

**FINAL GENERIC ENVIRONMENTAL IMPACT STATEMENT (FGEIS)  
DOLSONTOWN CORRIDOR  
Town of Wawayanda, Orange County, New York**

**Lead Agency:** Planning Board, Town of Wawayanda

**Lead Agency Contact:** John Razzano, Chairperson  
80 Ridgebury Hill Road  
Slate Hill, NY 10973  
(845) 355-5700

**APPENDIX J: STIPULATION OF  
SETTLEMENT BETWEEN MIDDLETOWN  
AND WAWAYANDA**

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND DEPARTMENT

-----X  
IN THE MATTER OF THE PETITION  
OF  
THE COMMON COUNCIL OF THE CITY OF  
MIDDLETOWN, ORANGE COUNTY, NEW YORK, :

Petitioner,

-against-

Final  
STIPULATION

THE TOWN BOARD OF THE TOWN OF  
WAWAYANDA, ORANGE COUNTY, NEW YORK :  
Pursuant to Article 17 of the  
General Municipal Law of the State  
of New York,

Respondent.

-----X  
WHEREAS, a petition pursuant to Article 17 of the  
General Municipal Law was heretofore presented to the Town Board  
of the Town of Wawayanda and to the Common Council of the City  
of Middletown for the annexation of certain property situate in  
the Town of Wawayanda to the City of Middletown, said property  
being as described on Exhibit "A" annexed hereto and made a part  
hereof; and

WHEREAS, a joint hearing of the Town Board of the  
Town of Wawayanda and the Common Council of the City of  
Middletown was duly held on said petition for annexation on the  
6th day of February, 1986; and

WHEREAS, the Town Board of the Town of Wawayanda by  
resolution, findings and order dated the 24th day of April, 1986  
did deny the petition for annexation; and

WHEREAS, the Common Council of the City of Middletown  
did, by resolution, findings and order did grant and consent to  
the petition for the annexation of the said property to the City

of Middletown; and

WHEREAS, by notice of petition and petition dated the 6th day of August, 1985 a proceeding was commenced pursuant to Article 17 of the General Municipal Law before the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, seeking a determination that the proposed annexation was in the overall public interest as required by the statutes applicable thereto; and

WHEREAS, the parties hereto have agreed to settle and resolve the disputes between them upon certain terms and conditions.

NOW, THEREFORE, it is hereby stipulated, consented and agreed by and between the parties hereto and their respective counsel as follows:

1. The Town Board of the Town of Wawayanda does hereby consent, acknowledge and agree that it is in the overall public interest for the Town Board of the Town of Wawayanda to consent to the annexation of the territory as described on Exhibit "A" annexed hereto and made a part hereof and situated in the Town of Wawayanda to the City of Middletown, Orange County, New York, excluding only that portion thereof as described on Exhibit "B" annexed hereto and made a part hereof, subject to the terms and provisions of this stipulation hereinafter set forth.

2. The City of Middletown does hereby agree to allocate, on a permanent basis to the Town of Wawayanda, 200,000 gallons per day of water and 200,000 gallons per day of sewer service and these shall be taken into account in all planning by the City of Middletown as to its future needs and requirements.

The said allocation of water and sewer service is to be limited only by such restrictions as the City of Middletown shall impose hereafter on its own citizens, residents, inhabitants, water and sewer users for the use of the water and sewage facilities of the City of Middletown, including, but not limited to, such emergency rules and regulations as may be promulgated hereafter, it being the intention of the parties hereto, that the allocation of water and allocation of sewage shall be upon the same terms as to use as the City of Middletown now or may hereafter impose upon its own residents. Emergency limitations are to be based upon the actual usage by the Town of Wawayanda as of the date of implementation of the same and not based upon the quantity of water and sewer above allocated.

3. The water and sewage usage bills shall for the usage of such water and sewage up to 200,000 gallons per day of each, be billed by the City of Middletown to such water and sewer districts as may be hereafter created in accordance with the appropriate statutes applicable thereto by the Town of Wawayanda for the purpose of distributing such water and sewage services which water and sewer district shall pay such charges to the City of Middletown on a timely basis.

4. The rates and charges by the City of Middletown to the water district and/or sewer district to be created by the Town of Wawayanda as above referred to shall be the rates and charges charged by the City of Middletown to its own residents and inhabitants as the same now are charged or as may hereinafter be charged, including, but not limited to, water and sewage usage charges, hook-up fees and charges, and such other

charges and expenses as may be applicable and appropriate. The said water and/or sewer districts shall have the right and privilege of charging to its residents and inhabitants such amounts as it deems appropriate. Notwithstanding the foregoing, the said water and/or sewer district shall not be permitted to charge a rate for sewer services for the users thereof which is greater than the amount charged by the City of Middletown to similar users or as in any fashion to violate the terms and provisions of §35.2140 of the Construction Grants Manual applicable to the grant made by the Federal Government to the City of Middletown, a copy of the said provisions being annexed hereto as Exhibit "C" and made a part hereof.

