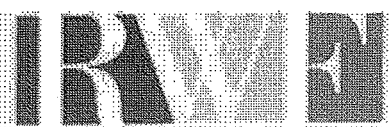


#546



Rider Weiner & Frankel P.C.
ATTORNEYS & COUNSELORS AT LAW

MEMORANDUM

TO: HON. GILBERT J. PIAQUADIO, SUPERVISOR
TOWN BOARD MEMBERS

FROM: MARK C. TAYLOR, ATTORNEY FOR THE TOWN

RE: LEVINSON HIEGHTS WATER MAIN EXTENSION
PROJECT;
INCREASE AND IMPROVEMENT OF THE FACILITIES OF
THE CONSOLIDATED WATER DISTRICT;
ESTABLISHMENT OF PROPOSED EXTENSION OF THE
CONSOLIDATED WATER DISTRICT
OUR FILE NO. 801. ____; 800.1(B)() (2024)

DATE: JUNE 21, 2024

P: 845.562.9100
F: 845.562.9126

655 Little Britain Road
New Windsor, NY 12553

P.O. Box 2280
Newburgh, NY 12550

ATTORNEYS

David L. Rider
Charles E. Frankel
Michael I. Matsler
Mark C. Taylor
Deborah Weisman-Estis
M. Justin Rider

M. J. Rider
(1906-1968)
Elliott M. Weiner
(1915-1990)

COUNSEL

Stewart P. Glenn
Mary Fern Breheney
Stephen P. Duggan, III
John K. McGuirk
(1942-2018)

OF COUNSEL

Craig F. Simon

Enclosed for the Town Board's reconsideration at its regular meeting scheduled for June 24, 2024, following the close of the public hearings scheduled for the proceedings are the following:

#5A

1 PUBLIC INTEREST ORDER IN THE MATTER OF THE INCREASE AND IMPROVEMENT OF FACILITIES OF THE CONSOLIDATED WATER DISTRICT IN THE TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK;

#6A

2 A RESOLUTION MAKING CERTAIN DETERMINATIONS IN RELATION TO AND FINDING IT TO BE IN THE PUBLIC INTEREST TO ESTABLISH A WATER DISTRICT EXTENSION IN THE TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK, TO BE KNOWN AS LEVINSON/OLD POST ROAD AREA EXTENSION TO THE CONSOLIDATED WATER DISTRICT.

#6B

3 A RESOLUTION APPROVING THE ESTABLISHMENT OF LEVINSON/OLD POST ROAD AREA EXTENSION TO THE CONSOLIDATED WATER DISTRICT AND THE IMPROVEMENTS IN CONNECTION THEREWITH. (This Resolution is Subject to Permissive Referendum)

PAGE -2-

#6C

4 RESOLUTION OF TOWN BOARD APPROVING AGREEMENT
BETWEEN THE CITY OF NEW YORK AND TOWN OF
NEWBURGH FOR CERTAIN WATER SUPPLY IMPROVEMENTS

The proposed Agreement is also enclosed.

Should you have any questions or concerns please contact me.

MCT:sel

Enc.

cc: Hon. Lisa M. Vance Ayers, Town Clerk
James Osborne, Town Engineer
Patrick Hines, Engineers Representative, McGoey, Hauser & Edsall
Ronald Clum, Town Accountant
Steve Grogan, Water and Sewer Manager

At a regular meeting of the Town Board of the Town of Newburgh, Orange County, New York, held at the Town Hall, in Newburgh, New York in said Town, on June 24, 2024, at 7:00 o'clock P.M., Prevailing Time.

PRESENT:

Supervisor

Councilman

Councilman

Councilman

Councilman

<p>In the Matter of The Increase and Improvement of Facilities of the Consolidated Water District in the Town of Newburgh, Orange County, New York</p>	<p>PUBLIC INTEREST ORDER</p>
--	------------------------------

WHEREAS, the Town Board of the Town of Newburgh, Orange County, New York, has duly caused to be prepared a map, plan and report including an estimate of cost, pursuant to Section 202-b of the Town Law, relating to the proposed increase and improvement of the facilities of the Consolidated Water District, in the Town of Newburgh, Orange County, New York, consisting of the purchase and installation of new eight inch and twelve inch water mains, including original furnishings, equipment, machinery, apparatus, appurtenances, and incidental

improvements and expenses in connection therewith as applicable, at a maximum estimated cost of \$3,374,557; and

WHEREAS, at a meeting of said Town Board duly called and held on May 29, 2024, an Order was duly adopted by it and entered in the minutes specifying the said Town Board would meet to consider the increase and improvement of facilities of the Consolidated Water District in said Town at a maximum estimated cost of \$3,374,557, and to hear all persons interested in the subject thereof concerning the same at the Town Hall, in Newburgh, New York, in said Town, on June 24, 2024, at 7:00 o'clock P.M., Prevailing Time; and

WHEREAS, said Order duly certified by the Town Clerk was duly published and posted as required by law; and

WHEREAS, a public hearing was duly held at the time and place set forth in said notice, at which all persons desiring to be heard were duly heard; NOW, THEREFORE, BE IT

ORDERED, by the Town Board of the Town of Newburgh, Orange County, New York, as follows:

Section 1. Upon the evidence given at the aforesaid public hearing, it is hereby found and determined that it is in the public interest to make the increase and improvement of the facilities of the Consolidated Water District, in the Town of Newburgh, Orange County, New York, consisting of the purchase and installation of new eight inch and twelve inch water mains, including original furnishings, equipment, machinery, apparatus, appurtenances, and incidental improvements and expenses in connection therewith as applicable, at a maximum estimated cost of \$3,374,557.

Section 2. This Order shall take effect immediately.

The question of the adoption of the foregoing order was duly put to a vote on roll, which resulted as follows:

_____ VOTING _____
_____ VOTING _____
_____ VOTING _____
_____ VOTING _____
_____ VOTING _____

The Order was thereupon declared duly adopted.

* * * * *

CERTIFICATION

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

I, the undersigned Clerk of the Town of Newburgh, Orange County, New York (the "Issuer"), DO HEREBY CERTIFY:

1. That a meeting of the Issuer was duly called, held and conducted on the 24th day of June, 2024.
2. That such meeting was a **special regular** (circle one) meeting.
3. That attached hereto is a proceeding of the Issuer which was duly adopted at such meeting by the Board of the Issuer.
4. That such attachment constitutes a true and correct copy of the entirety of such proceeding as so adopted by said Board.
5. That all members of the Board of the Issuer had due notice of said meeting.
6. That said meeting was open to the general public in accordance with Section 103 of the Public Officers Law, commonly referred to as the "Open Meetings Law".
7. That notice of said meeting (the meeting at which the proceeding was adopted) was given PRIOR THERETO in the following manner:

PUBLICATION (here insert newspaper(s) and date(s) of publication)

POSTING (here insert place(s) and date(s) of posting)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer
this _____ day of June, 2024.

Town Clerk

(CORPORATE SEAL)

..

..

..

..

At a regular meeting of the Town Board of the Town of Newburgh, Orange County, New York, held at the Town Hall, 1496 Route 300, in Newburgh, New York, in said Town, on June 24, 2024, at 7:15 o'clock P.M., Prevailing Time.

The meeting was called to order by _____, and upon roll being called, there were

PRESENT:

ABSENT:

The following resolution was offered by Councilman _____, who moved its adoption, seconded by Councilman _____, to-wit:

RESOLUTION DATED JUNE 24, 2024.

A RESOLUTION MAKING CERTAIN DETERMINATIONS IN RELATION TO AND FINDING IT TO BE IN THE PUBLIC INTEREST TO ESTABLISH A WATER DISTRICT EXTENSION IN THE TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK, TO BE KNOWN AS LEVINSON/OLD POST ROAD AREA EXTENSION TO THE CONSOLIDATED WATER DISTRICT.

WHEREAS, the Town Board of the Town of Newburgh, Orange County, New York, has duly caused to be prepared a map showing the boundaries of a proposed Water District Extension in said Town, to be known as the Levinson/Old Post Road Area Extension to the Consolidated Water District (the "Extension" and the "District"), and a plan and report in connection therewith; and

WHEREAS, said map, plan and report were prepared by competent engineers, duly licensed by the State of New York, and have been filed in the office of the Town Clerk of said town, where the same is available during regular office hours for examination by any persons interested in the subject matter thereof; and

WHEREAS, the estimated cost of said District as extended to the typical property therein, being a typical one- or two-family home, is \$472.68 in the first year in which operation, maintenance, and other charges and expenses are to be paid by said properties as set forth in the map, plan and report; and

WHEREAS, the improvements proposed for said Extension consist of the purchase and installation of new eight-inch water mains, including original furnishings, equipment, machinery, apparatus, appurtenances, and incidental improvements and expenses, including water mains, original equipment, machinery, apparatus, appurtenances, land or rights-in-land, and incidental improvements and expenses in connection therewith, as more fully set forth in the map, plan and report; and

WHEREAS, the maximum estimated cost of said improvements is \$4,546,100; and

WHEREAS, of said maximum estimated cost, \$4,546,100 of bonds and/or notes of said Town are expected to be issued to pay for the maximum estimated cost of the improvements in connection with the establishment of said Extension, to be reduced by any grants-in-aid received therefore; and

WHEREAS, the costs of the provision of services in said Extension shall be through the imposition of a schedule of water rents to the extent that such water rents provide a source of revenue for such expenditures and shall otherwise be payable as provided in Article 12-A of the Town Law by the annual apportionment and assessment upon the several lots and parcels of land within said District as so extended on a benefit basis as provided by Chapter 531 of the Laws of 1970; and

WHEREAS, an Order was duly adopted by said Town Board on May 29, 2024, reciting a description of the boundaries of said proposed Levinson/Old Post Road Area Extension to the Consolidated Water District, the improvements proposed, the maximum amount proposed to be expended for said improvements, the proposed method of financing to be employed, the fact that said map, plan and report were on file in the Town Clerk's office for public inspection and specifying June 24, 2024, at 7:15 o'clock P.M., local time, at the Town Hall, in Newburgh, New York, in said Town, as the time when and the place where said Town Board would meet for the purpose of holding a public hearing to consider the establishment of said Levinson/Old Post Road Area Extension to the Consolidated Water District and said map, plan and report filed in relation thereto and to hear all persons interested in the subject thereof concerning the same; and

WHEREAS, notice of the aforesaid public hearing was duly published and posted in the manner and within the time prescribed by Section 209-d of the Town Law, and proof of publication and posting have been duly presented to said Town Board; and

WHEREAS, said public hearing was duly held at the time and place in said order as aforesaid, at which all persons desiring to be heard were duly heard; and

WHEREAS, said Town Board has duly considered said map, plan and report and the evidence given at said public hearing; NOW, THEREFORE, BE IT

RESOLVED, by the Town Board of the Town of Newburgh, Orange County, New York, as follows:

Section 1. Upon the evidence given at the aforesaid public hearing, it is hereby found and determined as follows:

- a) The notice of hearing was published and posted as required by law and is otherwise sufficient;
- b) All the property and property owners within said proposed Levinson/Old Post Road Area Extension to the Consolidated Water District, and said Water District as so extended as described in the preambles hereof, are benefited thereby pursuant to the provisions of Chapter 531 of the Laws of 1970;
- c) All the property and property owners benefited are included within the limits of said proposed Levinson/Old Post Road Area Extension to the Consolidated Water District and said Water District as extended, pursuant to the provisions of Chapter 531 of the Laws of 1970; and
- d) The establishment of said proposed Levinson/Old Post Road Area Extension to the Consolidated Water District is in the public interest.

Section 2. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

_____ VOTING _____
_____ VOTING _____
_____ VOTING _____
_____ VOTING _____
_____ VOTING _____

In addition, at such meeting, the following resolution was offered by Councilman

_____, who moved its adoption, seconded by Councilman

_____, to-wit:

RESOLUTION DATED JUNE 24, 2024.

A RESOLUTION APPROVING THE ESTABLISHMENT OF LEVINSON/OLD POST ROAD AREA EXTENSION TO THE CONSOLIDATED WATER DISTRICT AND THE IMPROVEMENTS IN CONNECTION THEREWITH.

