dollars (\$5,000) of that portion of the Fine that would be otherwise be allocable to such Subsidized Households, if allocated among all users served by the System; if that portion of the Fine that would otherwise be allocable to such Subsidized Households is greater than Five Thousand Dollars (\$5,000), the amount thereof in excess of \$5,000 shall be paid in accordance with subparagraph (c) below.
- (b) 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 Household Cap, without inclusion of any amount in respect of such Fine, the Subsidized Households shall pay the first Five Thousand Dollars (\$5,000) of that portion of the Fine that would otherwise be allocable to such Subsidized Households, if allocated among all users served by the System, up until the point that such aggregate total is increased to the then-applicable Household Cap. The City will pay the balance of the first Five Thousand Dollars (\$5,000) of such portion of the Fine; if such portion of the Fine is greater than Five Thousand Dollars (\$5,000), the amount thereof in excess of \$5,000 shall be paid in accordance with subparagraph (c) below.

- (c) If the portion of the Fine that would otherwise be allocable to such Subsidized Households is in excess of Five Thousand Dollars (\$5,000), 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 subparagraph (c), exceed an amount equal to the then-applicable Household Cap, any excess beyond that amount being payable by the City.

(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 Municipality or its agent, arising out of the operation and maintenance of the System, provided that Fines shall not include (and the City shall have no obligation to pay any portion of, whether as Household Subsidy or otherwise) any fine, penalty or environmental benefit project imposed by a federal, state or local regulatory authority on the Municipality as a result of any criminal conduct, willful misconduct, or gross negligence in connection with the operation and maintenance of the System.

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

D. The obligation of the City to pay for Eligible Costs, as set forth herein, is subject to the establishment, by the Municipality, of a system of sewer rents, charges, and/or other user fees assessed, to properties served by the System, that fairly allocates costs of operating and maintaining the System 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 Municipality's allocation of sewer rents and/or other user fees on the basis that such allocation does not comply with the foregoing standard. The Municipality 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 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 \$5,030,000 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 \$5,030,000 over the term of this Agreement, the City shall process a change order to this Agreement increasing the amount of monies available to be paid under this Agreement. Nothing in this paragraph shall diminish the obligations of the Municipality to properly operate and maintain the System pursuant to the Watershed Regulations, its SPDES permit, and other applicable laws.

B. Payments shall be made by the City to the Municipality in the form of a check or warrant in the proper amount, made payable to the Municipality or the designated sewer district.

Section 3.03 Payment Procedures

Following the registration of this Agreement by the City pursuant to Section 328 of the City Charter, payment of amounts payable to the Municipality under this Agreement shall be made as follows:

- A. (1) Annual budget for operation and maintenance: As part of its annual budget process or at such other time allowed by local law, the Municipality will propose an operations and maintenance budget for the System and sewerage system. Notwithstanding the foregoing, the first such budget will be proposed at least sixty (60) days prior to the Commencement Date.
- (2) When the proposed budget for the System is issued, the Municipality will transmit it together with such additional information as may be necessary to identify all costs by item to the City. The Municipality 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 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 Municipality 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 Municipality's Fiscal Year. Any payments made after ninety days are subject to the late charges or fees provided for in the municipal sewer rent ordinance, if any.

(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 Municipality.

(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 Municipality.

- B. All payments to the Municipality under this Agreement shall be placed by

the Municipality in separate dedicated accounts promptly upon receipt by the Municipality. To the greatest extent feasible, such accounts shall be interest-bearing.

C. Within sixty (60) days after the end of each Fiscal Year, the Municipality 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 Municipality, will be deducted from the Municipality'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 allocated to an Operation and Maintenance Reserve Account are considered to be allocated and not subject to reimbursement to the City.

D. The Municipality 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 Municipality shall make its records with respect to operation and maintenance of the 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, canceled checks, certified payroll and machinery use records. The Municipality shall provide the City additional documentation at the City's expense to support each invoice as the City reasonably requires.

Section 3.04 Conditions of Payment

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

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

D. If the Municipality 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 Municipality, 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 under this Agreement, the Municipality 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 Municipality has or may have against the City under this Agreement for any and all operation and all maintenance costs of the System for the period covered by the payment.