5. In the transmission, distribution and hook-up of the water and sewer to be supplied to the water district and/or sewage district all rules, regulations, and requirements of the City of Middletown as are imposed by it upon its own residents and water and sewage users and in accordance with good engineering practices and procedures shall be applicable. Notwithstanding the foregoing, the rules pertaining to the use of plumbers licensed by the City of Middletown in the performance of work, labor and services in the hook-up of water and sewage shall not be applicable but, in lieu thereof, the parties hereto shall agree upon a procedure wherein and whereby the Town of Wawayanda and/or the water and sewer districts to be formed as provided herein shall certify that all hook-ups, lines, pipes, etc. are in conformance with the rules, regulations and ordinances of the City of Middletown and the parties shall agree upon a procedure for the enforcement of the

regulations referred to herein. The City of Middletown plumbing inspector shall have the right, without charge to the Town of Wawayanda, the water or sewer districts, or their residents, to inspect such water and sewer hook-ups.

6. It is understood and agreed that any capital expenditure for the running of water and sewer pipes and transmission lines through and into the water and sewer district to be formed shall be at the sole cost and expense of the said water district and sewer district. Further, the said water district and sewer district shall be solely and only responsible for the maintenance of the same and cost incurred with regard to such maintenance. The Town of Wawayanda shall agree to hold the City of Middletown free and harmless from any and all liability of or concerning the maintenance, use and operation of the fire hydrants to be constructed by the Town of Wawayanda and any and all matters pertaining thereto except as to claims made by third parties, which arise from alleged lack of pressure or quantity of water, the source of which claim occurs prior to the entry of the water supply pipes into the Town of Wawayanda.


7. The 200,000 gallon allocation of water and of sewage shall not in any way effect, impair nor reduce the right of the Town of Wawayanda to discharge up to 1,000,000 gallons per day of treated effluent through the outfall line maintained by the City of Middletown pursuant to prior separate agreement.

8. The City of Middletown agrees that it will not, for a period of three years, subject to the statutes applicable thereto, entertain any annexation petitions filed by any resident of the Town of Wawayanda.


9. That the parties hereto do each hereby agree to, with due diligence, to take such steps as may be reasonably required to effectuate the terms and provisions of this stipulation and the intentions of the parties with respect thereto, including, but not limited to, enter into such mutual agreements concerning engineering standards, practices and procedures, lining location, and similar matters so as not to frustrate the agreement herein embodied.

10. That the terms and provisions of this stipulation have received the approval and consent of the same by the Town Board of the Town of Wawayanda and the Common Council of the City of Middletown at meetings duly called and held in accordance with law, and as soon as practical the parties by their duly authorized representatives shall execute duplicate originals of the stipulation.

IN WITNESS WHEREOF, the parties hereto have entered into this stipulation this 14 day of SEPTEMBER, 1989.

  
MICHAEL R. GOTTLIEB, ESQ.  
Special Counsel to the City  
of Middletown

McGUIRK, LEVINSON, ZECCOLA,  
SEAMAN, REINEKE & ORNSTEIN

By:   
STEPHEN L. REINEKE, ESQ.  
Attorneys for the Town of  
Wawayanda

The parties hereto by their respective authorized officials do hereby consent and agree to the foregoing stipulation and

represent and state that they are authorized to execute this stipulation on behalf of the respective municipal corporations.

THE CITY OF MIDDLETOWN

By: Daniel Johnson  
Daniel Johnson, Mayor

THE TOWN BOARD OF THE TOWN OF WAWAYANDA

By: C. Edgar Flynn  
Supervisor

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

On the 20<sup>th</sup> day of OCTOBER, 1989, before me personally came DANIEL F. JOHNSON, to me known, who, being by me duly sworn, did depose and say that he resides at 64 Wallkill Avenue, Middletown, New York, deponent is the Mayor of the City of Middletown, the corporation described in and which executed the foregoing instrument; deponent knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Common Council of said corporation; deponent signed deponent's name thereto by like order.

THOMAS G. FARRELL  
Notary Public, State of New York  
# 1168558  
Qualified in Orange County  
Commission Expires December 31, 1992

Thomas G. Farrell

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

On the 16<sup>th</sup> day of FEBRUARY, 1990, before me personally came C. EDGAR FLYNN, to me known to be the SUPERVISOR of the Town of Wawayanda, and who, by me being duly sworn did depose and say that he resides at STATE HILL, PO BOX 106,, New York, deponent is the SUPERVISOR of the Town Board of the Town of Wawayanda, the body described in and who executed the foregoing instrument; deponent was authorized to sign such instrument and has done so by order of the Town Board of the Town of Wawayanda.