WHEREAS, the Town Board of the Town of Newburgh, Orange County, New York, has duly caused to be prepared a map showing the boundaries of a proposed Water District Extension in said Town, to be known as Levinson/Old Post Road Area Extension to the Consolidated Water District (the "Extension" and the "District"), and a plan and report in connection therewith; and

WHEREAS, said map, plan and report were prepared by competent engineers, duly licensed by the State of New York, and have been filed in the office of the Town Clerk of said town, where the same is available during regular office hours for examination by any persons interested in the subject matter thereof; and

WHEREAS, the estimated cost of said District as so extended to the typical property therein, being a typical one- or two-family home, is \$472.68 in the first year in which operation, maintenance, and other charges and expenses are to be paid by said properties as set forth in the map, plan and report as provided by Chapter 531 of the Laws of 1970; and

WHEREAS, the improvements proposed for said District consist of the purchase and installation of new eight-inch water mains, including original furnishings, equipment, machinery, apparatus, appurtenances, and incidental improvements and expenses, including water mains, original equipment, machinery, apparatus, appurtenances, land or rights-in-land, and incidental improvements and expenses in connection therewith, as more fully set forth in the map, plan and report; and

WHEREAS, the maximum estimated cost of said improvements is \$4,546,100; and

WHEREAS, of said maximum estimated cost, \$4,546,100 of bonds and/or notes of said Town are expected to be issued to pay for the maximum estimated cost of the improvements in connection with the establishment of said Extension to be reduced by any grants-in-aid received therefore; and

WHEREAS, the costs of the provision of services in said District shall be through the imposition of a schedule of water rents to the extent that such water rents provide a source of revenue for such expenditures and shall otherwise be payable as provided in Article 12-A of the Town Law by the annual apportionment and assessment upon the several lots and parcels of land within said District on a benefit basis as provided by Chapter 531 of the Laws of 1970; and

WHEREAS, an Order was duly adopted by said Town Board on May 29, 2024, reciting a description of the boundaries of said proposed the Levinson/Old Post Road Area Extension to the Consolidated Water District, the improvements proposed, the maximum amount proposed to be expended for said improvements, the proposed method of financing to be employed, the fact that said map, plan and report were on file in the Town Clerk's office for public inspection and specifying June 24, 2024, at 7:15 o'clock P.M., local time, at the Town Hall, in Newburgh, New York, in said Town, as the time when and the place where said Town Board would meet for the purpose of holding a public hearing to consider the establishment of said Levinson/Old Post Road Area Extension to the Consolidated Water District and said map, plan and report filed in relation thereto and to hear all persons interested in the subject thereof concerning the same; and

WHEREAS, notice of the aforesaid public hearing was duly published and posted in the manner and within the time prescribed by Section 209-d of the Town Law, and proof of publication and posting have been duly presented to said Town Board; and

WHEREAS, said public hearing was duly held at the time and place in said order as aforesaid, at which all persons desiring to be heard were duly heard; and

WHEREAS, said Town Board has duly considered said map, plan and report and the evidence given at said public hearing; and

WHEREAS, said Town Board has adopted a resolution heretofore at this meeting making the findings and determinations required pursuant to Section 209-e(1) of the Town Law; NOW, THEREFORE, BE IT

RESOLVED, by the Town Board of the Town of Newburgh, Orange County, New York, as follows:

Section 1. The establishment of Levinson/Old Post Road Area Extension to the Consolidated Water District in the Town of Newburgh, Orange County, New York, to be bounded and described as hereafter set forth, and the improvements proposed therefor consisting of the purchase and installation of new eight-inch water mains, including original furnishings, equipment, machinery, apparatus, appurtenances, and incidental improvements and expenses, in connection therewith, as more fully set forth in the map, plan and report, at a maximum estimated cost of \$4,546,100, is hereby approved. To the extent grants-in-aid are not received therefor, the method of financing the cost of said improvements shall be by the issuance of \$4,546,100 serial bonds of said Town maturing in annual installments over a period not exceeding forty years, which to the extent not paid by water rents, will be payable in the first instance from the annual levy upon the lots and parcels of land within said District as so extended, on a benefit basis as provided by Chapter 531 of the Laws of 1970, in an amount sufficient to pay the principal and interest on said bonds as the same become due, but if not paid from such source, all the taxable real property in said Town shall be subject to the levy of ad valorem taxes without limitation as to rate or amount

sufficient to pay the principal of and interest on said bonds as the same shall become due and payable.

Section 2. Said Extension shall be bounded and described as set forth in Exhibit A attached hereto and hereby made a part hereof.

Section 3. This resolution is adopted subject to permissive referendum in accordance with Section 209-e(3) of the Town Law and the Town Clerk shall publish and post within ten (10) days hereof notice of adoption hereof. Establishment of said Extension is not subject to the approval of the State Comptroller pursuant to Section 209-f of the Town Law, being below the average estimated cost threshold of \$1,083 for 2024 for water district and extension establishment.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

_____ VOTING _____
_____ VOTING _____
_____ VOTING _____
_____ VOTING _____
_____ VOTING _____

The resolution was thereupon declared duly adopted.

* * *

Exhibit A

Boundaries of Proposed
Levinson/Old Post Road Area Extension to the Consolidated Water District
in the Town of Newburgh, Orange County, New York

Boundaries of Proposed
Levinson/Old Post Road Area Extension to the Consolidated Water District of the
Town of Newburgh, Orange County, New York

Description of Proposed District Beginning at the southern corner of parcel 8-1-39.21 on Old Post Road, the Proposed District Boundary follows said parcel to its western corner. The Boundary then extends to the northern corner of adjacent parcel 8-1-39.22, then southeast to its eastern corner on Old Post Road before connecting back to the southern corner of parcel 8-1-39.21. The District then skips over parcel 8-1-31.12 (a Central Hudson utility ROW) and begins again at the southern corner of parcel 8-1-40.1, on Old Post Road. The Boundary extends NW along the parcel line, then proceeds in a NNE direction until turning west along the southern boundary of parcel 8-1-101. The Boundary follows this parcel to its western boundary then turns NNE until the NW corner of parcel 8-1-42.33, where the Boundary follows parcels lines of parcel 8-1-43.452 west, then NE to the northern corner of parcel 8-1-43.451. From this corner, the Boundary follows the northern parcels lines of four parcels until meeting Old Post Road at the eastern corner of lot 8-1-43.2. The Boundary then crosses Old Post Road to the northern corner of parcel 8-1-61.1 and follows that parcel's property line SE then SW to its southern corner. From here, the Boundary follows the parcel line of parcel 8-1-60.1 SE to its eastern corner, then turns SW at the parcel's southern corner, then NW back to Old Post Road. The Boundary then skips over parcel 8-1-66.1 and resumes at the northern corner of parcel 8-1-66.22. The Boundary follows the parcel line to its eastern corner then proceeds to follow the eastern property lines of the four (4) parcels to its SW, making a turn to the west along parcel 8-1-65's southwestern boundary that ends at Old Post Rd. From this corner, the Boundary skips over Old Post Road in a SW direction until it meets with the southern corner of parcel 8-1-89. The Boundary then aligns with Old Post Rd until the southern corner of parcel 8-1-40.1, where this segment of the Boundary began.

CERTIFICATION FORM

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

I, the undersigned Clerk of the Town of Newburgh, Orange County, New York (the "Issuer"), DO HEREBY CERTIFY:

- 1) That a meeting of the Issuer was duly called, held and conducted on June 24, 2024.
- 2) That such meeting was a special regular (circle one) meeting.
- 3) That attached hereto is a proceeding of the Issuer which was duly adopted at such meeting by the Board of the Issuer.
- 4) That such attachment constitutes a true and correct copy of the entirety of such proceeding as so adopted by said Board.
- 5) That all members of the Board of the Issuer had due notice of said meeting.
- 6) That said meeting was open to the general public in accordance with Section 103 of the Public Officers Law, commonly referred to as the "Open Meetings Law".
- 7) That notice of said meeting (the meeting at which the proceeding was adopted) was given PRIOR THERETO in the following manner:

PUBLICATION (here insert newspaper(s) and date(s) of publication)

POSTING (here insert place(s) and date(s) of posting)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer
this _____ day of June, 2024.

Town Clerk

(CORPORATE SEAL)

ADOPTION NOTICE FOR RESOLUTION
SUBJECT TO PERMISSIVE REFERENDUM
(ARTICLE 12-A)

**NOTICE OF ADOPTION
OF RESOLUTION SUBJECT TO PERMISSIVE REFENDUM ON EXTENSION OF
THE CONSOLIDATED WATER DISTRICT**

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Newburgh, Orange County, New York, at a meeting held on the June 24, 2024, duly adopted the resolution published herewith **subject to a permissive referendum.**

Dated: Newburgh, New York,

June 24, 2024.

/s/ Lisa M. Vance-Ayers
Town Clerk

[ATTACH RESOLUTION APPROVING ESTABLISHMENT HERE]

[RESOLUTION DATED JUNE 24, 2024.

**A RESOLUTION APPROVING THE ESTABLISHMENT OF LEVINSON/OLD
POST ROAD AREA EXTENSION TO THE CONSOLIDATED WATER
DISTRICT AND THE IMPROVEMENTS IN CONNECTION THEREWITH.]**

NO-REFERENDUM CERTIFICATE
FOR FILING WITH COUNTY CLERK
(TOWN LAW SECTION 209-e(4)(a))

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

I, the undersigned Town Clerk of the Town of Newburgh, Orange County, New York, DO
HEREBY CERTIFY:

1. That on the 24th day of June, 2024, the Town Board of said Town duly adopted a
resolution entitled:

RESOLUTION DATED JUNE 24, 2024.

A RESOLUTION MAKING CERTAIN DETERMINATIONS IN RELATION TO
AND FINDING IT TO BE IN THE PUBLIC INTEREST TO ESTABLISH A
WATER DISTRICT EXTENSION IN THE TOWN OF NEWBURGH, ORANGE
COUNTY, NEW YORK, TO BE KNOWN AS LEVINSON/OLD POST ROAD
AREA EXTENSION TO THE CONSOLIDATED WATER DISTRICT.

2. That said resolution was adopted subject to permissive referendum.
3. That a notice of adoption of said resolution subject to permissive referendum was duly
published and posted.
4. That the period of time has elapsed for the submission and filing of a petition protesting
against such resolution and requesting that it be submitted to the applicable voters in said Town for their
approval or disapproval.
5. That no such valid petition has been submitted and filed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town this
_____ day of June, 2024.

Town Clerk

(S E A L)

At a meeting of the Town Board of the Town of Newburgh, held at the Town Hall, 1496 Route 300, in the Town of Newburgh, Orange County, New York on the ___th day of June, 2024 at 7:00 o'clock p.m.

PRESENT:

Gilbert J. Piaquadio, Supervisor

Paul I. Ruggiero, Councilman

Scott M Manley, Councilman

RESOLUTION OF TOWN BOARD
APPROVING AGREEMENT
BETWEEN THE CITY
OF NEW YORK AND THE
TOWN OF NEWBURGH FOR CERTAIN
WATER SUPPLY IMPROVEMENTS

Councilman _____ presented the following resolution which was
seconded by Councilman _____.

WHEREAS, pursuant to that Water Supply Agreement dated February 1, 1993, between the New York City Water Board and the Town of Newburgh (the "Town"), the Town takes and receives water from the City's water supply system via a connection to the Delaware Aqueduct; and

WHEREAS, the Department of Environmental Protection ("DEP") of the City of New York (the "City") has identified leaks in sections of the Delaware Aqueduct and has committed capital funds to address the leaks to ensure the long-term sustainability of its ability to supply water through the Delaware Aqueduct, as part of a project known as "Water for the Future"; and

WHEREAS, pursuant to that certain Agreement in Principle dated March 22, 2024 ("AIP") between the Town and City, the City has committed to fund, and the Town has agreed in principle to manage, the extension of the Town's water main and associated infrastructure located within the Town and boundaries of the Consolidated Water District to enable the Town to provide its municipal water supply service to up to an additional twenty-four (24) residences during and following the extended periods of time the DEP will shut down the Delaware Aqueduct in order to connect a new tunnel segment ("RWBT Bypass Tunnel") to bypass a leaking section of the existing Delaware Aqueduct tunnel; and

WHEREAS, pursuant to the AIP the City has also committed to fund, and the Town has agreed in principle to manage the establishment of a duly formed extension to the boundaries of the Consolidated Water District to include up to thirty-two (32) residences within the Town in the Roseton area outside of the Consolidated Water District, and the connection of each of the additional residences to the Town's extended water mains to ensure the Town can supply adequate water to such residences during and following the RWBT project's repairs of leaks at the Delaware Aqueduct); and

WHEREAS, in order to further the purpose of the City's projects, the Town requested and the City has agreed to provide certain funds to the Town for the costs of upgrading the Meadow Hill Pump Station to integrate its operation with that of the interconnection between the Town and the Town of New Windsor water system in order to meet the additional water supply demands of the Extended Consolidated Water District; and

WHEREAS, the Town has determined that certain work is necessary to repair damage to a

portion of the River Road and the Town has requested and the City has agreed to provide certain funds to repair River Road in order to further the purpose of DEP's projects; and

WHEREAS, a certain Agreement Between the City of New York and the Town of Newburgh for Certain Water Supply Projects (the "Agreement") pursuant to which the City and Town will agree upon the terms and conditions under which undertake the aforesaid projects and the City will fund them has been presented to the Town Board;

WHEREAS, the Town Board has reviewed and considered the Agreement and determined it is in the best interests of the Town to authorize the execution and delivery of the Agreement.

NOW, THEREFORE BE IT RESOLVED, that we the Town Board of the Town of Newburgh approves the Agreement as to its form and manner of execution and authorizes the Supervisor to sign and deliver the Agreement; and

BE IT FURTHER RESOLVED, that the Supervisor and other officers and employees of the Town are hereby authorized and empowered to make, execute and deliver, or cause to be made, executed and delivered, in the name of and on behalf of the Town, all such acknowledgments, certificates, agreements, documents and papers and to take such actions as may be necessary to effectuate and carry out the contents of the foregoing resolution and the terms and conditions of the Agreement.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

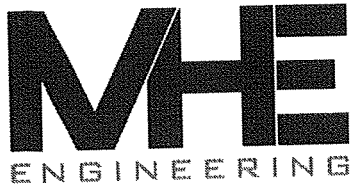
<u>Paul I. Ruggiero, Councilman</u>	<u>voting</u>
<u>Scott M. Manley, Councilman</u>	<u>voting</u>
<u>Anthony R. LoBiondo, Councilman</u>	<u>voting</u>
<u>Gilbert J. Piaquadio, Supervisor</u>	<u>voting</u>

The resolution was thereupon declared duly adopted.