Section 3.05 Payment Adjustments

A. In the event of a disagreement concerning any payments or invoices under this Article, the City will be obligated to serve notice as specified in Section 3.03(A)(4) and make payment as specified in 3.03(A)(5). 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 City's notice (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 municipality's sewer use or rent ordinance/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 Dispute Resolution Procedures Expedited Procedure Rules then in effect. The City shall provide simultaneous notice to the Municipality 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. The Parties shall share equally in the cost, if any, of the Arbitrator and any stenographic record. Except as provided in Section 12.10, each Party will bear its own costs. 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 Municipality. In the event that the Municipality 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 Municipality and the City agree that the Municipality, and its employees, agents, contractors, subcontractors and/or consultants are not agents or employees of the City or DEP.

B. The Municipality 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 Municipality who are employed by the Municipality 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 Municipality, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the Municipality 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. This paragraph will survive any termination of this Agreement.

E. The City is not responsible for any physical injuries or death to the Municipality'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 Municipality's officers, trustees, employees, agents, servants, or independent contractors. The Municipality 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 Municipality, 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 Municipality's employees. 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. This paragraph will survive any termination of this Agreement.

F. The Municipality, its agents, employees, contractors and subcontractors shall comply with all applicable State, federal and local laws, rules and regulations, including, but not limited to, the Worker's Compensation Law and minimum wage and unemployment insurance requirements of the Labor Law.

Section 4.02 Equal Employment

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

ARTICLE 5 **PROCUREMENT OF GOODS AND SERVICES**

Section 5.01 Procurement and Bidding

The Municipality shall comply with all public bidding and other procurement requirements applicable to the Municipality by State law or by the local laws of the Town or Village and County in soliciting work to be done under this Agreement. For all contracts subject to public bidding, the Municipality 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 contract, for work done under this Agreement.

Section 5.02 Consultants and Other Subcontractors

A. A contract between the Municipality and a subcontractor (the Subcontract) to perform work to be included in the Eligible Costs shall include the following provisions:

- (1) A requirement that the subcontractor perform all work in accordance with the terms of this Agreement;
- (2) A requirement that the subcontractor 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 SPDES permit;
- (3) A statement and a requirement that the subcontractor 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 Subcontract shall create any contractual relationship between the subcontractor and the City; and
- (5) A statement and requirement that the subcontractor will not engage in any unlawful employment discrimination under the Subcontract based upon race, creed, color, national origin, sex, age, disability, marital status or sexual orientation.

B. The Municipality shall take reasonable measures to enforce the foregoing provisions of each Subcontract it enters into. Nothing in this Section constitutes a guarantee to the City that the Municipality's subcontractors will comply with the foregoing provisions. However, the Municipality is responsible for the performance of the terms of this Agreement, whether they are performed by the Municipality or by its subcontractors.

Section 5.03 Background Investigation Compliance for Subcontracts

A. For purposes of this Section 5.03, the following definitions apply:

(1) "Affiliate" shall mean an entity in which the parent of the proposed Contractor or Subcontractor owns more than 50 percent voting stock or an entity in which a group of principal owners which owns more than 50 percent of the proposed Contractor or Subcontractor also owns more than 50 percent of the voting stock.

(2) "Contract" shall mean any contract for the procurement of labor, materials, equipment or services paid for, in whole or in part with City funds provided pursuant to this Agreement.

(3) "Contractor" shall mean a person or entity other than a Governmental Entity which enters into a Covered Contract with the Municipality to perform work on the System or its associated sewerage system.

(4) "Covered Contract" shall mean a Contract of \$100,000 or more with a Contractor or Subcontractor, or which is valued at \$100,000 or more when aggregated with the value of all other contracts funded with funds provided by the City awarded to the same Contractor or Subcontractor during the immediately preceding twelve month period. In determining whether a Contract is a Covered Contract, the Municipality shall be entitled to rely on a certificate of the subject Contractor or Subcontractor, except where the Municipality has actual knowledge that a Contract is a Covered Contract.