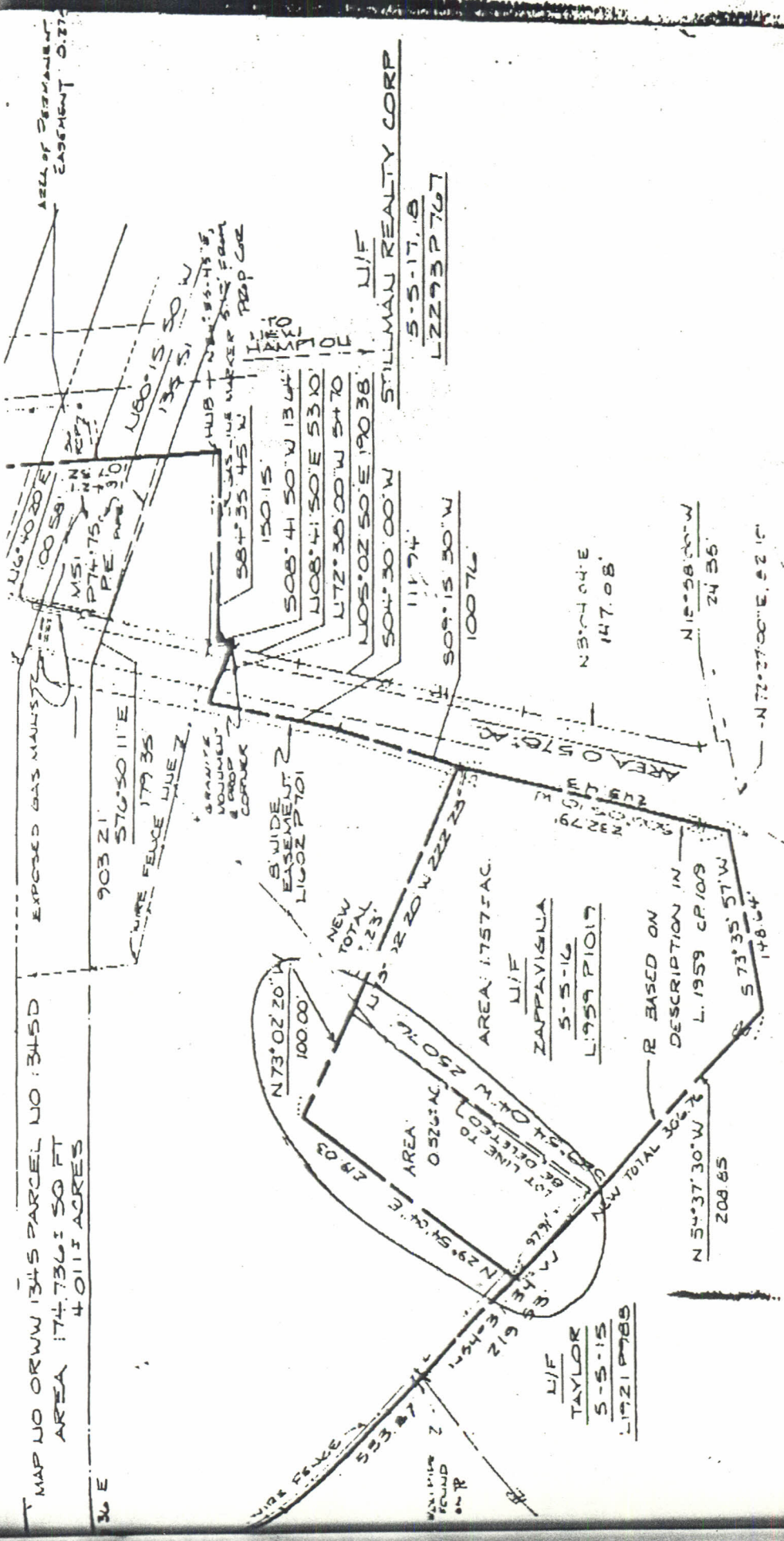
Thomas G. Farrell

THOMAS G. FARRELL  
Notary Public, State of New York  
# 1168558  
Qualified in Orange County  
Commission Expires December 31, 1992