I, Lisa M. Vance Ayers, the duly elected and qualified Town Clerk of the Town of Newburgh, New York, do hereby certify that the following resolution was adopted at a regular meeting of the Town Board held on June __, 2024 and is on file and of record and that said resolution has not been altered, amended or revoked and is in full force and effect.

Lisa M. Vance Ayers, Town Clerk
Town of Newburgh

#6A



MAP, PLAN AND REPORT
FOR
NEWBURGH CONSOLIDATED WATER DISTRICT:
LEVINSON/OLD POST ROAD AREA WATER DISTRICT
IMPROVEMENTS
TOWN OF NEWBURGH
ORANGE COUNTY, NEW YORK

PREPARED FOR:
Town of Newburgh
1496 Route 300
Newburgh, NY 12550

PREPARED BY:
MHE Engineering, D.P.C.
33 Airport Center Dr. Suite 202
New Windsor, NY 12553

NOTE: ANY UNAUTHORIZED ALTERATION OR
ADDITION TO THIS DOCUMENT IS A
VIOLATION OF SECTION 7209(2) OF THE
NEW YORK STATE EDUCATION LAW.

DATE: 24 May 2024
JOB #: 24-105

NEW YORK OFFICE
33 Airport Center Drive, Suite 202, New Windsor, NY 12553
845-567-3100 | F: 845-567-3232 | mheny@mhepc.com

PENNSYLVANIA OFFICE
111 Wheatfield Drive, Suite 1, Milford, PA 18337
570-296-2765 | F: 570-296-2767 | mhepa@mhepc.com

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APPENDICES

APPENDIX #1: PROJECT AREA MAP

APPENDIX #2: COST ESTIMATE

I. INTRODUCTION

The Town of Newburgh proposes to make improvements to construct new water mains including all necessary appurtenances to provide water service to 24 parcels within its Consolidated Water District (District). These residents are currently using private wells but can connect to the District's infrastructure once the project is completed. Connection of these properties to the District may be necessary for providing potable water subsequent to the shutdown of New York City Department of Environmental Protection's (NYCDEP) Delaware Aqueduct, scheduled for late 2024. Well monitoring by NYCDEP has shown that the water supply coming from these wells is augmented by the leakage from the Delaware Aqueduct Tunnel and the residents' wells may be adversely impacted when the leakage is eliminated. It is therefore expected that the private wells will suffer from decreased yields during and after shutdown.

There is an understanding between the NYCDEP and the Town of Newburgh that funding for the District improvements will be financed by the NYCDEP via reimbursement to the Town. This understanding will be solidified through a Letter of Understanding between the two parties before the project commences.

II. BENEFIT AREA

The Benefit Area includes the 23 parcels that will receive water from the District. This Area includes properties north and west of the hamlet of Roseton and to the east of State Route 9W, in a part of the Town that includes Old Post Road, River Road and the Levinson Heights neighborhood. All properties are within the boundaries of the Town of Newburgh Consolidated Water District. The 23 parcels in the Benefit Area include (see Appendix #1 for a map of parcels and proposed improvements):

8-1-35.1	8-2-4	8-2-15
8-1-35.21	8-2-5	8-2-16
8-1-35.221	8-2-6	8-2-19.1
8-1-37	8-2-7	8-2-20
8-1-38.21	8-2-8	8-2-23
8-1-96	8-2-9	9-1-32
8-1-97	8-2-10	9-1-33
8-2-3	8-2-11	

III. PROPOSED IMPROVEMENTS

Improvements to be made include:

1. A new 12" water main will be connected to the end of an existing water main in front of the Roseton Generating Facility. This new main will be 1,010+/- linear feet and will serve two properties on River Road.
2. A new 8" water main will be connected to the existing main that currently runs beneath Old Post Road from State Route 9W. This will serve Levinson Heights Road and Cedar Court and will include 1,225+/- linear feet of new 8" main.
3. A new segment of 8" water main will be connected to the existing water main on Old Post Road at the northeastern edge of the current district. This will connect the district's existing main to the proposed new district extension along Old Post Road. This segment is 610 linear feet.

In total, this improvement project will consist of 1,010+/- linear feet of 12" water main, 1,829+/- linear feet of 8" water main, 24 water service connections, 11 gate valves and 7 fire hydrants. Cost estimates for constructing the project are included within Appendix #2.

IV. ANNUAL COST

The following cost impact to a typical household has been estimated assuming 100% of the estimated project construction cost will be financed by the New York City Department of Environmental Protection. Homeowners that are being added to the Water District will assume the same annual debt as the existing users and will be responsible for paying the same annual operation and maintenance fees as the existing users.

As per Appendix 2, the cost estimate of improvements is \$3,374,557. The assessed value of parcels already in the District is \$974,724,229. Therefore the cost ratio of the improvements is 0.35%.

Below is an analysis of the annual user cost for an average single-family home receiving improvements.

Yearly debt service for Water 1 (based on average assessed value of the homes in this District of \$103,192)	\$158.92
Operation and Maintenance per year based on the Town's annual water costs for the average single-family home using 72,000 gallons/yr	\$313.76
Total yearly cost per household	\$472.68

V. CONCLUSION

On the basis of the above and attached, we find that this project is both economically and technically feasible and therefore recommend that the Town proceed with this expansion and improvement project.

Respectfully submitted,

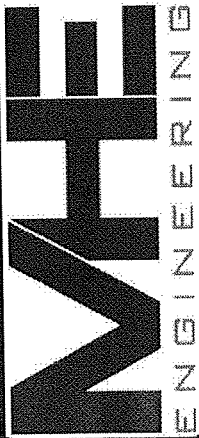
Shawn E. Arnott, P.E.
Associate
MHE Engineering, D.P.C.

APPENDIX 1

PROJECT AREA MAP

APPENDIX 2

COST ESTIMATE



TOWN OF NEWBURGH
 LEVINSON/OLD POST ROAD AREA
 WATER MAIN IMPROVEMENTS
 COST ESTIMATE

Last Revised:
 3-Apr-24
 Revised By:
 KDM

ITEM DESCRIPTION QUANTITY UNIT UNIT PRICE EXT. PRICE TOTALS

WATER MAIN IMPROVEMENTS:

1	12" Water Main Extension	1,010	LF	\$ 400.00	\$ 404,000	
2	8" Water Main Extension	1,829	LF	\$ 300.00	\$ 548,700	
3	12" Gate Valves	3	EA	\$ 6,000.00	\$ 18,000	
4	8" Gate Valves	8	EA	\$ 4,000.00	\$ 32,000	
5	Hydrant Assemblies	7	EA	\$ 10,000	\$ 70,000	
6	Rock Excavation	1,893	CY	\$ 150	\$ 283,950	
7	Service Laterals	24	EA	\$ 20,000	\$ 480,000	
8	Well Decommissioning	24	EA	\$ 10,000	\$ 240,000	

Subtotal \$ **2,076,650**

Construction Contingencies (30%) \$ 622,995

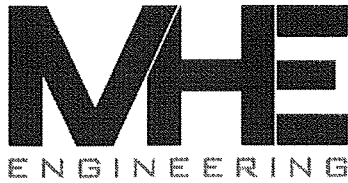
Estimated Total Construction Cost \$ **2,699,645**

Administration Including Legal, Engineering and Design Services (25%) \$ 674,912

Total Design and Construction Cost \$ **3,374,557**

* Note(s): 1) This is an "Estimate of Probable Construction Cost," for estimating purposes only.

#kab



MAP, PLAN AND REPORT

FOR

NEWBURGH CONSOLIDATED WATER DISTRICT:

LEVINSON/OLD POST ROAD AREA WATER DISTRICT
EXTENSION

TOWN OF NEWBURGH
ORANGE COUNTY, NEW YORK

PREPARED FOR:

Town of Newburgh
1496 Route 300
Newburgh, NY 12550

PREPARED BY:

MHE Engineering, D.P.C.
33 Airport Center Dr. Suite 202
New Windsor, NY 12553

NOTE: ANY UNAUTHORIZED ALTERATION OR
ADDITION TO THIS DOCUMENT IS A
VIOLATION OF SECTION 7209(2) OF THE
NEW YORK STATE EDUCATION LAW.

DATE: 24 May 2024
JOB #: 24-105

NEW YORK OFFICE

33 Airport Center Drive, Suite 202, New Windsor, NY 12553
845-567-3100 | F: 845-567-3232 | mheny@mhepc.com

PENNSYLVANIA OFFICE

111 Wheatfield Drive, Suite 1, Milford, PA 18337
570-296-2765 | F: 570-296-2767 | mhepa@mhepc.com

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APPENDICES

APPENDIX #1: PROJECT AREA MAP

APPENDIX #2: COST ESTIMATE

APPENDIX #3: DESCRIPTION OF BENEFIT AREA

I. INTRODUCTION

The Town of Newburgh proposes to extend its Consolidated Water District (District) to 32 residential properties (Benefit Area) adjacent to the existing District in the northeastern portion of the Town. These residents are currently using private wells but can connect to the District’s infrastructure once the project is completed. Connection of these properties to the District may be necessary for providing potable water subsequent to the shutdown of New York City Department of Environmental Protection’s (NYCDEP) Delaware Aqueduct, scheduled for late 2024. Well monitoring by NYCDEP has shown that the water supply coming from these wells is augmented by the leakage from the Delaware Aqueduct Tunnel and the residents’ wells may be adversely impacted when the leakage is eliminated. It is therefore expected that the private wells will suffer from decreased yields during and after shutdown.

II. BENEFIT AREA

The Benefit Area includes the 32 parcels that are proposed to be added to the District. The Area contains properties north and west of the hamlet of Roseton and to the east of State Route 9W, in a part of the Town that includes Old Post Road and River Road. The parcels are north of River Road along Old Post Road, Christopher Way, McDonald Drive, and Curtin Lane.

The following 32 tax parcels are within the Benefit Area (see Appendix #1 for a map of the parcels and Appendix #2 for a description of this Area):

8-1-39.21	8-1-43.41	8-1-63	8-1-100
8-1-39.22	8-1-43.43	8-1-64	8-1-101
8-1-40.1	8-1-43.452	8-1-65	
8-1-40.21	8-1-43.451	8-1-66.21	
8-1-40.22	8-1-43.44	8-1-66.22	
8-1-40.23	8-1-43.42	8-1-88	
8-1-42.31	8-1-43.3	8-1-89	
8-1-42.32	8-1-43.2	8-1-90	
8-1-42.33	8-1-60.1	8-1-98	
8-1-43.1	8-1-61.1	8-1-99	

III. PROPOSED IMPROVEMENTS IN BENEFIT AREA

A primary improvement will be a new segment of 8" water main under Old Post Road from its existing terminus on Old Post Road NE to Curtain Lane. This main will be 2,420+/- linear feet and will provide potable water to residences on Old Post Road as well as residents on the following three roads: Christopher Way, McDonald Drive, and Curtis Lane. The lateral connections to the three roads off of Old Post Road will be 8" main, totaling 1,835+/- linear feet.

In total, improvements include 4,254+/- linear feet of 8" main, 14 gate valves, 8 hydrants, and 32 water service connections.

IV. ANNUAL COST

Residences that are being added to the District will assume the same annual debt as the existing users and will be responsible for paying the same annual operation and maintenance fees as the existing users.

As per Appendix 3, the cost of improvements within the extension is \$4,546,100. The assessed value of parcels already in the District plus that of the additional 32 parcels is \$977,306,189. Therefore the cost ratio of the extension is 0.47%.

Below is an analysis of the annual user cost for an average single-family home to be added to the District. These homes will incur Water 1 debt.

Yearly debt service for Water 1 (based on average assessed value of the homes in this District of \$103,192)	\$158.92
Operation and Maintenance per year based on the Town's annual water costs for the average single-family home using 72,000 gallons/yr	\$313.76
Total yearly cost per household	\$472.68

V. CONCLUSION

On the basis of the above and attached, we find that this project is both economically and technically feasible and therefore recommend that the Town proceed with this extension project.

Respectfully submitted,

Shawn E. Arnott, P.E.
Associate
MHE Engineering, D.P.C.

APPENDIX 1

PROJECT AREA MAP

APPENDIX 2

DESCRIPTION OF BENEFIT AREA

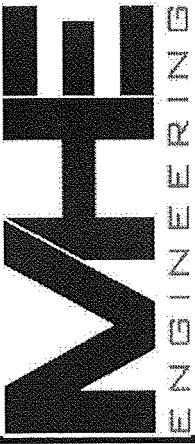
Description of Proposed District

Beginning at the southern corner of parcel 8-1-39.21 on Old Post Road, the Proposed District Boundary follows said parcel to its western corner. The Boundary then extends to the northern corner of adjacent parcel 8-1-39.22, then southeast to its eastern corner on Old Post Road before connecting back to the southern corner of parcel 8-1-39.21. The District then skips over parcel 8-1-31.12 (a Central Hudson utility ROW) and begins again at the southern corner of parcel 8-1-40.1, on Old Post Road. The Boundary extends NW along the parcel line, then proceeds in a NNE direction until turning west along the southern boundary of parcel 8-1-101. The Boundary follows this parcel to its western boundary then turns NNE until the NW corner of parcel 8-1-42.33, where the Boundary follows parcels lines of parcel 8-1-43.452 west, then NE to the northern corner of parcel 8-1-43.451. From this corner, the Boundary follows the northern parcels lines of four parcels until meeting Old Post Road at the eastern corner of lot 8-1-43.2.