(5) "Governmental Entity" shall include the State or any political subdivision thereto, any entity described in Section 99-r of the New York General Municipal Law, and any federal, state or local agency, department, board, bureau, public authority or public benefit corporation.

(6) "Principal Owner" shall mean an individual, partnership, joint venture, or corporation which holds a 10 percent or greater ownership interest in a proposed Contractor or Subcontractor.

(7) "Subcontractor" shall mean any person or entity other than a Governmental Entity which enters into a Covered Contract with a Contractor.

B. A Covered Contract shall not be awarded (or approved in the case of Subcontractors) to persons or entities other than Eligible Contractors. An Eligible Contractor for purposes of this Section is a Contractor or Subcontractor that has a satisfactory record of business integrity. A Contractor or Subcontractor shall be deemed to lack the requisite record of business integrity if any of the following criteria are met within or during the period commencing from ten (10) years prior to completion of the VENDEX Questionnaire through the date of determination:

(1) Criminal conduct in connection with government contracts or the conduct of business activities involving: (a) the infliction, attempted

infliction, or threat of death, intentional personal injury, or intentional property damage, in connection with involvement in a pattern of racketeering, labor racketeering, extortion, obstruction of justice, or other comparable crimes; (b) bribery, fraud, bid rigging, embezzlement, theft, perjury, forgery, or other comparable crimes; (c) serious moral turpitude, fundamental lack of integrity, or a pattern or practice of a knowing disregard for the law so as to call into question the integrity of the proposed Contractor or Subcontractor; or (d) conspiracy to do any of the above acts. Evidence of such conduct shall consist of (a)(1) a judgment of conviction, (2) a pending criminal indictment, (3) a formal grant of immunity in connection with a criminal prosecution, in each case of a proposed Contractor or Subcontractor, any director or officer, any principal, and any employee primarily responsible for contracting procedures, or any holder of five percent (5%) or more of the shares or equity of the proposed Contractor or Subcontractor, or any affiliate or subsidiary of the proposed Contractor or Subcontractor; or (b) any ongoing criminal investigation by a law enforcement agency in which the proposed Contractor or Subcontractor, any director or officer, any principal, employee primarily responsible for contracting procedures, or any holder of five percent (5%) or more of the shares or equity of the proposed Contractor or Subcontractor, or any affiliate of the proposed Contractor or Subcontractor is a target.

(2) An actual determination, by a person or entity which has jurisdiction, of a willful noncompliance with the prevailing wage requirements of Section 220 of the Labor Law, by the proposed Contractor or Subcontractor, or any affiliate thereof.

(3) An actual determination, by a person or entity which has jurisdiction, of a significant willful violation of the Workers' Compensation Law including, but not limited to, the failure to maintain required workers' compensation or disability coverage.

(4) An actual determination, by a person or entity which has jurisdiction, of a submission by the proposed Contractor or Subcontractor to a government agency of a false or misleading statement on a uniform questionnaire or other form, in connection with a bid or proposal for or award of a contract or request for approval of a subcontractor.

(5) A conviction or judgment of civil liability against the Proposed Contractor or Subcontractor for fraud in connection with a bid or proposal for or award of a contract or request for approval of a Subcontractor.

(6) Debarment or current suspension of the proposed Contractor or Subcontractor for reasons of business integrity from consideration for the award of contracts with a government, Governmental Entity or public

authority pursuant to any procedure enacted by statute or adopted by regulation, providing for notice and hearing.

(7) Arrears for more than one year on income, sales or payroll taxes, unless such person is in good faith disputing such payments with the appropriate taxing authority.