PARCEL ONE - BEGINNING at a concrete Highway Monument set on the Westerly bounds of State Route #17 M, leading from Middletown to Bradleys Corners, said Monument being the Northerly line of lands of Smith, and runs from thence along the Westerly bounds of Route #17 M, North 0° 35' West 421.0 feet to a monument, thence still along the same, North 0° 47' West 224.47 feet to a monument, thence leaving said Highway and along lands of Meola, North 69° 58' West 324.35 feet to an iron, thence along the same and lands of Skateland Inc. North 50° 54' West 375.2 feet to an iron, thence still along the same, North 25° 56' East 147.0 feet to an iron set in the line between the City of Middletown and the Town of Wawayanda, thence along said line, North 83° 36' West 1760.1 feet to a stake set in a corner of stone walls, thence still along the same, South 38° 16' West 724.91 feet to an iron set in a corner of stone walls, thence still along the same North 41° 03' West 1332.77 feet to a stake set on the Southeast bounds of the Middletown-Unionville Railroad; thence along the bounds of said Railroad, South 57° 51' West 1332.77 feet to a stake set on the Northeast bounds of the Uhlig Road, thence along the bounds of said Road South 24° 23' East 330.0 feet to a point, thence still along the same, South 18° 14' East 200.0 feet to an iron, thence leaving Uhlig Road and along lands of White, and following a stone wall, North 61° 18' East 203.0 feet to an iron set in a corner of stone walls, thence still along the same, South 40° 57' East 256.0 feet to an iron, thence still along the same, North 83° 53' East 221.0 feet to an ash tree, thence still along the same, South 5° 11' West 556.37 feet to a stake set at the end of a stone wall, thence still along the same, South 69° 55' West 144.0 feet to an iron set on the Northeast bounds of the Uhlig Road, thence along the bounds of said Road, South 16° 34' East 421.72 feet to a stake at the most westerly corner of lands of Hunter, thence along said lands and following a wire fence and lands of others; North 69° 28' East 1955.28 feet to a corner of stone walls, thence along lands of Schoorel and following a stone wall, South 40° 31' East 25.45 feet to an iron set at the most westerly corner of lands of Polak, thence along said lands, North 47° 37' East 741.95 feet to an iron, thence still along the same and lands of Taylor and following a wire fence, South 57° 20' East 556.86 feet to an iron, thence still along lands of Taylor and following a wire fence South 43° 29' East 795.03 feet to a stake at the most westerly corner of lands of Bradleys Restaurant Inc. thence along said lands, North 41° 22' East 250.76 feet to a stake, thence still along the same, South 62° 30' East 221.77 feet to a stake set on the Westerly bounds of the Old State Road, thence along the same North 18° 32' East 212.25 feet to an iron, thence along the abandoned portion of said old Road and along lands of Smith South 31° 11' East 206.73 feet to the place of beginning and containing 120.321 Acres of land.

ALL that certain plot, piece or parcel of land, lying, situate and being in the Town of Wawayanda, County of Orange, State of New York, and being an area located in the southwesterly corner of parcel identified on the tax maps as Section 4, Block 1, Lot 51, and adjoining that property designated on the tax maps of the Town of Wawayanda as Section 5, Block 5, Lot 16, and being more particularly shown as the circled area of the map attached hereto as page 2.



MAP NO ORWW 1345 PARCEL NO: 345D  
 AREA 174.736 ± 50 FT  
 4.011 ± ACRES

AREA OF PERMANENT  
 EASEMENT 0.27

36 E

903 21  
 576°50'11"E  
 CURVE FENCE LINE

GRAVITY  
 VOLUME  
 & PROOP  
 CORNER

8' WIDE  
 EASEMENT  
 L1602 P101

NEW  
 TOTAL  
 1.23

AREA: 0.526 AC  
 L1602 P101

AREA: 1757 ± AC  
 L1602 P101

AREA: 0.526 AC  
 L1602 P101

RE BASED ON  
 DESCRIPTION IN  
 L. 1959 CP 109

L1721 P785  
 TAYLOR  
 5-5-15

L1959 P1017  
 ZAPPALISINA  
 5-5-16

STILLMAN REALTY CORP  
 5-5-17, B  
 L2293 P767

L101

504°30'00"W  
 111.74

509°15'30"W  
 100.76

130.15

508°41'50"W 13.44  
 108°41'50"E 53.10  
 172°36'00"W 54.70  
 105°02'50"E 190.38

137.51

160°15'30"W

58°43'45"W

100.59

146°40'30"E

100.59

137.51

160°15'30"W

137.51

160°15'30"W

137.51

160°15'30"W

137.51

160°15'30"W

137.51

U.S. ROUTE 6  
 U.S. COUNTY OF ORANGE  
 LVS 207 DISCULTUATION  
 MAP 678, SH 95  
 OFFICIAL SURVEY RECORD  
 MARCH 27, 1988

POINT 18815

U.S. ROUTE 6

U.S. COUNTY OF ORANGE

LVS 207 DISCULTUATION

MAP 678, SH 95

OFFICIAL SURVEY RECORD

MARCH 27, 1988

needs of residential, commercial, industrial, and other users) as determined on the date of the approval of the Step 3 grant. Grant assistance awarded after September 30, 1990 shall be limited to the needs existing on September 30, 1990.