The Boundary then crosses Old Post Road to the northern corner of parcel 8-1-61.1 and follows that parcel's property line SE then SW to its southern corner. From here, the Boundary follows the parcel line of parcel 8-1-60.1 SE to its eastern corner, then turns SW at the parcel's southern corner, then NW back to Old Post Road. The Boundary then skips over parcel 8-1-66.1 and resumes at the northern corner of parcel 8-1-66.22. The Boundary follows the parcel line to its eastern corner then proceeds to follow the eastern property lines of the four (4) parcels to its SW, making a turn to the west along parcel 8-1-65's southwestern boundary that ends at Old Post Rd. From this corner, the Boundary skips over Old Post Road in a SW direction until it meets with the southern corner of parcel 8-1-89. The Boundary then aligns with Old Post Rd until the southern corner of parcel 8-1-40.1, where this segment of the Boundary began.

APPENDIX 3

COST ESTIMATE



TOWN OF NEWBURGH
 LEVINSON/OLD POST ROAD AREA
 WATER MAIN EXTENSION
 COST ESTIMATE

Last Revised:
 3-Apr-24
 Revised By:
 CML

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXT. PRICE	TOTALS
<u>WATER MAIN IMPROVEMENTS:</u>						
1	8" Water Main Extension	4,254	LF	\$ 300.00	\$ 1,276,200	
2	8" Gate Valves	14	EA	\$ 4,000.00	\$ 56,000	
3	Hydrant Assemblies	8	EA	\$ 10,000	\$ 80,000	
4	Rock Excavation	2,836	CY	\$ 150	\$ 425,400	
5	Service Laterals	32	EA	\$ 20,000	\$ 640,000	
6	Well Decommissioning	32	EA	\$ 10,000	\$ 320,000	
				Subtotal		\$ 2,797,600
				Construction Contingencies (30%)		\$ 839,280
				Estimated Total Construction Cost		\$ 3,636,880
				Administration Including Legal, Engineering and Design Services (25%)		\$ 909,220
				Total Design and Construction Cost		\$ 4,546,100

* Note(s): 1) This is an "Estimate of Probable Construction Cost," for estimating purposes only.

#6C

**AGREEMENT BETWEEN
THE CITY OF NEW YORK AND THE
TOWN OF NEWBURGH FOR
CERTAIN WATER SUPPLY PROJECTS**

THIS AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2024_, by and between the **CITY OF NEW YORK** (the “City”), a municipal corporation of the State of New York, acting by and through the **NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION** (“DEP”), having its principal office at 59-17 Junction Boulevard, Flushing, New York 11373, and the **TOWN OF NEWBURGH**, New York (the “Town”), a municipal corporation of the State of New York having its principal office at 1496 Route 300, Newburgh, New York 12550 (each, a “Party” and collectively, the “Parties”).

WHEREAS, DEP operates and maintains the New York City water supply system and is responsible for providing drinking water to more than eight million residents in the City, as well as approximately one million upstate residents, including users who rely on a water supply from connections to the City’s Delaware Aqueduct, including the Town; and

WHEREAS, DEP has identified leaks in sections of the Delaware Aqueduct and has committed capital funds to address such leaks to ensure the long-term sustainability of its ability to supply water through the Delaware Aqueduct, as part of a project known as “Water for the Future” (“WFF”); and

WHEREAS, in connection with WFF, DEP constructed a new tunnel segment (“RWBT Bypass Tunnel”) to bypass a leaking section of the existing Delaware Aqueduct tunnel, which will require DEP to shut down the Delaware Aqueduct for extended periods of time to connect the bypass tunnel with the Delaware Aqueduct; and

WHEREAS, communities that take water from the New York City water supply are required to maintain a back-up water supply system and enter into a water supply agreement with the New York City Water Board; and

WHEREAS, pursuant to that Water Supply Agreement dated February 1, 1993, between the New York City Water Board and the Town, the Town takes and receives water from the City’s water supply system via a connection to the Delaware Aqueduct (“Town’s Connection”); and

WHEREAS, pursuant to that Water Supply Agreement dated September 17, 2012, between the New York City Water Board, the Town of New Windsor Consolidated Water District (“New Windsor Water District”), and the Town of New Windsor (“New Windsor”), the New Windsor Water District operates an authorized interconnection located in NYS Route 300 at the Town of New Windsor and Town of Newburgh municipal boundary (“New Windsor Interconnection”) for the purpose of supplying an emergency source of water and a backup source of water to an area within the Town comprising the Consolidated, Colden Park, Fleetwood-Holiday Park and ANG Water Districts (“Consolidated Town Water District”); and

WHEREAS, pursuant to that certain Agreement between the City and Town of New Windsor dated February 2, 2017 (“DEL-417C”), DEP provided funds to the Town of New Windsor for the design and construction of a bi-municipal back-up water supply system to serve the Town of New Windsor and a certain portion of the Town during extended shutdowns of the City’s aqueducts; and

WHEREAS, pursuant to that certain agreement between the Parties, dated March 9, 2020, (“DEL-418C”), DEP provided funds to the Town for the construction of improvements to water treatment filtration plant (“WTFP”) at Chadwick Lake, to further serve the Town during extended shutdowns of the City’s aqueducts; and

WHEREAS, as a result of DEP’s postponed shutdown of the City’s Delaware Aqueduct, the Town’s costs for completing the WTFP under the DEL-418C has exceeded the amount of funds provided thereunder, and the Town has requested and the City has agreed to provide additional funds to cover certain costs resulting from DEP’s postponed shutdown (“WTFP Chadwick Lake Completion Project”); and

WHEREAS, in addition to the foregoing project, as part of DEP’s ongoing monitoring activities during its RWBT and WFF projects, DEP commissioned EISCOM JV to perform an analysis of the probable costs associated with extending the Town’s municipal water supply system serving the existing Consolidated Town Water District into select areas of the Roseton hamlet; and

WHEREAS, pursuant to that certain Agreement in Principle dated March 22, 2024 (“AIP”), the City has committed to fund, and the Town has agreed to manage, the extension of the water main and associated infrastructure located within the Town and boundaries of the Consolidated Water District to enable the Town to provide its municipal water supply service to up to an additional

twenty-four (24) residences identified on the map attached as Appendix A-2 to ensure the Town can supply adequate water to such residences during and following the RWBT project's repairs of leaks at the Delaware Aqueduct ("Consolidated Town Water District Water Main Extension Project"); and

WHEREAS, the City has also committed to fund, and the Town has agreed to manage, the establishment of a duly formed extension to the boundaries of the Consolidated Water District to include up to thirty-two (32) residences within the Town in the area of Roseton outside of the Consolidated Water District as identified by the map attached hereto as Appendix A-3 ("Extended Consolidated Water District"), and the connection of each of the additional residences to the Town's extended water mains to ensure the Town can supply adequate water to such residences during and following the RWBT project's repairs of leaks at the Delaware Aqueduct ("Extended Consolidated Water District Water Main Extension Project", together with the Consolidated Town Water District Water Main Extension Project, collectively, "Water Main Extension Project"); and

WHEREAS, in order to further the purpose of the foregoing projects, the Town has requested and the City has agreed to provide certain funds to the Town for the costs of upgrading the Meadow Hill Pump Station to integrate its operation with the New Windsor Interconnection in order to meet the additional water supply demands of the Extended Consolidated Water District ("Meadow Hill Road Pump Station Project"); and

WHEREAS, the Town has determined that certain work is necessary to repair damage to a portion of the River Road identified on the map set forth on Appendix A-1 ("River Road"); and

WHEREAS, the Town has requested and the City has agreed to provide certain funds to repair River Road in order to further the purpose of DEP's RWBT and WFF projects ("Road Repair Project").

NOW, THEREFORE, in consideration of the respective representations and agreements contained below, the Parties agree as follows:

1. Registration Required

This Agreement shall not take effect until it is registered pursuant to Section 328 of the New York City Charter. The date of registration shall be referred to as the "Effective Date" of this Agreement.

2. Expiration, Termination and Extension of Agreement

Unless otherwise extended in writing signed by both Parties, with the approval of the DEP Agency Chief Contracting Officer (the “ACCO”), and except for the provisions herein which expressly survive this Agreement, this Agreement shall expire on the fourth anniversary of the Effective Date, unless terminated sooner pursuant to the terms of this Agreement. Once this Agreement becomes effective, the term of this Agreement (the “Term”) shall be deemed to have commenced as of April 11, 2023 (“Commencement Date”).

3. Description of Projects

a) The services to be completed by the Town pursuant to this Agreement (“Work”) shall consist of the following four projects (collectively, the “Projects”), with the Town to use best efforts to complete each Project in accordance with the milestones set forth on Appendix B, in accordance with the budget caps set forth in Appendix C, and subject to the terms and provisions set forth herein:

i. WTFP Chadwick Lake Completion Project: The services to be completed by the Town for the WTFP Chadwick Lake Completion Project shall consist of performing the start-up implementation of the WTFP at Chadwick Lake, in accordance with and subject to the terms and conditions set forth in the DEL-418C agreement, and in accordance with the milestones and budget set forth on Appendix B and Appendix C;

ii. Water Main Extension Project: The services to be completed by the Town for the Water Main Extension Project shall consist of the following two (2) components:

1. Consolidated Town Water District Water Main Extension Project: design and construction of an extension of the water main and laterals, together with their appurtenances to enable service to up to twenty four (24) residences, identified on the map attached as Appendix A, which residences are located within the boundaries of said Consolidated Town Water District, but do not currently receive water supply from the Town’s municipal water service as

they are in locations without frontage on streets or easements containing installed water mains; and

2. Extended Consolidated Water District Water Main Extension: (i) the establishment of a duly formed extension to the boundaries of the Consolidated Water District to include the additional thirty two (32) residences in the Extended Consolidated Water District, pursuant to Article 12 and 12A of the Town Law of the State of New York subject to the permissive referendum petition and voting rights of affected property owners within the Extended Water District; and (ii) the design and construction of an extension of the Town's water main and laterals together with their appurtenances that will serve the duly formed Extended Consolidated Water District. The Town's performance and the City's funding of the Water Main Extension Project are contingent upon either the expiration of the permissive referendum period for a water district extension without submission of the necessary petition for referendum meeting the requirements of the Town Law, or the approval of the Extended Consolidated Water District by qualified voters at referendum. Notwithstanding the foregoing, the Town agrees to use its best efforts to obtain all necessary permissions in furtherance of completing the Extended Consolidated Water District Water Main Extension Project. Promptly upon the Town's awareness thereof, the Town shall provide DEP with notice of submission of a necessary petition for referendum, or objection to the Extended Consolidated Water District. At any time thereafter, DEP may issue a stop work order for the Extended Consolidated Water District Water Main Extension Project to the Town in accordance with the following terms and conditions:

(a) The Town shall cease any or all work with respect to the Extended Consolidated Water District Water Main Extension Project as of the date specified in the stop work order;

(b) The Town shall cancel all cancelable orders for material and equipment relating to the Extended Consolidated Water District Water Main

Extension Project; and

(c) The Town shall take no action which will increase the amounts payable by the City for the Extended Consolidated Water District Water Main Extension Project under this Agreement.

3. Together with the two components of the Water Main Extension Project, the Town shall undertake the design and construction of individual service connections for each improved lot containing an existing residence.

4. Easement Agreements with Property Owners. Prior to commencing construction of the Water Main Extension Project, the Town shall enter into agreements with the relevant property owners to acquire the temporary and permanent easements and/or construction access the Town determines necessary for construction and operation of the water main extension. In the event the Town learns that it will not be able to obtain any easements or that it will be initiating condemnation proceedings in order to obtain any necessary easement, the Town must immediately notify DEP in writing. At any time thereafter, DEP may issue a stop work order for all or a part of the Water Main Extension Project to the Town in accordance with the following terms and conditions:

(a) The Town shall cease any or all work identified in the notice with respect to the Water Main Extension Project as of the date specified in the notice;

(b) The Town shall cancel all cancelable orders for material and equipment relating to the applicable portion of the Water Main Extension Project; and

(c) The Town shall take no action which will increase the amounts payable by the City for the Extended Consolidated Water District Water Main Extension Project under this Agreement.

5. Release by Property Owners. Prior to performing a service connection of an individual property to the Water Main Extension, the Town shall obtain a

release from the owner(s) of the individual property to be connected, in form approved by DEP, which releases the City and the New York City Water Board, and their respective officials and employees, from any and all claims of and liability to such property owner for anything heretofore done or relating to or arising out of the leak of the Delaware Aqueduct, whether directly or indirectly; and of any requirement by the City or the New York City Water Board, including their respective, its officials and employees, to develop or implement any action plan for the Town, that would consist in part, of a program to monitor the groundwater quality of a portion of the Town. Nothing herein shall be construed as preventing the Town from additionally obtaining releases from the property owner(s) which release the Town, its officials, employees and agents.