C. Before any Covered Contract is awarded to a Contractor (or approved in the case of a Subcontractor), the Municipality shall require the proposed Contractor or Subcontractor to complete the appropriate VENDEX questionnaire, or such revised standard VENDEX questionnaire as the City provides from time to time. The Municipality shall also require that the proposed Contractor or Subcontractor submit the completed VENDEX questionnaire to the Department at least thirty-five (35) days before the Covered Contract is awarded (or approved) to the following address: DEP, 59-17 Junction Boulevard, 17th Floor, Flushing, NY 11373-5108, Attention: Agency Chief Contracting Officer ("ACCO"). The ACCO shall be the contact person for the City who shall provide information during regular business hours as to whether the City has received a particular VENDEX questionnaire and the status of the City's review of such questionnaire. Within five (5) business days of receiving a VENDEX questionnaire, the City shall notify the Municipality if the VENDEX questionnaire is not complete. If the City fails to notify the Municipality within such five (5) business day period, the VENDEX questionnaire shall be deemed complete. Within thirty-five (35) days of receiving the VENDEX questionnaire, the City may provide a report indicating whether any of the criteria of sub-Section B are met, including an explanation of the non-confidential evidence that such criteria are met. If the report states in fact that such criteria are met, the Contractor or Subcontractor will be deemed not to be an Eligible Contractor unless the City and Municipality agree that the Contractor possesses a satisfactory record of business integrity.

D. Even if the Contractor or Subcontractor does not meet the criteria set forth in sub-Section B, the City may provide the Municipality with information within the thirty-five (35) day period set forth in sub-Section C which may be relevant to the question of whether a proposed Contractor or Subcontractor for a Covered Contract has a satisfactory record of business integrity. Before awarding the Contract or approving a Subcontract for a Covered Contract, the Municipality shall receive and consider such information provided by the City. If after receiving and considering such information, the Municipality intends to proceed to award the Covered Contract to such Contractor or approve such Subcontractor, before making such award, the Municipality shall respond in writing to any such information provided by the City. If the Municipality intends to award the Covered Contract and if the City and the Municipality continue to disagree, the Municipality shall refer the issue to the Executive Committee of the Watershed Protection and Partnership Council for a recommendation. The Executive Committee shall be given the information provided to the Municipality by the City, the Municipality's written response, and any additional written material which the City or the Municipality desires to submit. The Executive Committee shall have fifteen (15) days in which to issue a recommendation as to whether a proposed Contractor or Subcontractor

has a satisfactory record of business integrity. The Municipality shall make a determination whether to award the Covered Contract to the proposed Contractor or Subcontractor after one of the following, whichever is applicable: (1) the Executive Committee fails to make a recommendation within fifteen (15) days allotted for Executive Committee review; or (2) the Municipality reviews any recommendation made by the Executive Committee.

E. If no report referred to in sub-Section C or no information referred to in sub-Section D is received from the City within the thirty-five (35) day period following the submission of a VENDEX questionnaire as provided in sub-Section C, the Contractor or Subcontractor may be deemed to be an Eligible Contractor for purposes of this sub-Section.

F. The City shall not use this Section as a means of restricting the selection or approval of an Eligible Contractor or Subcontractor over another Eligible Contractor or Subcontractor, or the decision that one project be undertaken instead of another. The report shall be based solely on the criteria set forth in sub-Section B, 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 sub-Section B.

G. In addition to and not in limitation of the indemnification provision in Article 9, at the Municipality's request, the City shall defend, indemnify and hold harmless the Municipality, 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, including, the requirements that Contractors and Subcontractors complete and submit the VENDEX questionnaire and meet the criteria in sub-section B, the requirement of submitting disputes to the Executive Committee in sub-Section D, the report or other information provided by the City to the Municipality; and any other dissemination of the information provided by the City necessary to comply with this Section. The Municipality 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 (G).

ARTICLE 6

REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties of the Municipality

The Municipality represents and warrants that:

A. The Municipality 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 Municipality and has been duly executed and delivered by the Municipality and, assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of the Municipality.

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 Municipality is bound, or to the knowledge of the Municipality, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Municipality 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 and registration of the Agreement pursuant to Section 328 of the City Charter). 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 registered by the City pursuant to Section 328 of the City Charter, and assuming due execution and delivery by the Municipality, 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 Municipality 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 Municipality 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 Municipality 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 Municipality 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 Municipality, as part of its submission of O&M Costs documentation, 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 System's SPDES permit during the preceding year and measures taken to address such violations; (3) any recommendations for changes to the Maintenance Plan and the reasons therefor; (4) any foreseeable, unusual, and large O&M Costs anticipated for the upcoming year; and (5) any other matters that the Municipality 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 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 Municipality shall provide documentation of all insurance policies for the 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 Municipality's coverage will be deemed adequate if (a) the City states in writing that the insurance policy is adequate; (b) the Municipality 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, the defaulting Party will correct the default within thirty (30) days after notice is received from the non-defaulting Party. If the nature of the Municipality'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 Municipality commences appropriate actions to cure prior to the end of the thirty days and diligently pursues all reasonable actions necessary to cure the breach. If the System is completed, City may terminate this Agreement only in the event that the System ceases to operate and/or the City's obligations under the Program Contract are modified and the Parties enter into another agreement satisfying any obligations the City may continue to have under the Program Contract or any successor agreement with respect to the subject matter hereof.