(d) For any application with capacity in excess of that provided by this section:

(1) All incremental costs shall be paid by the applicant. Incremental costs include all costs which would not have been incurred but for the additional excess capacity, i.e., any cost in addition to the most cost-effective alternative with eligible reserve capacity described under paragraphs (a) and (b) of this section.

(2) It must be determined that the actual treatment works to be built meets the requirements of the National Environmental Policy Act and all applicable laws and regulations.

(3) The Regional Administrator shall approve the plans, specifications and estimates for the actual treatment works.

(4) The grantee shall assure the Regional Administrator satisfactorily that it has assessed the costs and financial impacts of the actual treatment works and has the capability to finance and manage their construction and operation.

(5) The grantee must implement a user charge system which applies to the entire service area of the grantee.

(6) The grantee shall execute appropriate grant conditions or releases protecting the Federal Government from any claim for any of the costs of construction due to the additional capacity.

#### § 35.2125 Treatment of wastewater from industrial users.

(a) Grant assistance shall not be provided for a project unless the project is included in a complete waste treatment system and the principal purpose of both the project and the system is for the treatment of domestic wastewater of the entire community, area, region or district concerned.

(b) Allowable project costs do not include:

(1) Costs of interceptor or collector sewers constructed exclusively, or almost exclusively, to serve industrial users; or

(2) Costs for control or removal of pollutants in wastewater introduced into the treatment works by industrial users, unless the applicant is required to remove such pollutants introduced from nonindustrial users.

#### § 35.2127 Federal facilities.

Grant assistance shall not be provided for costs to transport or treat wastewater produced by a facility that is owned and operated by the Federal government which contributes more than 250,000 gallons per day or five percent of the design flow of the complete waste treatment system, whichever is less.

(Approved by the Office of Management and Budget under control number 2040-0027)

#### § 35.2130 Sewer use ordinance.

The sewer use ordinance (see also §§ 35.2122 and 35.2208) or other legally binding document shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance or other legally binding document shall also require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works; cause violation of effluent or water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

(Approved by the Office of Management and Budget under control number 2040-0027)

#### § 35.2140 User charge system.

The user charge system (see §§ 35.2122 and 35.2208) must be designed to produce adequate revenues required for operation and maintenance (including replacement). It shall provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for such increased cost. The user charge system shall be based on either actual use under paragraph (a) of this section, ad valorem taxes under paragraph (b) of this section, or a combination of the two.

(a) *User charge system based on actual use.* A grantee's user charge system based on actual use (or

estimated use) of wastewater treatment services shall provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment works within the grantee's service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(b) *User charge system based on ad valorem taxes.* A grantee's user charge system which is based on ad valorem taxes may be approved if:

(1) On December 27, 1977, the grantee had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment works within the grantee's service area and the grantee has continued to use that system;

(2) The ad valorem user charge system distributes the operation and maintenance (including replacement) costs for all treatment works in the grantee's jurisdiction to the residential and small non-residential user class (including at the grantee's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works), in proportion to the use of the treatment works by this class; and

(3) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance (including replacement) of the treatment works based upon charges for actual use.

(c) *Notification.* Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Regional Administrator), of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(d) *Financial management system.* Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis

for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(e) *Charges for operation and maintenance for extraneous flows.* The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e., infiltration/inflow) be distributed among all users based upon either of the following:

(1) In the same manner that it distributes the costs for their actual use, or

(2) Under a system which uses one or any combination of the following factors on a reasonable basis:

- (i) Flow volume of the users;
- (ii) Land area of the users;
- (iii) Number of hookups or discharges of the users;
- (iv) Property valuation of the users, if the grantee has an approved user charge system based on ad valorem taxes.

(f) After completion of building a project, revenue from the project (e.g., sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased under the grant agreement) shall be used to offset the costs of operation and maintenance. The grantee shall proportionately reduce all user charges.

(g) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt user charge systems in accordance with this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.

(h) *Inconsistent agreements.* The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of section 204(b)(1)(A) of the Act and this section.

(Approved by the Office of Management and Budget under control number 2040-0027)

#### § 35.2152 Federal share.

(a) *General.* The Federal share for each project shall be based on the sum of the total Step 3 allowable costs and the allowance established in the grant agreement under Appendix B. Except as provided elsewhere in this section, the Federal share shall be:

(1) 75 percent for grant assistance awarded before October 1, 1984;

(2) 55 percent for grant assistance awarded after September 30, 1984, except as provided in paragraph (a)(3) of this section; and

(3) Subject to paragraph (c) of this section, 75 percent for grant assistance awarded after September 30, 1984, for sequential phases or segments of a primary, secondary, or advanced treatment facility or its interceptors, or infiltration/inflow correction provided:

(i) The treatment works being phased or segmented is described in a facilities plan approved by the Regional Administrator before October 1, 1984;

(ii) The Step 3 grant for the initial phase or segment of the treatment works described in (a)(3)(i) of this section is awarded prior to October 1, 1984; and

(iii) The phase or segment that receives 75 percent funding is necessary to (A) make a phase or segment previously funded by EPA operational and comply with the enforceable requirements of the Act, or (B) complete the treatment works referenced in (a)(3)(i) of this section provided that all phases or segments previously funded by EPA are operational and comply with the enforceable requirements of the Act.