6. Adoption of Town Ordinance. Prior to the commencement of the Water Main Extension Project work, the Town shall, subject to the administrative appeals process, undertake efforts adopt an ordinance (or law, as applicable) governing use of the Water Main Extension constructed hereunder, which must require, *inter alia*, that the owner of a residence or structure located in the Extended Consolidated Water District is required to connect to the Water Main Extension. Prior to the adoption of the proposed ordinance (or law, as applicable) by the Town, the Town shall submit to the City for review, a copy of the proposed resolutions for the adoption by the Town of its proposed ordinance (or law, as applicable). Within thirty (30) days of the adoption by the Town Board, the Town shall forward to the DEP Project Manager a copy of the ordinance (or law, as applicable) as adopted and the resolutions of the Town Board. Adoption of such ordinance (or law, as applicable) shall be a condition precedent to the City's obligation to fund the Construction Work.

7. The provisions of this Section shall survive the expiration or termination of this Agreement.

- iii. Meadow Hill Road Pump Station Project. The services to be performed by the Town for the Meadow Hill Pump Station Project shall consist of the purchase and installation of necessary equipment upgrades to establish a variable frequency drive control of the Meadow Hill Pump Station, as approved in writing by DEP's Project Manager. The improvements at the Meadow Hill Pump Station shall protect the Town's water system from unnecessary pressure conditions and allow the Town to make full use of the New Windsor interconnection located near 960 Union Avenue, New Windsor, NY 12553, subject to the terms and provisions set forth herein; and
 - iv. Road Repair Project. The services to be performed by the Town for the Road Repair Project shall consist of two components 1) the purchase of necessary supplies and the construction of emergency road repairs consisting of the design of traffic controls at River Road, in accordance with a conceptual plan approved in writing by DEP's Project Manager, and 2) the construction of long term repairs following the Delaware Aqueduct Bypass Tunnel Connection Shutdown utilizing a design provided by DEP subcontractor and per subject to the terms and provisions set forth herein ("Road Repair Project");
- b) Each of the Water Main Extension Project, the Meadow Hill Pump Station Project and the emergency component of the Road Repair Project shall be constructed pursuant to designs completed by the Town, through its own professional staff or through consultants who, if necessary, are licensed to practice engineering in the State. The designs shall include the preparation of plans and specifications that comply with all applicable standards set by the New York State Department of Health ("NYSDOH"), the American Association of State Highway and Transportation Officials, and the New York State Department of Environmental Conservation and with all applicable federal, New York State ("State") and local laws and regulations (for each applicable Project, the "Plans and Specifications"). Each of the Plans and Specifications for the foregoing applicable Projects shall be submitted to DEP at the ninety percent (90%) design phases. DEP may provide written comments for each submission within fifteen (15) days of submission. To the maximum extent possible,

the Town shall incorporate any revisions necessitated by DEP's comments in its final plans and specifications.

c) Each of the Projects shall be managed by the Town. The Town shall be responsible for ensuring that all necessary permits, consents, and approvals are obtained, for and making of any and all notifications necessary to carry out each of the Projects, and for making all necessary modifications to its existing permits that may be affected by each of the Projects, in a timely manner to ensure that the milestones on Appendix B are met. Upon request, the Town shall provide DEP with a copy of any permit application. In the event that the Town learns that it may not obtain a necessary approval, consent or permit prior to the date upon which such work must be undertaken to meet the milestone dates set forth on Appendix B, it shall notify DEP immediately, in writing, in accordance with the provisions of Section 14, below.

d) The Town is responsible for complying with its obligations in a diligent fashion and using best efforts to complete each of the Projects in accordance with the milestones on Appendix B hereto. Failure to do so will give DEP the option to declare an event of default under this Agreement.

4. Public Letting of Construction Contract(s)

a) In accordance with the milestones set forth on Appendix B, the Town shall submit the bid documents for the proposed construction contract(s) for each of the Water Main Extension Project, Meadow Hill Pump Station Project, and, subject to the option set forth below, component (2) of the Road Repair Project ("Construction Contract(s)"). A copy of the final bid solicitation package shall be provided by the Town to DEP on its release date. The Town shall have the option to either competitively bid the Road Repair Project or to complete the Project utilizing its own workforce and equipment and materials acquired in accordance with applicable laws, rules and regulations and standards, including but not limited to competitive bidding requirements. The Town shall comply with any and all public solicitation

requirements for the Projects in accordance with its procurement policies and applicable laws, rules and regulations.

b) Following the determination by the Town Board after public hearing, if necessary, that the acquisition or construction, as the case may be, of each applicable Project is in the public interest, and for Consolidated Town Water District Water Main Extension Project, following the expiration of the permissive referendum period applicable to the extension of the Consolidated Water District, the Town shall take all steps necessary under applicable law, including, without limitation, the Wicks Law, to advertise and bid out and award the pre-selection and purchase contract for any necessary equipment relating to the Projects and for the Construction Contract(s).

c) Promptly after the opening of the sealed bids, the Town shall provide DEP with a list of the bidders' names and the bid amounts.

d) Within three (3) business days of the Town providing such notice of bidders, DEP shall have the opportunity to provide notice to the Town that, in DEP's opinion, the lowest bidder does not have a satisfactory record of business integrity, would otherwise be found to be a non-responsible bidder by DEP or that DEP has reason to believe such bidder will be unable to complete the relevant Construction Contract according to the applicable Plans and Specifications. Upon receipt of such notice, the Town shall have the option to reject the lowest bidder or to reject all bids and rebid the Construction Contract; provided that if the Town opts to rebid the Construction Contract, it shall not relieve the Town of completing the applicable Projects in accordance with the milestones set forth on Appendix B. If DEP does not provide notice of an objection to the Town within three business days, DEP shall waive its opportunity to object to award of a Construction Contract to the lowest responsive bidder.

e) In accordance with the time frames set forth on Appendix B, the Town shall award one or more Construction Contract(s) (which may allow for subcontracting) for the construction work, in compliance with the Wicks Law, if applicable. The Town shall immediately notify DEP, in writing, of any Construction Contract award.

5. **Construction Work**

a) The commencement of construction work performed for each of the Projects (“Construction Work”) pursuant to its Plans and Specifications shall not occur prior to:

i. the Town’s completion of all actions for the applicable Project necessary to conduct a review as the lead agency in compliance with the requirements set forth under the State Environmental Quality Review Act (“SEQRA”) for the Project;

ii. the Town’s receipt of all approvals and permits and provision of all notices that are necessary for the applicable Project under law or contract prior to commencing the Construction Work;

iii. the Town’s having secured the necessary bonds and proof of insurance for the applicable Project, pursuant to Section 11, below;

iv. the Town’s having provided to DEP a complete original set of the Plans and Specifications for the applicable Project included in the bidding documents for the Construction Contract(s); and

v. procurement by Town of design services during construction and construction management services to ensure the applicable Project is built in accordance with the Plans and Specifications.

b) The Town shall ensure that the Construction Work is prosecuted diligently and performed in an orderly, expeditious and workmanlike manner and in substantial conformance with the Plans and Specifications and with the milestones set forth on Appendix B. The Town’s design engineer shall be required to certify that the work was completed in accordance with the approved Plans and Specifications.

c) DEP shall have the right (and the Town shall ensure that DEP shall have access to the work site as needed) to inspect the Construction Work from time to time to determine whether the Construction Work is being prosecuted in accordance with Section 5(b), above.

d) The Town must provide DEP with written notice of any and all change orders under the Construction Contract(s) prior to the approval thereof, unless necessitated by an emergency condition.

6. Progress Reports

The Town shall submit written monthly progress reports to DEP by email on the first day of each month after the Effective Date, which shall include, at a minimum, a written report on all work completed in the past month; work planned for completion in the upcoming month; and a description of any aspect of the Projects that the Town anticipates may be delayed or not completed in accordance with the milestones established in Appendix B, for any reason, and a description of any Construction Work that may not or will not be completed in accordance with the Plans and Specifications.

7. Costs

a) Eligible Costs. Subject to the restrictions set forth in this Section 8, the City agrees to pay for the reasonable and necessary out-of-pocket costs to third parties actually incurred by the Town for the performance of the Work, in accordance with the categories and amounts set forth in Appendix C (but not including any costs for time spent on the Projects by employees of the Town or permit fees paid to the Town) (“Eligible Costs”). In no event shall any costs associated with litigation disputes, Town overhead, or operation or maintenance of the Project constitute eligible costs.

i. WTFP Chadwick Lake Completion Project. The Eligible Costs of the WTFP Chadwick Lake Project shall consist of the actual costs incurred by the Town of reserving and hooking up mobile treatment trailers, and performing the startup of the WTFP Chadwick Lake Project in accordance with the terms and conditions set forth in the DEL-418C and in this Agreement, each cost totaling an aggregate amount not to exceed the maximum amount for the applicable budget category set forth on the Budget attached as Appendix C, and together totaling an aggregate amount not to exceed Three Hundred Twenty Two Thousand Dollars (\$322,000) (“Total Eligible WTFP Chadwick Lake Project Costs”).

ii. Water Main Extension Project: The Eligible Costs for the Water Main Extension Project shall consist of the Town's actual costs for administrative, procedural, legal, financing, Map, Plan and Report, construction mobilization/demobilization, construction of primary water mains and laterals, construction of service connections, rock excavation and dimensioning, engineering design, survey, and permitting, and construction management incurred by the Town for completing the Water Main Extension Project; implementation of each cost totaling an aggregate amount not to exceed the maximum amount for the applicable budget category set forth on the Budget attached as Appendix C, and together totaling an aggregate amount not to exceed Sixteen Million One Hundred Forty-Seven Thousand Dollars (\$16,147,000) ("Total Eligible Water Main Extension Project Costs"). Notwithstanding the foregoing, for purposes of reimbursement, the "Total Eligible Water Main Extension Project Costs" shall, subject to the restrictions set forth in the Budget attached as Appendix C, be incurred by the Town's attorney, at a rate of no more than \$175/hour, for costs related to obtaining easements and licenses from property owners within the Town Consolidated Water District and Extended Town Consolidated Water District, as necessary for the Town to complete the Water Main Extension Project.

iii. WTP Meadow Hill Project. The Eligible Costs of the WTP Meadow Hill Project shall consist of the Town's actual costs of the equipment, design, procurement, and installation of variable frequency drive control system upgrades for the Meadow Hill Pump Station, each cost totaling an aggregate amount not to exceed the maximum amount for the applicable budget category set forth on the Budget attached as Appendix C, and together totaling an aggregate amount not to exceed One Hundred Ninety Thousand Dollars (\$190,000) ("Total Eligible WTP Meadow Hill Project Costs").

iv. Road Repair Project: The Eligible Costs of the Road Repair Project shall consist of the Town's actual costs of the equipment and supplies necessary to (i)

periodically stabilize a portion of River Road near confirmed leak expression of the Delaware Aqueduct (ii) the costs of procuring a consultant to perform emergency road repairs on River Road as approved by DEP and the Department of Public Works and (iii) the costs of procuring a consultant to provide emergency response traffic safety measures for short-term repairs of the roadway, each cost totaling an aggregate amount not to exceed the maximum amount for the applicable budget category set forth on the Budget attached as Appendix C, and together totaling an aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000) (“Total Eligible Road Repair Project Costs”). The Eligible Costs shall include an additional maximum aggregate amount of up to One Million Dollars (\$1,000,000) for construction to implement long term road repairs as designed by a DEP subcontractor and approved by the Town, as set forth on the Budget attached as Appendix C,.

b) Total Eligible Costs. Notwithstanding anything to the contrary herein, the aggregate total of all Eligible Costs payable by DEP hereunder shall not exceed Eighteen Million One Hundred Fifty-Nine Thousand Dollars (\$18,159,000) (“Total Eligible Costs”). The Town shall be responsible for any and all costs above the maximum Eligible Costs for each applicable Project as set forth above, and for any costs or expenses that are determined by DEP to not qualify as an Eligible Cost. If the Town identifies costs exceeding the Total Eligible Costs, it may discuss revisions to projects scope of work as applicable.