B. In the event of a dispute concerning the default, the Parties shall make a good faith effort to resolve the dispute. If the dispute is not resolved within forty-five (45) days after the notice of default is received, the Parties will resolve disputes pursuant to Section 12.09 of this Agreement.

C. For purposes of this Agreement, breach of a material term of this Agreement includes, but is not limited to, willful or grossly negligent commission of acts or omission of acts by the Municipality or the Municipality's employees or independent contractors, that give rise to additional O&M Costs for the System or require replacement of equipment at the 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 Municipality receives written notice of the termination from the City pursuant to Section 8.01. Any obligation necessarily incurred by the Municipality 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 Municipality from continuing to operate and maintain the System in compliance with applicable laws, rules, or regulations pertaining to the 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 Program Contract to fund operation and maintenance costs relating to the operation and maintenance of this System.

B. Municipality's Termination. If the Municipality should terminate this Agreement, the termination shall in no way relieve the Municipality from complying with any and all applicable laws, rules, and regulations pertaining to the System. The Municipality's termination of this Agreement does not affect any obligation the City may have, under the Program Contract, to fund operation and maintenance costs relating to the operation and maintenance of this System.

C. Upon termination, the Municipality 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 Municipality 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 Municipality cannot comply with the terms and conditions of this Agreement because of an act of God, war, strike or other condition as to which conduct the City or the Municipality (as the case may be) was not the proximate cause, the City's or the Municipality'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 Municipality, or the Municipality 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 Municipality, 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 real or tangible personal 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.

ARTICLE 10

INSPECTION

The Municipality agrees to allow the City reasonable access to the System, during normal business hours, to permit inspection and observation of operation and maintenance of the System. The Municipality 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 Municipality 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 Municipality 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 Municipality 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 Municipality hereunder. The City shall not unreasonably withhold its consent to such an assignment, Notwithstanding this Section 12.03, the Municipality may retain and employ subcontractors to assist in performing operation and maintenance services at the System hereunder subject to the limitations and restrictions on subcontractors set forth in Article 5 of this Agreement.

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
Attention: General Counsel

If to the Municipality:

Town of Tompkins

P.O. Box 139 Trout Creek, New York 13847

Att: Supervisor

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 Municipality shall have any personal liability in connection with this Agreement or any failure of the Municipality 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.

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 the procedures set forth in paragraph 177 of the Watershed MOA or 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 agrees to 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 Municipality or the City to enforce the terms of this Agreement, specifically including arbitration of payment adjustments under Section 3.05 of this Agreement.

B. Although the City has agreed to pay for certain fines and penalties as a portion of O&M Costs pursuant to Section 3.01(B)(3), 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 Municipality is sued by a third party in connection with the operation and maintenance of the System. The City does not believe that it would be liable for such reimbursement, even in the event that the Municipality substantially prevailed in a defense that such violations were caused solely by the City's failure to make payments under this Agreement. The Municipality 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. 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.

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 Deputy Commissioner of the Department of Environmental Protection on behalf of the City and the Supervisor of the Town of Tompkins have executed this agreement, in triplicate, one part to be filed with the Comptroller of the City of New York, one part to be retained by the Department of Environmental Protection and one part to be delivered to the Town of Tompkins.

For THE MUNICIPALITY

BY: _____
Town of Tompkins

For THE CITY OF NEW YORK

BY: _____
First Deputy Commissioner
New York City Department of Environmental Protection

Approved as to Form and Certified as to Legal Authority

Acting Corporation Counsel

Dated: 2011