(b) *Innovative and alternative technology.* In accordance with § 35.2032, the Federal share for eligible treatment works or unit processes and techniques that the Regional Administrator determines meet the definition of innovative or alternative technology shall be 20 percent greater than the Federal share under paragraph (a) or (c) of this section, but in no event shall the total Federal share be greater than 85 percent. This increased Federal share depends on the availability of funds from the reserve under § 35.2020. The proportional State contribution to the non-Federal share of building costs for I/A projects must be the same as or greater than the proportional State contribution (if any) to the non-Federal share of eligible building costs for all treatment works which receive 75 or 55 percent grants or such other Federal share under paragraph (c) of this section in the State.

(c) *Uniform lower Federal share.* (1) Except as provided in § 35.2032 (c) and (d) of this section, the Governor of a State may request the Regional Administrator's approval to revise uniformly throughout the State the Federal share of grant assistance for all future projects. The revised Federal share must apply to all needs categories (see § 35.2015(b)(2)).

(2) After EPA awards grant assistance for a project, the Federal share shall be the same for any grant increase that is within the scope of the project.

(3) The uniform lower Federal share established by the Governor does not apply to projects funded under § 35.2024(b).

[35.2152(c)(3) added by 50 FR 45894, November 4, 1985]

(d) *Training facilities.* The Federal share of treatment works required to train and upgrade waste treatment works operations and maintenance personnel may be up to 100 percent of the allowable cost of the project.

(1) Where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each State. The Federal funds awarded to any State under section 109(b) for all training facilities shall not exceed \$500,000.

(2) Any grantee who received a grant under section 109(b) before December 27, 1977, may have the grant increased up to \$500,000 by funds made available under the Act, not to exceed 100 percent of the allowable costs.

(Approved by the Office of Management and Budget under control number 2040-0027)

#### § 35.2200 Grant conditions.

In addition to the EPA General Grant Conditions (Part 30 of this subchapter), each treatment works grant shall be subject to the conditions under §§ 35.2202 through 35.2218.

#### § 35.2202 Step 2-3 projects.

(a) Prior to initiating action to acquire eligible real property, a Step 2-3 grantee shall submit for Regional Administrator review and written approval the information required under § 35.2040(b)(7).

(b) Before initiating procurement action for the building of the project, a Step 2-3 grantee shall submit for the Regional Administrator's review and written approval the information required under §§ 35.2040(b)(5) and (6), 35.2106, 35.2107, 35.2130 and 35.2140.

#### § 35.2204 Project changes.

(a) Minor changes in the project work that are consistent with the objectives of the project and within the scope of the grant agreement do not require the execution of a formal grant amendment before the grantee's implementation of the change. However, the amount of the funding provided by the grant agreement may only be increased by a formal grant amendment.

(b) The grantee must receive from the Regional Administrator a formal grant amendment before implementing changes which:



**COPY**

RECEIVED

NOV 04 2021

City Clerk  
City of Middletown

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
CITY OF MIDDLETOWN, NEW YORK,

Plaintiff.

**STIPULATION OF  
SETTLEMENT**

-against-

Index # 2017-002094

TOWN OF WAWAYANDA, NEW YORK.

Assigned Judge:  
Hon. Catherine Bartlett

Defendant.  
-----X

IT IS HEREBY STIPULATED by and between the Plaintiff, City of Middletown ("Middletown" or "City") and the Defendant, the Town of Wawayanda ("Wawayanda" or "Town") that the above captioned action be dismissed with prejudice, without costs, interest or disbursements by any litigant against another, on the following terms:

WHEREAS, the parties entered into a Stipulation, which was fully executed on February 16, 1990 ("1990 Stipulation"), which included provisions governing Middletown's delivery of water and sewer service to users in Wawayanda, and

WHEREAS, Middletown filed this action against Wawayanda, alleging non-compliance with the 1990 Stipulation:

WHEREAS the parties desire to fully and finally settle this action and any and all claims that Middletown has against Wawayanda in connection with the 1990 Stipulation.