8. Payment

The City shall pay the Town for the foregoing Eligible Costs as set forth below:

a) After the Effective Date, the Town shall submit to DEP itemized vouchers specifying the work performed, and the amount of compensation requested, and including appropriate documentation including, but not limited to, invoices from all contractors and subcontractors, and a cover letter from the Town verifying that all costs are reasonable and fair and were authorized in good faith and in accordance with all applicable laws. DEP shall release funds on a reimbursement basis after it confirms that all of the Town’s obligations under this

Agreement have been complied with, and that all outstanding water bills have been paid, but not more frequently than once a month.

b) Payments by the Town. The Town must require that all requests for payments from the Town by its contractors for Eligible Costs be made by itemized voucher. Such vouchers shall include documentation demonstrating that the services for which payment is sought have actually been performed, and that the vouchers cover an Eligible Cost as defined in this Agreement. Where appropriate, the documentation supporting the voucher may include items such as purchase orders, canceled checks, certified payroll records and machinery use records. The Town shall ensure that all funds released to it shall be used exclusively for Eligible Costs incurred in connection with Project activities as set forth herein.

c) Administration of Funds by the Town. The Town shall manage, coordinate and administer the Projects' costs and payments required in connection with each Project in accordance with the terms hereof, including compliance with the budget set forth above and on Appendix C and the milestones set forth on Appendix B. The acceptance of funds under this Agreement shall serve as a release by the Town of the City, the New York City Water Board, and their respective officials and employees, from any and all claims of and liability to the Town for anything heretofore done or relating to or arising out of the leak of the Delaware Aqueduct, whether directly or indirectly.

d) Right to Examine Books. All receipts and disbursements of funds pursuant to this Agreement are subject to audit by the City or the State, and the Town agrees to cooperate with any such audit of this Agreement.

e) Delays or Incomplete Work. If the Town is in material breach of the terms of this Agreement, including using best efforts to meet the milestones set forth on Appendix B, and such breach is not cured in accordance with Section 29, below, in addition to any other rights or remedies available to it at law or in equity, the City shall be entitled to withhold payment otherwise due to the Town in an amount that represents the cost to cure the breach and covers any reasonable damages resulting directly from such breach until such breach is cured.

f) Payment Disputes. In the event of a dispute between the Town and DEP as to the Town's documentation or expenditures, it is understood and agreed that such dispute shall be brought to the Commissioner of DEP (the "Commissioner") for a determination. The Commissioner shall examine the material submitted by each Party and may, in his or her discretion, convene an informal conference with the Parties and any other designee of the Commissioner to resolve the issue by mutual consent prior to reaching a determination. The Commissioner may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either Party or both Parties as he or she deems fit.

9. Maintenance of the Projects' Improvements

Each of the Project's applicable systems, including, without limitation, any pipes, valves, pumps, roadways, or other accessory infrastructure constructed or installed pursuant to any of the Projects funded in this Agreement, shall be owned and maintained by the Town for and on behalf of the Town and/or the Extended Consolidated Water District, or shall be owned and maintained by the property owner, as applicable. The City shall not take title to and shall not be responsible for the repair or maintenance of any improvements constructed and installed pursuant to this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement.

10. Required Water Supply Agreement and Authorized Interconnection

To accomplish the purpose under this Agreement of assuring the residents of the Town have adequate water supply sources to sustain extended shutdowns and/or repairs to the City's Catskill and Delaware Aqueducts, the Town agrees to: (i) enter into, a new or amended Water Supply Agreement with the New York City Water Board to govern the modified Town's Connection; and (ii) cause the Town of New Windsor to seek approval from the New York City Water Board for the expanded service area served by the Town of New Windsor Interconnection, in each case, prior to installing the final new service connections to the extended water main. Such new or amended water supply agreement shall be in form approved by the New York City Water Board, and contain the City's consent to extend the current boundaries of the existing Consolidated Town Water District to include up to fifty-six (56) additional residences in the

Hamlet of Roseton comprising the Extended Consolidated Water District and the Town's agreement to comply with the City's water conservation and back-up water supply requirements. The provisions of this Section shall survive the expiration or termination of this Agreement.

11. Independent Contractors

a) The Town and the City agree that the Town is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Town and its employees, officials, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Town, with respect to the City, that differs from or is inconsistent with that of independent contractor.

b) All persons who are employed by the Town and all the Town's contractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Town, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Town is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Town's employees, agents, contractors, or contractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Town, its employees or agents, its contractors, or its contractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, official, agent, or employee of the Town or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee

health and welfare benefits or employee retirement benefits, membership or credit). The Town and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Town, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, official, agent, or employee of the Town or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

12. Insurance

a) Prior to the Effective Date of this Agreement, the Town must provide evidence that it has procured, and must maintain throughout the term of this Agreement, the insurance set forth in Part I of Appendix D hereto. The City and the New York City Water Board, together with their respective officials and employees, shall be named as an additional insured on the required commercial general liability insurance policies as set forth in Appendix D.

b) Before they commence any work on a Project, the Town shall require its contractors and subcontractors to procure and provide evidence of insurance in the types and amounts set forth in Part II of Appendix D hereto, and require that such insurance be maintained during the entire period of their respective contracts to provide such work. The City and the New York City Water Board, together with their respective officials and employees, shall be named as an additional insureds (without a requirement of privity of contract) on the required commercial general liability insurance as set forth in Appendix D. Proof of insurance for each and every policy required hereunder, as required in Appendix D, shall be furnished to DEP for review and approval before the relevant work is commenced.

c) In addition to other bonds required by law, if any, for the performance and completion of the Construction Work, the Town shall require its construction contractor(s) to provide a

performance bond or other security acceptable to the City, in a form acceptable to the City. The performance bond or other security shall name the City, the New York City Water Board, and the Town as obligees in the full amount of the cost of the work to be performed by the contractor, shall be issued by a surety company qualified to do business in the State, and shall secure the faithful performance and completion of all work required of the contractor. The Town shall contemporaneously provide copies to the City of any notice given to the issuing surety company pursuant to the bond. In addition, the Town shall require the contractor(s) to provide a payment bond or other security acceptable to the City in the full amount of the work to be performed by the contractor guaranteeing prompt payment of monies due to all persons furnishing labor or materials in the prosecution of the Construction Work, as required by State Finance Law Section 137.

13. Indemnification

a) To the fullest extent permitted by law, the Town shall indemnify, defend and hold the City, the New York City Water Board, and their respective officials and employees (the "Indemnitees") harmless against any and all claims (including, but not limited to, claims asserted by any employee of the Town or any of its consultants and/or contractors) and costs and expenses of whatever kind (including, but not limited to, payment or reimbursement of reasonable attorneys' fees and disbursements) allegedly arising out of or in any way related to the operations of the Town and its consultants, subconsultants, contractors and/or subcontractors in the performance of this Agreement or the Town's and/or its consultants', subconsultants, contractors, and/or subcontractors' failure to comply with any of the provisions of this Agreement or of the law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Section 13 by way of cross-claim, third-party claim, declaratory judgment action or otherwise. The Parties expressly agree that the indemnification obligation hereunder contemplates (i) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (ii) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim (in which case,

indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a *pro rata* basis.

b) The Town shall include a provision in all of its contracts for work covered by this Agreement requiring that its contractors shall indemnify, defend and hold the Indemnitees harmless to the same extent set forth in paragraph (a), immediately above, provided that such indemnification, defense and hold-harmless provisions may be restricted to operations and failures to comply by the respective contractor, and need not include operations and failures to comply by the Town unrelated to the contractor and by unrelated contractors.

c) Indemnification under this Section or any other provision of this Agreement shall operate whether or not the Town and its contractors and/or subcontractors have placed and maintained the insurance required under Section 12.

d) The Town waives all rights against the City, the New York City Water Board, and their respective officials and employees, for any damages or losses for which either is covered under any insurance required under this Agreement (whether or not such insurance is actually procured) or any other insurance applicable to the operations of a consultant or contractor of the Town.

e) The provisions of this Section shall not be deemed to create any new right of action in favor of any third parties against the City.

14. Acceptance of Final Payment

The acceptance by the Town, or by anyone claiming by or through it, of final payment under this Agreement, whether such payment be made pursuant to any judgment of any court or otherwise, shall constitute and operate as a release of the City, the New York City Water Board, and their respective officials and employees, from any and all claims of and liability to the Town for anything heretofore done or furnished by the Town relating to or arising out

any work done pursuant to the terms of this Agreement, and for any prior act, neglect or default on the part of the City, the New York City Water Board, or any of their respective officials or employees, excepting only a claim against the City for the amounts deducted or retained in accordance with the terms and provisions of this Agreement or law.

15. Notices

All notices required or permitted hereunder shall, unless otherwise specified, be in writing and be delivered by hand, or by overnight mail or by certified mail, return receipt requested, to the Parties at the following respective addresses:

To DEP:

New York City Department of Environmental Protection
PO Box 385
Grahamsville, New York 12740
Attn: Bill Richardson, Chief, Community Water

With a copy to:

New York City Department of Environmental Protection
Bureau of Legal Affairs
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373
Attn: General Counsel

To the Town:

Town Supervisor
1496 Route 300
Newburgh, New York 12550

With copies to:

Town Engineer
1496 Route 300
Newburgh, New York 12550

and

Town Attorney

1496 Route 300
Newburgh, New York 12550

Either Party may, from time to time, change its address(es) for notices by giving notice of such change to the other Party in the manner specified in this Section.

16. Compliance with Public Procurement Requirements

Each of the contemplated Construction Contract(s) for the applicable Construction Work will be contract(s) for “public work” as such term is defined in Article 5-A of the General Municipal Law of the State. The Town shall, in soliciting or procuring contracts for any of the work on the Projects, comply with all public procurement requirements that are applicable to the Town under State or local law, or that would be applicable to the Town under State or local law or any regulations thereunder if it were funding such work itself. The Construction Contract(s) may permit subcontracting of the work under said contract(s) provided that all subcontracts comply with applicable law and regulations for public works contracts including, without limitation, the Wicks Law.

17. Administration of Contracts

The Town shall be responsible for administering all contracts necessary to complete the Projects in such a manner as to ensure compliance with all applicable laws and regulations. Upon request, the Town shall provide DEP with a copy of any contract entered into by it with respect to any aspect of any Project and of any subcontract entered into by its contractor(s).

18. Contract(s)

a) Any contract between the Town and any person, firm or other entity for the performance of work on a Project, and any subcontract thereunder, shall contain the following:

- i. a requirement that the contractor or subcontractor, as applicable, perform such work in accordance with the terms hereof, and with all applicable federal, State and local laws and regulations;

- ii. a provision requiring the contractor or subcontractor, as applicable, to indemnify the Indemnitees to the same extent and on the same conditions set forth in Section 13 of this Agreement;
- iii. a provision stating that nothing in such contract or subcontract shall be deemed to create any contractual relationship between the contractor or subcontractor and the City;
- iv. a provision stating that nothing contained in such contract or subcontract shall impair the rights of the City under this Agreement;
- v. a requirement that the contractor or subcontractor, as applicable, obtain insurance upon the terms and conditions and in the amounts set forth in Section 12 and Appendix D;
- vi. a statement that the contractor or subcontractor, as applicable, has not engaged and will not engage in any unlawful discrimination based upon actual or perceived race, color, creed, religion, religious practice, political beliefs or affiliations, ancestry, national origin, sex, sexual orientation, gender, disability or other handicap, predisposing genetic characteristics, pregnancy, age, veteran or military status, marital/familial status, partnership status, arrest or conviction record, status as a victim of domestic violence, stalking or sex offenses, unemployment status, or status with regard to public assistance or any other class protected by federal, state or local law with respect to all employment decisions, including but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoffs, termination, and all other terms and conditions of employment;
- vii. a provision requiring that the contractor or subcontractor, as applicable, fully comply with all applicable prevailing wage requirements and all other applicable requirements of Section 220 of the State Labor Law; and
- viii. a provision making any subcontracting or sub-subcontracting by the contractor or subcontractor, as applicable, subject to approval by the Town.

b) Except for any contract between the Town and its employees, the Town agrees not to enter into any subcontracts for, or assignment of, the performance of its obligations under this Agreement, in whole or in part, without the prior written approval of DEP.

c) The Town agrees that it is fully responsible to DEP for the acts and omissions of its contractors and subcontractors and of persons either directly or indirectly employed by such contractors and subcontractors as it is for the acts and omissions of any person directly employed by it.

d) The Town shall not in any way be relieved of any of its responsibilities, duties and liabilities under this Agreement by virtue of entering into any contract or subcontract for the performance of any portion of any Project work.

19) The Town's Representations and Warranties

a) The Town represents and warrants that:

i. it has all requisite power and authority to execute, deliver and perform this Agreement;

ii. this Agreement has been duly authorized by all necessary action on its part, has been duly executed and delivered by the Town and, assuming due execution and delivery by the City and registration under Section 328 of the City Charter, constitutes the legal, valid and binding agreement of the Town, enforceable in accordance with its terms;

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

b) Acceptance by the Town of funds from DEP hereunder shall be deemed at such time to be a reaffirmation of the foregoing representations and warranties.

20) No Discrimination

The Town agrees that it has not and will not, in connection with the performance of this Agreement, engage in any unlawful discrimination based upon actual or perceived race, color, creed, religion, religious practice, political beliefs or affiliations, ancestry, national origin, sex, sexual orientation, gender, disability or other handicap, predisposing genetic characteristics, pregnancy, age, veteran or military status, marital/familial status, partnership status, arrest or conviction record, status as a victim of domestic violence, stalking or sex offenses, unemployment status, or status with regard to public assistance or any other class protected by federal, state or local law with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoffs, termination, and all other terms and conditions of employment.

21. Compliance with Law

The Town agrees that it will comply with all federal, State and local laws, rules and regulations in performing its obligations hereunder and in prosecuting and ensuring the completion of each Project.

22. Incorporation of Applicable Laws

The Parties agree that each and every provision of federal, State or local law, rule, regulation or order applicable to this Agreement, that is required to be included in this Agreement, is incorporated herein by this reference. Furthermore, it is hereby stipulated that every such provision is to be deemed inserted herein, and if, through mistake or otherwise, any such provision is not inserted or is not inserted in correct form, then this Agreement shall forthwith, upon the application of either Party, be amended by any such insertion so as to comply strictly with such law, rules, regulation or order and without prejudice to the rights of either Party.