NOW THEREFORE, in consideration of the mutual promises contained in this Stipulation of Settlement and for other good and valuable consideration, the receipt and sufficient of which is hereby acknowledge, the parties agree as follows:

1. This Stipulation of Settlement shall modify the 1990 Stipulation. If any

provision of this Stipulation of Settlement shall conflict with any provision of the 1990 Stipulation, the provisions of this Stipulation of Settlement shall control.

2. The parties agree that water and sewer hookup fees for Wawayanda properties shall be the same as those which are assessed for in-City properties, unless, however, if a Wawayanda property is connected only to the Middletown sewer system or only to the Middletown water system (as opposed to both the sewer and water systems), the charge assessed to such Wawayanda user shall be one-half of the Middletown charge.

3. The parties acknowledge that the proposed amended Section 193-52 of the Middletown City Code governs the calculation of hookup fees for residential and mixed-use construction and change of usage in the City and the Town.

4. The parties further acknowledge that the proposed amended Section 193-53 of the Middletown City Code governs the calculation for nonresidential construction, change of usage and significantly increased consumption of water and sewer services in the City and the Town.

5. The parties further acknowledge that Sections 193-55 and 193-56 of the City Code govern the timing of the payment of these hookup fees and the use of monies received by the City, except that the hookup fees for any property in the Town must be paid prior to issuance of a certificate of occupancy.

6. The parties agree that Middletown shall utilize the figures and calculations in proposed amended Sections 193-52 and 193-53 to calculate the hookup fees for Wawayanda properties which connected into the Middletown system subsequent to September 17, 2015 and prior to the expiration of the 1990 Stipulation. The parties



acknowledge that this expiration shall occur on February 16, 2030, unless the 1990 Stipulation is extended by the parties. Properties in Wawayanda that connected to the Middletown system prior to September 17, 2015 shall not be charged a hookup fee.

6A. Notwithstanding the calculations provided in the proposed amended Sections 193-52 and 193-53, the City agrees to cap the total hookup fees chargeable to the Town for non-residential properties which connected into the Middletown system prior to the effective date of this Stipulation at a figure equal to Fifty Percent (50%) of the Code calculation.

7. For those properties in Wawayanda that connected to Middletown's system subsequent to September 17, 2015 and prior to the effective date of this Stipulation without paying a hookup fee, the parties agree that the amount of the hookup fees will be amortized by Middletown over the number of years from such effective date until February 16, 2030. The parties agree that any such hookup fees assessed prior to such effective date that remain due and owing on February 16, 2030 may be collected in their entirety from the assessed owner after February 16, 2030.

7A. For those non-residential properties in Wawayanda that connected to Middletown's system subsequent to September 17, 2015 and prior to the effective date of this Stipulation without paying a hookup fee, the parties further agree that the Town's Water District No. 1 and Sewer District No. 1 shall guarantee payment of the amounts due if the property owner fails to pay such amount by February 16, 2030.

7B. The parties agree that the properties subject to Paragraphs 6A, 7 and 7A, above, are limited to:

(i) Matrix Warehouse. SBL 4-1-83.6 (connected to water system only).

The Code calculation amounts to \$3,345.00, and 50% of that amount is \$1,672.50;

(ii) Middletown Real Estate/Wash Co., SBL 4-1-35.2. The Code

calculation amounts to \$144,190.00, and 50% of that amount is \$72,095.00;

(iii) Prestige Lexus Dealer, SBL 5-6-3.2. The Code calculation amounts to

\$3,288.00, and 50% of that amount is \$1,644.00.

8. For those properties in Wawayanda that connect to Middletown's water or sewer services after the effective date of this Stipulation but prior to February 16, 2030, the parties agree that the hookup fee will be paid in accordance with Section 193.55 of the City Code. Wawayanda agrees to provide written notification to the Middletown DPW Commissioner of any new construction or change of use that requires a hookup fee pursuant to Section 193.55. Wawayanda shall not allow receipt of City water/sewer services until payment in full of such hookup fee.

9. The parties agree to take any and all other reasonable additional steps as may be necessary to implement the provisions of Paragraphs 6, 6A, 7A, 7B, 7C, and 8, above.

10. Notwithstanding any references in the City Code that the Common Council has discretion to charge a higher hookup fee than the fee amount based on the figures and calculations in proposed amended Sections 193-52 and 193-53 of the City Code, such higher fee shall not be charged to Wawayanda properties. The hookup fee charged to buildings in Wawayanda shall not be increased unless the hookup fee charged to buildings in Middletown are increased proportionately.

11. The parties agree to negotiate in good faith prior to the above expiration date a successor agreement to the 1990 Stipulation so that Middletown's provision of water and sewer services to Wawayanda users will continue unabated at a fair and reasonable assessment to offset Middletown's water and sewer capital debt. However, if the parties are unable to agree on an extension or successor agreement, all Wawayanda users connected prior to February 16, 2030 shall have the right to continue receiving City water/sewer services at the same rates charged or to be charged to City users.

12. The terms of this Stipulation are conditioned upon Wawayanda's ability to establish and implement a lawful process to charge Town Sewer District and Water District properties an amount necessary to pay the City's hookup fees, such process to include those properties already connected to a water/sewer district supplied by the Middletown system. Wawayanda agrees to use reasonable efforts to expeditiously establish and implement such lawful process. The parties agree that if such lawful process cannot be implemented, this action shall be restored to the Court's calendar without prejudice. Notwithstanding the provisions of this Paragraph, the parties agree that Middletown is not obligated to provide water and sewer services to newly constructed residential, mixed-use, or nonresidential buildings in Wawayanda until a hookup fee is paid in accordance with Paragraphs 3 and 4, above.

13. Mutual Release: In consideration of the promises and covenants set forth in this Stipulation of Settlement, each party hereby irrevocably and unconditionally releases and discharges the other party from any and all charges, complaints, claims, and demands whatsoever of any kind, whether in law or in equity, in connection only with the

provisions or implementation of the 1990 Stipulation, which either party now has or may ever have had against the other party at any time up to the date each party signs this Stipulation of Settlement.

14. Adequacy of Consideration: The parties acknowledge that the consideration exchanged herein is fair and reasonable and an adequate basis for entering into this Stipulation of Settlement.

15. Non-Admission of Liability: Neither the negotiation, undertaking or signing of this Stipulation of Settlement constitutes, operates, or should be construed as an acknowledgment or admission that either party hereto or any person acting on either party's behalf has engaged in any wrongdoing or violated or failed to comply with any constitution, statute, regulation, or principle of common law.

16. Choice of Law and Venue: This Stipulation of Settlement shall be governed by and construed in accordance with the laws of the State of New York. Any action to enforce the terms hereof shall be brought in the Supreme Court of the State of New York for the County of Orange. In the event that either party believes that there has been a breach in the implementation of this Stipulation of Settlement, the non-breaching party agrees to provide written notice of such breach and to allow at least thirty (30) days to cure such breach before taking action to enforce this Stipulation of Settlement. Both parties agree to cooperate in good faith to try and cure any potential breach before taking such action to enforce this Stipulation of Settlement.

17. Savings Clause: Should any provision of this Stipulation of Settlement be declared unenforceable by a court or other tribunal of competent jurisdiction, it shall not

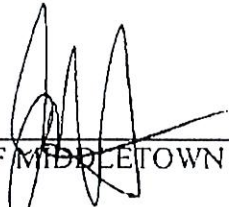
affect the enforceability of any other provision contained herein.

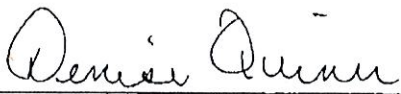
18. Non-Waiver: The parties agree that a failure by any party at any time to require performance of any provision of this Stipulation of Settlement shall not waive, affect, diminish, obviate, or void in any way that party's full right or ability to require performance of the same, or any provisions of this Stipulation, at any time thereafter.


19. Entire Agreement: The parties acknowledge that the terms and conditions set forth herein constitute the entire agreement between the parties and that there are no matters agreed to amongst them which are not specifically set forth herein.

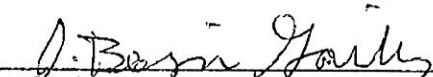
20. Modification of Agreement: This Stipulation of Settlement may not be modified except by a written document duly executed by both parties.

21. Execution: This Stipulation of Settlement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

  
11/17/21  
CITY OF MIDDLETOWN (Date)  
Plaintiff  
By: Joseph DeStefano, Mayor

  
11/23/21  
TOWN OF WAWAYANDA (Date)  
Defendant  
By: Denise Quinn, Supervisor

  
11/24/21  
Alex Smith, Esq. (Date)  
Corporation Counsel of the City of  
Middletown

  
11/23/21  
J. Benjamin Gailey, Esq. (Date)  
Jacobowitz & Gubits, LLP

Attorney for Plaintiff

Attorney for Defendant

16 James Street  
MIDDLETOWN, NEW YORK 10940  
(914) 346-4140

158 Orange Avenue  
WALDEN, NEW YORK 12586  
(914) 778-2121

DATED: NOVEMBER 30, 2021

SO ORDERED:   
Hon. CATHERINE M. BARTLETT, J.S.C.  
JUDGE NY STATE COURT OF CLAIMS  
ACTING SUPREME COURT JUSTICE

Middletown, New York 10940  
(845) 346-4140

Walden, New York 12586  
(845) 778-2121

DATED:

SO-ORDERED: \_\_\_\_\_  
HON. CATHERINE BARTLETT, JSC