23. Cooperation with Investigations

The Parties agree to cooperate fully and faithfully with any investigation, audit or inquiry relating to the subject matter of this Agreement conducted by a State, City or other municipal 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 or entity that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the 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.

24. Copyrights and Access to Information

The City shall have the right to use all written materials, documents, data and information that are gathered or prepared pursuant to the Agreement for any purpose deemed appropriate by the City. In furtherance thereof, the Town hereby grants to the City a royalty-free, worldwide, non-exclusive, perpetual, irrevocable license to use, execute, reproduce, make, modify, adapt, display, perform and create derivative works of, all written material, documents, data and information that are gathered or prepared pursuant to this Agreement, including, but not limited to, all designs, plans, specifications and models created hereunder.

25. Infringements

The Town shall defend, indemnify and hold the City, the New York City Water Board, and their respective officials and employees, harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for any damages and from the costs and expense to which the the New York City Water Board, and their respective officials and employees, may be subject or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Town, or any of its consultants, subconsultants, contractors, and/or subcontractors of any copyright, trademark, trade secrets or patent rights or any other property or personal right of any third party in the performance of this Agreement. Insofar as the facts or law relating to any claim would preclude the City,

the New York City Water Board, and their respective officials and employees, from being completely indemnified by the Town, the City, the New York City Water Board, and their respective officials and employees, shall be partially indemnified by the Town to the fullest extent permitted by law.

26. No Claim Against Officers, Agents or Employees

No claim whatsoever shall be made by either Party against any individual officer, agent or employee of the other Party for, or on account of, anything done or omitted in connection with this Agreement.

27. Waiver

Neither Party shall be deemed to have waived the observance or performance of any term or provision of this Agreement, or any default hereunder, except pursuant to a written instrument of waiver signed by such Party. No waiver of the observance or performance of any term or provision of this Agreement, or of any default hereunder, shall be deemed to be a waiver of any subsequent failure to observe or perform this Agreement, or of any subsequent default hereunder.

28. Retention of Records

a) The Town agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment under, or termination of, this Agreement, whichever is later. City, State and federal auditors and any other persons duly authorized by DEP or the Town shall have full access to and the right to examine any of said materials during said period, including ensuring that any funds administered under this Agreement were applied in accordance with the terms and conditions herein. The Parties shall have the right, at any time during normal business hours, to inspect, examine and/or make copies of any such books, records or other documents. The same right shall be afforded to representatives of the State Comptroller or the City Comptroller, or any other person duly authorized by DEP or the Town.

b) All receipts, management and disbursements of funds provided by the City pursuant to this Agreement, and the records and accounts evidencing such receipts, management and disbursements, shall be subject to audit by the State Comptroller and by the City, including the City Comptroller, pursuant to the rights and powers of such officials as conferred upon them by State and City law. The Town agrees to cooperate with any such audits.

c) The Town shall prepare and maintain its records and accounts of receipts, management and disbursements of funds under this Agreement in accordance with generally accepted government accounting standards and shall provide a summary of such records and accounts to DEP as requested.

29. Early Termination

The City may terminate this Agreement in the event that:

a) any litigation has been filed and served upon the Town that would, in DEP's reasonable opinion, materially, adversely affect the Town's ability to fulfill the obligations herein, including, using best efforts to meet the milestones in Appendix B, upon fifteen days written notice to the Town and failure by the Town to cure within such period, except in the event the DEP or City has commenced such litigation;

b) the Town has failed to use best efforts to meet, or in DEP's reasonable opinion, the Town's progress reports indicate it is likely to fail to meet, one of the milestones in Appendix B upon fifteen (15) days written notice to the Town and failure by the Town to cure within such period, except in the event the DEP has caused such delay; or

c) the City determines there has been a material default under any provision hereof and such breach has not been cured by the Town in accordance with Section 29.

30. Default

a) If either Party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than fifteen calendar days after written

notice of such default is received by the defaulting Party from the non-defaulting Party, the non-defaulting Party may, in addition to any other rights or remedies available at law or in equity, suspend its performance or terminate this Agreement by written notice of suspension or termination to the defaulting Party, specifying a date of suspension or termination which shall not be less than five business days from the date such notice is sent. However, if such default cannot reasonably be cured within fifteen calendar days, the Agreement may not be terminated if: (i) the defaulting Party commences appropriate actions to cure the default prior to the end of the fifteen day period, (ii) such actions have been approved in writing by the non-defaulting Party, and (iii) the defaulting Party thereafter diligently prosecutes the actions necessary to cure the default to the complete satisfaction of the non-defaulting Party.

b) In addition to any other right or remedy available to DEP at law or in equity, if the Town defaults in the observance or performance of any material term of this Agreement, including compliance with the milestones set forth on Appendix B hereto (which shall be deemed a default of a material term of this Agreement), and such default continues for more than fifteen calendar days after written notice of such default is received by the Town from DEP, DEP may withhold future payments to the Town. However, if such default cannot reasonably be cured within fifteen calendar days, the Agreement may not be terminated if: (i) the Town commences appropriate actions to cure the default prior to the end of the fifteen day period, (ii) such actions have been approved in writing by DEP, such approval not to be delayed, and (iii) the Town thereafter diligently prosecutes the actions necessary to cure the default to the complete satisfaction of DEP.

31. Force Majeure

The period of time during which either Party is prevented or delayed in any performance or fulfilling of any obligation under this Agreement, due to unavoidable delays caused by climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides or other catastrophes or acts of God; acts of war or of the public enemy or terrorist acts; disruption, outage or power failure caused by a utility's inability to provide service, pandemics, epidemics, outbreaks of infectious disease or any other public health emergency; other states of emergency

declared by the City, State or Federal government , quarantine restrictions, and freight embargoes; including the violating Party's reasonable responses to any of the above or other condition as to which conduct the violating Party was not the proximate cause, shall not be considered a basis for default under this Agreement. Notwithstanding the occurrence of such a *force majeure* event, in the event that DEP determines that the Town will not be able to meet the milestones in Appendix B hereto, or in the event of a prohibition by a governmental agency, DEP may terminate this Agreement in accordance with the terms herein. As a condition to the Town's right to avail itself of a *force majeure* defense, it must give DEP written notice of such claimed force majeure event not later than three (3) business days following the occurrence of such *force majeure* event.

32. Amendments

This Agreement may not be modified or amended except by an instrument in writing signed by both of the Parties and the Office of the City's Corporation Counsel.

33. No Third-Party Beneficiaries

This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties.

34. Assignment

This Agreement may not be assigned, in whole or in part, except pursuant to a written instrument signed by both of the Parties.

35. Cooperation; Obligation to Provide Documents

Both Parties acknowledge and agree that during the term of this Agreement each shall cooperate with the other and provide each other promptly with all documentation, reports, and information that may be necessary to carry out their respective obligations under this Agreement.

36. Choice of Law; Specific Performance

a) This Agreement shall be governed by and construed in accordance with the laws of the State. 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) The Parties each hereby agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. Accordingly, the Parties acknowledge and hereby agree that, unless this Agreement has been terminated in accordance with the terms set forth herein, in the event of any breach or threatened breach by the Town or DEP of any of their respective covenants or obligations set forth in this Agreement, the non-breaching Party shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the other under this Agreement.

37. Severability; Entire Agreement

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

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.

38. Counterparts

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

IN WITNESS WHEREOF, the Commissioner of the New York City Department of Environmental Protection, or his or her designee, on behalf of the City and the Town Supervisor on behalf of the Town of Newburgh, have executed this Agreement, in quadruplicate, 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 two parts to be delivered to the Town of Newburgh.

THE CITY OF NEW YORK

TOWN OF NEWBURGH

BY: _____
Name:
Title:
Department of Environmental Protection

BY: _____
Name:
Title: Town Supervisor

Dated: _____

Dated: _____

Approval as to Form and Certification as to Legal Authority

Acting Corporation Counsel of the City of New York
Dated: _____

State of New York)

ss.:

County of)

On the ____ day of _____, in the year 20__ , before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)

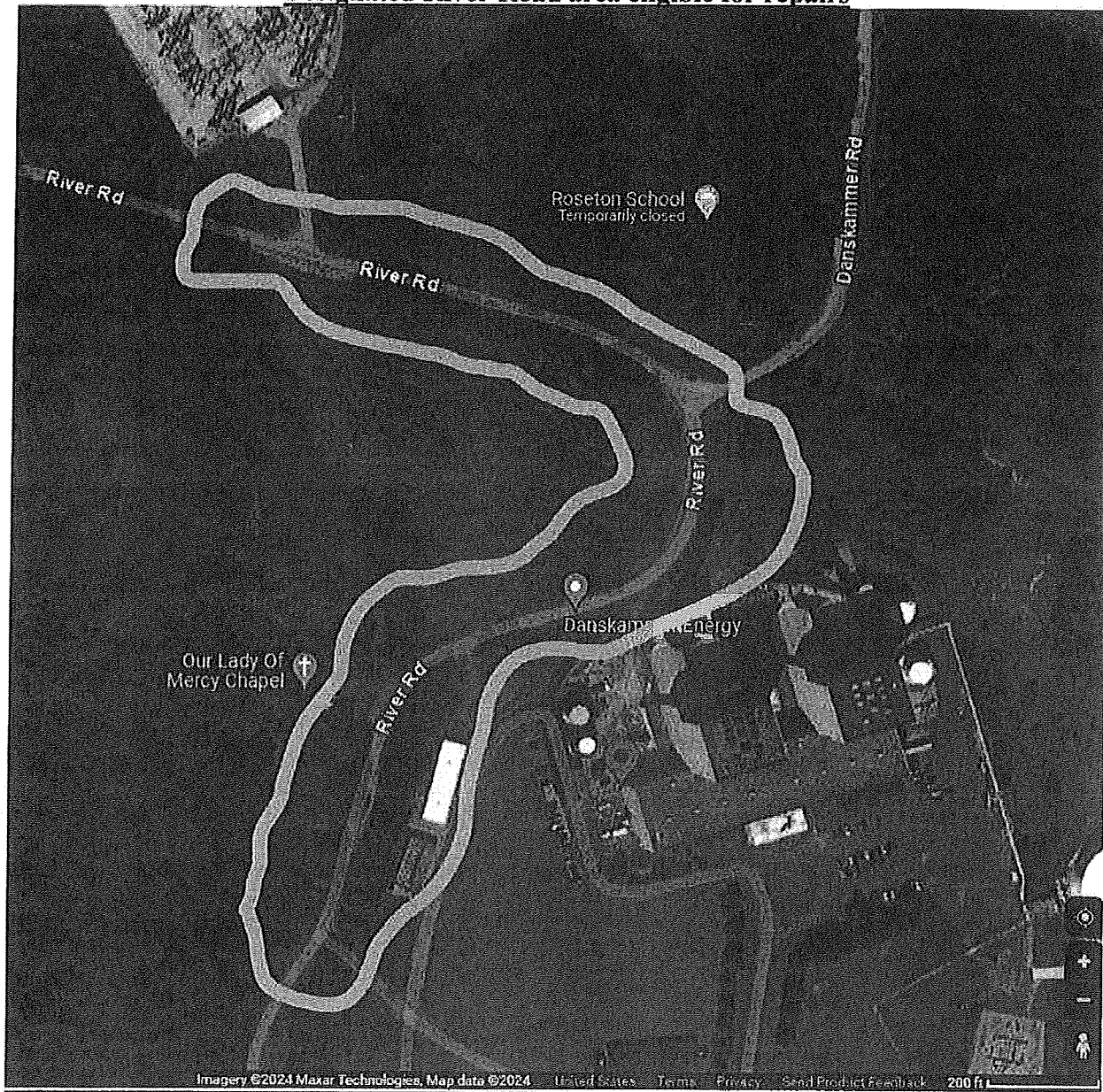
ss.:

County of)

On the ____ day of _____, in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Appendix A-1
Designated River Road area eligible for repairs



Appendix A-2
Map of Water Main Extension Properties in District (24 parcels)

Appendix A-3
Map of Water Main Extension Properties in District Extension (32 parcels)

Appendix B
Milestones

WTFP Chadwick Lake Project

Milestone	Anticipated Completion
Initiate algae monitoring and treatment contract	July 1 2024
Delivery and commissioning of mobile treatment system	August 1, 2024
Complete startup and testing and receive NYSDOH approval completed works	September 1, 2024

Water Main Extension Project

Milestone	Anticipated Completion
SEQR determination by Town	June 1, 2024
Map Plan and Report	June 1, 2024
Design Plan regulatory submission	June 15
Construction bids awarded	August 1, 2024
Water main extensions complete	November 1, 2024
Water main laterals and services complete	January 15, 2025
Overall project substantial completion	March 1, 2025

WTP Meadow Hill Road Project

Milestone	Anticipated Completion
Technical memo proposing solution and refined cost estimate	July 1, 2024
Service and supply bid for equipment	August 1, 2024
Project substantial completion	October 1, 2024

Road Repair Project

Milestone	Anticipated Completion
Interim road stabilization	Ongoing through project
Emergency contract plan	June 15, 2024
Emergency contract initiation	September 15, 2024
Permanent repair plan	DEP to provide via Delve Subcontract
Permanent repairs	720 days after completion of RWBT bypass tunnel connection

Appendix C
Budget

WTP Chadwick Lake Project

Cost	Unit	Unit Price	Qty	Expense Amount	Capital Amount
Delay Fee	per month	\$2000	6	\$12,000.00	\$0.00
Reservation Fee	per month	\$3500	12	\$42,000.00	\$0.00
Rental Fee escalation	per month	\$8451	9	\$76,059.00	\$0.00
Rental Fee early mobilization (July)	per month	\$49181	2	\$98,362.00	\$0.00
Commissioning fee	lump sum	\$6000	1	\$6,000.00	\$0.00
Decommissioning fee	lump sum	\$4800	1	\$4,800.00	\$0.00
Freight	lump sum	\$20000	1	\$20,000.00	\$0.00
GC Change Order 2022-2024	lump sum	\$50045	1	\$50,045.00	\$0.00
E Change Order 2022-2024	lump sum	\$12734	1	\$12,734.00	\$0.00
Total				\$322,000.00	\$0.00

Water Main Extension Project

Cost	Unit	Unit Price	Qty	Expense Amount	Capital Amount
Administration, Procedural, and legal costs	NTE	125,000	1	125,000	\$0.00
Financing (Bond Anticipation Note, interest, Bond counsel) Costs	NTE	500,000	1	\$500,000.00	
Map, Plan, Report for district expansion	NTE	60,000	1	\$0.00	\$60,000.00
Mobilization, Demobilization	NTE	600,000	1	\$0.00	\$600,000.00
Primary Water Mains	NTE	8,000,000	1	\$0.00	\$8,000,000.00
Domestic service connections	NTE	672,000	1	\$0.00	\$672,000.00
Rock excavation and dimensioning	NTE	2,000,000	1	\$0.00	\$2,000,000.00
Design, Survey, Permitting	NTE	2,136,000	1	\$0.00	\$2,136,000.00

Construction Management	NTE	1,929,000	1	\$0.00	\$1,929,000.00
Total				\$625,000.00	15,397,000.00

WTP Meadow Hill Road Project

Cost	Unit	Unit Price	Qty	Expense Amount	Capital Amount
Variable frequency drives	Ea	\$35,000	3	\$105,000.00	
Engineering design and oversight	Estimate	\$25,000	1	\$25,000.00	
E contract installation, startup, testing	Estimate	\$45,000	1	\$45,000.00	
Instrumentation controls, integration	Estimate	\$15,000	1	\$15,000.00	
Total				\$190,000.00	

Road Repair Project

Cost	Unit	Unit Price	Qty	Expense Amount	Capital Amount
Asphalt products, delivered	Ton	\$110.00	250	\$27,550.00	
Road Subbase, stone mixes, delivered	Ton	\$35.00	600	\$21,000.00	
Traffic Engineering allowance	NTE	\$75,000	1	\$75,000.00	
Emergency repair contract and services	NTE	\$376,500.00	1	\$376,500.00	
Permanent repair contract and services	NTE	\$1,000,000.00	1		\$1,000,000.00
Total				\$500,000.00	\$1,000,000.00

Appendix D
Insurance Requirements

Note: All certificate(s) of insurance submitted pursuant to Section 8 of Part III of this Appendix D must be accompanied by a Certification of Insurance Broker or Agent in the form at the end of this Appendix D and include the following information:

- For each insurance policy, the name and NAIC number of issuing company, number of policy, and effective dates;
- Policy limits consistent with the requirements listed below;
- Additional insureds or loss payees consistent with the requirements listed below; and
- The name of this Agreement and the number assigned to it by the City (in the "Description of Operations" field).

All such certificate(s) of insurance (including Certification(s) of Insurance Broker or Agent, where required) must be sent to the New York City Department of Environmental Protection, as follows:

For insurance required from the Town, to:

NYCDEP
Office of the ACCO
59-17 Junction Blvd., 17th Floor
Flushing, New York 11373

For insurance required from the Town's contractors, to:

NYCDEP
Bureau of Water Supply
ATTN: Project Manager (Bill Richardson)
PO Box 385
Grahamsville, New York 12740

I. **Specific Types of Insurance Coverage Required to be Maintained by the Town of Newburgh (Agreement, Section 11):**

- Workers' Compensation Statutory per New York State Law without regard to jurisdiction (See Part III(1), below)
- Employers' Liability Statutory (See Part III(2), below)
- Disability Benefits Insurance Statutory (See Part III(1), below)

(See Part III(4), below)

- Professional Liability Insurance (for all professional services contracts) \$1,000,000 per claim (See Part III(5), below)
- Builders' Risk (for construction contracts only; may be maintained by Town or its Contractor) 100% of the value of the Contract Work City should be named as "loss payee as its interests may appear" and additional insured (See Part III(6), below)

III. General Provisions Applicable to Insurance Coverage:

In each case below, the reference to "Contractor" shall mean the party required to maintain insurance coverage, and the reference to "Contract" shall mean the contract pursuant to which the contractor is providing services to the Town pursuant to this Agreement, or, in the case of the Town's obligation to provide insurance, this Agreement itself.

Section 1 Worker's Compensation and Disability Benefits Insurance:

Before performing any work under the Contract, the Contractor shall procure Worker's Compensation and Disability Benefits Insurance in accord with the laws of the State of New York on behalf of all employees who are to provide labor or services under the Contract.

Section 2 Employer's Liability Insurance:

Before performing any work under the Contract, the Contractor shall procure Employer's Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his or her employment under the Contract.

Section 3 Commercial General Liability:

The Contractor shall provide Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, and personal and advertising injury which may arise from any of the operations under the Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office ("ISO") Form CG 0001. Such insurance shall be "occurrence" based rather than "claims-made." No Commercial Liability Insurance policy shall contain exclusions that are not included in ISO Form CG 00 01 (whether by exception, exclusion, endorsement, script, or other modification) unless approved in writing by DEP, including but not limited to exclusions of any of the following attributes: (i) contractual liability insuring the contractual obligations of the insured; (ii) employer's liability coverage for liability

assumed by the Contractor under an "insured contract"; (iii) coverage for claims arising under New York Labor Law; (iv) independent contractors; (v) explosion, collapse and underground (XCU); and (vi) the applicability of Commercial General Liability Insurance coverage to the City, including its officials and employees, as Additional Insured in respect of liability arising out of claims against the Additional Insured by employees of Contractor. Such insurance shall contain a "per project" aggregate limit, as specified above, that applies separately to operations under the Contract. Such Commercial General Liability Insurance shall name the City as an Additional Insured. Coverage for the City and the New York City Water Board shall specifically include their respective officials and employees, be at least as broad as the latest edition of ISO Form CG 20 10 (for the Contractor) or 20 26 (for the Town) and provide completed operations coverage at least as broad as the latest edition of ISO Form CG 20 37. ISO Form CG 20 37 shall be maintained at least three years after completion of the Contract work. Additional insured endorsements provided by any entity other than the Town of Newburgh shall not include a privity of contract requirement.

Section 4 Commercial Automobile Liability:

(a) The Contractor will provide Commercial Automobile Liability Insurance covering liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with the Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, the Commercial Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

Section 5 Professional Liability Insurance

(a) If professional services are provided pursuant to the Contract, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under the Contract in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall cover the liability assumed by the Contractor under the Contract arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

(b) All subcontractors of the Contractor providing professional services under the Contractor for which Professional Liability Insurance is reasonably commercially available shall also maintain Professional Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to DEP, at the time of its request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to DEP.

(c) Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 6 Builders Risk Insurance:

The Town or its construction contractor shall procure and maintain Builders Risk Insurance on special causes of loss and completed value forms through completion of construction. Unless waived by DEP, such insurance shall include coverage, without limitation, for terrorism, windstorm (including named windstorm), water (other than flood-related), storm surge, and earth movement. It shall include coverage for collapse in the course of construction and ordinance and law, including coverage for loss to the undamaged portion of the building, demolition cost coverage, and increased cost of construction coverage. Such insurance shall cover, without limitation, (a) all buildings and/or structures involved in the Contract work, as well as temporary structures at the work site, and (b) any property that is intended to become permanent part of such building or structure, whether such property is on the work site, in transit or in temporary storage. Policies shall name the Town and/or its construction contractor as Named Insured and list the City as both an Additional Insured and a Loss Payee as its interest may appear.

Section 7 Miscellaneous Requirements for Insurance Coverage and Policies

(a) All required insurance policies shall be procured from companies that may lawfully issue such policies and have an A.M. Best rating of at least A- /VII, Standard & Poor's rating of at least A, a Fitch Ratings rating of at least A-, a Moody's Investors Service rating of at least A3, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Office of the New York City Corporation Counsel, unless prior written approval is obtained from the Office of the New York City Corporation Counsel.

(b) All insurance policies (except professional liability insurance, workers' compensation/employer's liability insurance, and disability benefits insurance) shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

(c) The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

(d) There shall be no self-insurance program with regard to any insurance required under this Agreement unless approved in writing by DEP. Any such self-insurance program shall provide the City and the New York City Water Board, including their respective officials and employees, with all rights that would be provided by traditional insurance required under this Appendix D, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies.

(e) The limits of coverage for all types of insurance for the City and the New York City Water Board, including their respective officials and employees, required under this Agreement shall be the greater of (i) the minimum limits set forth above in this Appendix D or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

(f) The Contractor may satisfy its insurance obligations under this Agreement through

primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(g) Unless waived by DEP, policies of insurance provided pursuant to this Agreement, other than professional liability insurance and disability benefits insurance include a waiver of the right of subrogation with respect to the City of New York, including its officials and employees.

Section 8 Proof of Insurance

(a) For all types of insurance required by this Agreement, the Contractor shall file proof of insurance in accordance with this Section 8 within ten (10) days of the Effective Date.

(b) For policies provided pursuant to Sections 1 and 2, above, the Contractor shall submit one of the following forms: C-105.2 Certificate of Workers' Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to DEP. ACORD forms are not acceptable.

(c) For policies provided pursuant to all of this Appendix D other than Sections 1 and 2, above, the Contractor shall submit one or more Certificates of Insurance on forms acceptable to DEP. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to Section 3, that the City and the New York City Water Board, including their respective officials and employees, is an Additional Insured with coverage at least as broad as the most recent edition of ISO Forms CG 20 10 or CG 20 26, and CG 20 37, as applicable; (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number); and (d) the number assigned to this Agreement by the City. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker or Agent" in the form contained in this Appendix D or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

(d) Documentation confirming renewals of insurance shall be submitted to DEP prior to the expiration date of coverage of policies required under the Contract. Such proofs of insurance shall comply with the requirements of subsections (b) and (c), immediately above.

(e) The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Agreement upon the demand for such policy by DEP or the Office of the New York City Corporation Counsel.

Section 9 Operations of the Contractor:

(a) The Contractor shall not commence the Contract work unless and until all required certificates have been submitted to and accepted by DEP. Acceptance of a certificate does not

excuse the Contractor from securing insurance consistent with all provisions of the Contract or of any liability arising from its failure to do so.

(b) The Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by the Contract and shall be authorized to perform Contract work only during the effective period of all required coverage.

(c) In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Contract work, and shall not recommence work until authorized in writing to do so. Contract time shall continue to run during such periods and no extensions of time will be granted. The Contractor may be declared to be in default for failure to maintain required insurance.

(d) In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Appendix D shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to DEP and (if the Contractor in question is the Town itself) to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Appendix D.

(e) Whenever notice of loss, damage, occurrence, accident, claim or suit to an insurance company is required under a policy maintained in accordance with this Appendix D (whether on behalf of the Contractor as Named Insured or the City or the New York City Water Board, including their respective officials and employees, as Additional Insured), the Contractor shall provide timely notice thereof. Such notice shall comply with all of the following requirements:

- (i) The Contractor shall send written notice of any such event to all insurance carriers that issued potentially responsive policies (including commercial general liability insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) days after such event and again no later than twenty (20) days after the initiation of any claim and/or suit resulting therefrom. Such notice shall contain the following information: the number of the insurance policy, the name of the Named Insured, the date and location of the incident, and the identity of the persons injured or property damaged. For any policy on which the City, and/or the New York City Water Board, including their respective officials and employees, is an Additional Insured and/or Loss Payee, such notice shall expressly specify that "this notice is being given on behalf of the City of New York and the New York City Water Board, including their respective officials and employees, as Additional Insured [and Loss Payee, as applicable], as well as the Named Insured."

- (ii) Whenever such notice is sent under a policy on which the City, and/or the New York City Water Board, together with their respective officials and employees, is an Additional Insured, the Contractor shall provide copies of the notice to the Comptroller, DEP and the City Corporation Counsel. The copy to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York 10007. The copy to DEP shall be sent to the address set forth at the beginning of this Appendix D. The copy to the City Corporation Counsel shall be sent to Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

- (iii) If the Contractor fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Contractor shall indemnify the City and the New York City Water Board, together with their respective officials and employees, for all losses, judgments, settlements, and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

(1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

(2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

**CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT**

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

Sworn to before me this

_____ day of _____, 20__

NOTARY PUBLIC

